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federal register

Wednesday
January 5, 1983

Selected Subjects

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Selected Subjects

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Presidential Documents

Title 3—

The President

Executive Order 12398 of December 31, 1982

President's Private Sector Survey on Cost Control in the Federal Government

By the authority vested in me as President by the Constitution and laws of the United States of America, including the Federal Advisory Committee Act, as amended (5 U.S.C. App. I), and in order to increase the membership and extend the life of the President's Private Sector Survey on Cost Control in the Federal Government, it is hereby ordered that Executive Order No. 12369 of June 30, 1982, is amended as follows:

(a) The second sentence of Section 1(a) shall read: "The Committee shall be composed of not more than 170 members appointed by the President from among citizens in private life.".

(b) Section 4(b) shall read: "In accordance with the Federal Advisory Committee Act, as amended, the Committee shall terminate on June 30, 1983, unless sooner extended.".

Ronald Reagan

THE WHITE HOUSE,
December 31, 1982.

[FR Doc. 83-364]
Filed 1-3-83; 4:25 pm]
Billing code 3195-01-M

Presidential Documents

Executive Order 12399 of December 31, 1982

Continuance of Certain Federal Advisory Committees

By the authority vested in me as President by the Constitution and statutes of the United States of America, and in accordance with the provisions of the Federal Advisory Committee Act, as amended (5 U.S.C. App. I), it is hereby ordered as follows:

Section 1. Each advisory committee listed below is continued until September 30, 1984.

(a) Committee for the Preservation of the White House; Executive Order No. 11145, as amended (Department of the Interior).

(b) President's Commission on White House Fellowships; Executive Order No. 11183, as amended (Office of Personnel Management).

(c) President's Committee on the National Medal of Science; Executive Order No. 11287, as amended (National Science Foundation).

(d) President's Council on Physical Fitness and Sports; Executive Order No. 12345, as amended (Department of Health and Human Services).

(e) President's Committee on Mental Retardation; Executive Order No. 11776 (Department of Health and Human Services).

(f) President's Export Council; Executive Order No. 12131 (Department of Commerce).

(g) The International Private Enterprise Task Force; Executive Order No. 12395 (Agency for International Development).

(h) Advisory Committee on Small and Minority Business Ownership; Executive Order No. 12190 (Small Business Administration).

(i) Federal Advisory Council on Occupational Safety and Health; Executive Order No. 12196 (Department of Labor).

(j) President's Committee on the International Labor Organization; Executive Order No. 12216 (Department of Labor).

(k) President's Economic Policy Advisory Board; Executive Order No. 12296 (Office of Policy Development).

(l) National Productivity Advisory Committee; Executive Order No. 12332 (Department of the Treasury).

(m) President's Committee on the Arts and the Humanities; Executive Order No. 12367 (National Endowment for the Arts).

Sec. 2. The following advisory committee is continued until December 31, 1983: President's National Security Telecommunications Advisory Committee; Executive Order No. 12382 (Department of Defense).

Sec. 3. Notwithstanding the provisions of any other Executive Order, the functions of the President under the Federal Advisory Committee Act which are applicable to the committees listed in Sections 1 and 2 of this Order, except that of reporting annually to the Congress, shall be performed by the head of the department or agency designated after each committee, in accordance with guidelines and procedures established by the Administrator of General Services.

Sec. 4. The following Executive Orders, that established committees which have terminated or whose work is completed, are revoked:

(a) Section 2(d) of Executive Order No. 12039, establishing the Intergovernmental Science, Engineering, and Technology Advisory Panel.

(b) Executive Order No. 12168, establishing the President's Commission for a National Agenda for the Eighties.

(c) Executive Order No. 12202, establishing the Nuclear Safety Oversight Committee.

(d) Executive Order No. 12229, establishing the White House Coal Advisory Council.

(e) Executive Order No. 12303, establishing the Presidential Advisory Committee on Federalism.

(f) Executive Order No. 12308, establishing the Presidential Task Force on the Arts and Humanities.

(g) Executive Order No. 12310, establishing the President's Commission on Housing.

(h) Executive Order No. 12323, establishing the Presidential Commission on Broadcasting to Cuba.

(i) Executive Order No. 12329, establishing the President's Task Force on Private Sector Initiatives.

(j) Executive Order No. 12360, establishing the President's Task Force on Victims of Crime.

(k) Section 1–2 of Executive Order No. 12137, as amended, establishing the Peace Corps Advisory Council.

Sec. 5. Executive Order No. 12258 is superseded.

Sec. 6. This Order shall be effective December 31, 1982.

Ronald Reagan

THE WHITE HOUSE,
December 31, 1982.

[FR Doc. 83-401
Filed 1-4-83; 12:03 pm]
Billing code 3195-01-M

Presidential Documents

Executive Order 12400 of January 3, 1983

President's Commission on Strategic Forces

By the authority vested in me as President by the Constitution and laws of the United States of America, and in order to establish, in accordance with the provisions of the Federal Advisory Committee Act, as amended (5 U.S.C App. I), an advisory committee on strategic forces, it is hereby ordered as follows:

Section 1. *Establishment.* (a) There is established the President's Commission on Strategic Forces. The Commission shall be composed of no more than 15 members appointed or designated by the President. These members shall have particular knowledge and expertise concerning the national security, strategic forces, or foreign relations of the United States.

(b) The President shall designate a Chairman from among the members of the Commission.

Sec. 2. *Functions.* (a) The Commission shall review the strategic modernization program for United States forces, with particular reference to the intercontinental ballistic missile system and basing alternatives for that system, and provide appropriate advice to the President, the National Security Council, and the Department of Defense.

(b) The Commission shall report to the President by February 18, 1983.

Sec. 3. *Administration.* (a) The heads of Executive agencies shall, to the extent permitted by law, provide the Commission such information as it may require for purposes of carrying out its functions. Information supplied to or developed by the Commission shall not, to the extent permitted by law, be available for public inspection.

(b) Members of the Commission shall serve without compensation for their work on the Commission. However, members appointed from among private citizens of the United States may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by law for persons serving intermittently in the government service (5 U.S.C. 5701–5707), to the extent funds are available therefor.

(c) The Secretary of Defense shall provide the Commission with such administrative services, facilities, staff and other support services as may be necessary. Any expenses of the Commission shall be paid from such funds as may be available to the Secretary of Defense.

Sec. 4. *General.* (a) Notwithstanding any other Executive Order, the functions of the President under the Federal Advisory Committee Act, as amended, except that of reporting to the Congress, which are applicable to the Commission, shall be performed by the Secretary of Defense, in accordance with guidelines and procedures established by the Administrator of General Services.

(b) The Commission shall terminate 30 days after its report, unless sooner extended.

Ronald Reagan

THE WHITE HOUSE,
January 3, 1983.

[FR Doc. 83-402
Filed 1-4-83; 12:04 pm]
Billing code 3195-01-M

Editorial Note: The President's statement of January 3 on the formation of the Commission is printed in the *Weekly Compilation of Presidential Documents* (vol. 19, no. 1).

Presidential Documents

Proclamation 5009 of January 3, 1983

Bicentennial of Air and Space Flight

By the President of the United States of America

A Proclamation

On November 21, 1783, a French balloonist named Etienne de Montgolfier made the first manned flight in history when he soared aloft in a hot air balloon at LaMuette, France. The balloon sailed over Paris for 25 minutes and traveled five and one-half miles.

This epochal flight fulfilled mankind's desire, as old as the myth of Icarus, to become airborne. But it was also something more than the fulfillment of a dream. Montgolfier's achievement was a concrete demonstration of the power of technological know-how when coupled with the yearnings of the human spirit. For the first time, man had freed not only his imagination but his physical self from the forces of gravity. With every advance, our imagination and knowledge have leaped forward—from Montgolfier to the Wright brothers, through the moon walks and the space shuttle.

In the 200 years since that first flight, man's quest to understand the unknown has resulted in our ability to fly higher, faster, safer and farther. We race the sun as we move from continent to continent in a matter of hours. We have vastly multiplied commerce and communication among far-flung peoples. We have flown 250 thousand miles to explore the surface of the moon, and, with this unprecedented triumph of spirit and technology, changed forever our view of the Earth. She is a delicate blue jewel in the darkness of space.

In recognition of 200 years of progress around the globe in manned flight, the Congress, by Senate Joint Resolution 270, has designated the year 1983 as the Bicentennial of Air and Space Flight. I am proud to have been named Honorary Chairman of the United States Organizing Committee, which will plan our participation in activities at home and abroad to commemorate the Bicentennial. I view the celebration as an opportunity to increase public awareness of our Nation's achievements in aviation and space flight and to rededicate ourselves to the spirit of excellence which has brought us so far so fast.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby designate the year beginning January 1, 1983, as the Bicentennial of Air and Space Flight. I call upon all government agencies and the American people to observe this year with appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this 3rd day of Jan., in the year of our Lord nineteen hundred and 83, and of the Independence of the United States of America the two hundred and seventh.

Ronald Reagan

[FR Doc. 83-403
Filed 1-4-83; 12:05 pm]
Billing code 3195-01-M

Presidential Documents

Proclamation 5010 of January 3, 1983

One Hundred and Fiftieth Anniversary of Greene County, Missouri

By the President of the United States of America

A Proclamation

The year 1983 marks the sesquicentennial anniversary of the founding of Greene County, Missouri.

Greene County, named for the Revolutionary War hero General Nathanael Greene, has enjoyed a long and distinguished history. Many of its sons and daughters have held high public office and otherwise served the State of Missouri and our nation.

In 1833, Greene County included all of southwest Missouri and remains today an important cultural and economic center. As the third most populous county in the State of Missouri, it continues to grow and prosper.

The Congress of the United States, by House Joint Resolution 630, has requested and authorized the President of the United States to proclaim January 3, 1983, as the One Hundred and Fiftieth Anniversary of Greene County, Missouri.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim January 3, 1983, as the "One Hundred and Fiftieth Anniversary of Greene County, Missouri."

IN WITNESS WHEREOF, I have hereunto set my hand this third day of January, in the year of our Lord nineteen hundred and eighty-three, and of the Independence of the United States of America the two hundred and seventh.

Ronald Reagan

[FR Doc. 83-404
Filed 1-4-83; 12:06 pm]
Billing code 3195-01-M

Rules and Regulations

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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. 82-356]

Citrus Canker—Mexico

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule.

SUMMARY: This document amends the interim rule published in the Federal Register on November 17, 1982, which was based on the finding of citrus canker disease in the State of Colima and in the municipio of Coahuayana in the State of Michoacan in Mexico. The interim rule is amended by reestablishing fruit and peel of lemon and Persian lime as restricted articles and by allowing fruit or peel of ethrog, grapefruit, lemon, orange, Persian lime, and tangerine from areas in Mexico not infected by citrus canker disease to be imported into the United States in accordance with the restrictions set forth in the interim rule of November 17, 1982. The interim rule is further amended by adding restrictions designed to assure that fruit or peel of ethrog, grapefruit, lemon, orange, Persian lime and tangerine are not destined to locations within Arizona, California, Florida, Hawaii, Louisiana, Puerto Rico, Texas, or the Virgin Islands of the United States.

This action is necessary as an emergency measure to establish provisions in accordance with the statutory mandate and to prevent the introduction of citrus canker disease into the United States.

EFFECTIVE DATE: January 20, 1983.

FOR FURTHER INFORMATION CONTACT:
Frank Cooper, Staff Officer, Regulatory Services Staff, Plant Protection and Quarantine, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 637 Federal Building, 6505 Belcrest Road, Hyattsville, Maryland 20782; 301–436–8248.
Stephen Poe, Plant Pathologist, Emergency Programs, Plant Protection and Quarantine, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 609 Federal Building, 6505 Belcrest Road, Hyattsville, Maryland 20782; 301–436–6365.

SUPPLEMENTARY INFORMATION:

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 of this interim rule without further opportunity for public comment. Immediate action is necessary to establish provisions in accordance with the statutory mandate and to prevent the introduction into the United States of citrus canker disease.

Further, pursuant to the administrative procedure provisions in 5 U.S.C. 553, it is found upon good cause that further 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.

Background

On November 17, 1982, the Department, on an emergency basis, established an interim rule (47 FR 51723–51729) based on the recent finding of citrus canker disease in the State of Colima and in the municipio of Coahuayana in the State of Michoacan in Mexico (these areas are referred to below as infected areas).

The interim rule of November 17, 1982, provided that any fruit or peel of Mexican lime (*Citrus aurantifolia*) from any area in Mexico, and any other fruit or peel of citrus or citrus relatives (fruit or peel of any genera, species, or varieties of the subfamilies Aurantioideae, Rutoideae, and Toddalioideae of the botanical family Rutaceae) from infected areas in Mexico offered for importation into the United States would be refused importation unless imported by the U.S. Department of Agriculture for experimental or scientific purposes under certain conditions. This portion of the interim rule of November 17, 1982, remains in effect without change.

The interim rule of November 17, 1982, also designated fruit or peel of ethrog (*Citrus medica*), grapefruit (*Citrus paradisi*), lemon (*Citrus limon*), orange (*Citrus sinensis*), Persian lime (*Citrus latifolia*), and tangerine (*Citrus reticulata*) from uninfected areas in Mexico as restricted articles and provided that they would be allowed to be imported into the United States by any importer if imported in accordance with certain conditions. In addition, the interim rule of November 17, 1982, allowed these articles to be imported by the U.S. Department of Agriculture for experimental or scientific purposes under certain conditions.

A companion document to the interim rule of November 17, 1982, was also published in the Federal Register on November 17, 1982, (47 FR 51764–51765). The companion document proposed to establish as a final rule provisions similar to those set forth in the interim rule. Comments were solicited concerning the proposed rule for a 60 day period which ends January 17, 1983.

The provisions of the interim rule concerning the importation of fruit or peel of lemon and Persian lime were changed by court order. On November 17, 1982, the United States District Court for the Southern District of Florida issued a temporary restraining order concerning the importation of fruit or peel of lemon and lime from Mexico, and on November 19, 1982, the court converted the temporary restraining order into a preliminary injunction. Pursuant to the preliminary injunction, it appears that fruit or peel of lemon or lime have been allowed to be imported by the U.S. Department of Agriculture for experimental or scientific purposes in accordance with certain conditions, but that otherwise, fruit or peel of lemon or lime from Mexico have been prohibited from being imported into the United States pending an Agency decision to be made after a public hearing. *South Florida Growers Association, Inc. et al.* v. *U.S. Department of Agriculture et al.*, 82–

2462, (S.D. Fla., 1982). A document published in the **Federal Register** on December 2, 1982 (47 FR 54273–54275), announced this rule change as a result of the preliminary injunction.

The court ordered that the preliminary injuction concerning lemons and limes remain in effect until 5 days after the announcement of an Agency decision after a public hearing. On December 6, 1982 the court extended this 5 day period to a 15 day period. Pursuant to notices in the documents of November 17, 1982, and in the document of December 2, 1982, a public hearing was held in San Antonio, Tex. on December 7, 1982. As explained in the document of December 2, 1982, the public hearing, among other things, served as a forum for soliciting comments on the interim rule of November 17, 1982.

This document reestablishes fruit and peel of lemon and Persian lime as restricted articles, and sets forth additional restrictions on the importation of all restricted articles. The provisions of the interim rule of November 17, 1982, allowing such fruit or peel of ethrog, grapefruit, lemon, orange, Persian lime, and tangerine to be imported by the U.S. Department of Agriculture for experimental or scientific purposes remain in effect without change. However, this document provides that otherwise fruit or peel of ethrog, grapefruit, lemon, orange, Persian lime, and tangerine from uninfected areas in Mexico are allowed to be imported into the United States in accordance with the restrictions set forth in the interim rule of November 17, 1982, and in accordance with additional restrictions set forth in this document. As a condition of importation, these articles are required to comply with provisions of the interim rule of November 17, 1982, concerning permits, inspection and phytosanitary certificates of inspection, treatment and other requirements, marking and identity, arrival notification, costs and charges, and ports of entry. These provisions and the rationale for them are set forth in the interim rule document of November 17, 1982. As an additional condition of importation, this document requires these articles to comply with restrictions designed to assure that they are not destined to locations within Arizona, California, Florida, Hawaii, Louisiana, Puerto Rico, Texas, or the Virgin Islands of the United States.

As noted above, any of the articles subject to the provisions of the interim rule are allowed to be imported by the U.S. Department of Agriculture for experimental or scientific purposes under certain conditions. The specific provisions and the rationale for them are set forth in the interim rule document of November 17, 1982.

Basis for Requirements

Citrus canker disease, which does not occur in the United States other than in Guam, is caused by the infectious bacterium *Xanthomonas campestris* pv *citri* (Hasse 1915) Dye 1976. The strain of citrus canker bacteria found to occur in infected areas in Mexico has been found to infect twigs and foliage of Mexican lime trees and Persian lime trees in Mexico. The resulting disease damages the twigs and foliage of the trees.

Further, artificial inoculation tests using the Mexican strain of the pathogen were conducted by USDA scientists in a greenhouse under optimum conditions. These tests resulted in development of citrus canker disease symptoms on leaves of Meyer lemon (*Citrus Meyeri* syn. *Citrus limon* X *Citrus sinensis*) and caused a hypersensitive reaction to citrus canker bacteria on leaves of calamondin (*Citrus reticulata* X *Fortunella* sp.).

The interim rule does not concern twigs or foliage of any citrus or citrus relatives. This is because twigs and foliage of all citrus and citrus relatives from Mexico are already subject to provisions of the "Citrus Canker and Other Citrus Diseases" regulations (7 CFR 319.19). These regulations appear to be adequate to prevent the dissemination of citrus canker disease into the United States by the movement of such twigs and foliage.

As noted above, the interim rule of November 17, 1982, provided that any fruit or peel of Mexican lime from any area in Mexico, and any other fruit or peel of citrus or citrus relatives from infected areas in Mexico offered for importation into the United States would be refused entry into the United States unless imported by the U.S. Department of Agriculture for experimental or scientific purposes under certain conditions. The court orders did not affect this portion of the interim rule of November 17, 1982. After further consideration of all of the available information, including that presented at the public hearing, it has been determined that this portion of the interim rule of November 17, 1982, should remain in effect without change. The basis for this determination is as follows.

The presence of citrus canker disease in infected areas may result in high levels of citrus canker bacteria being spread to fruit growing on infected trees and to fruit on nearby uninfected trees. Based on departmental expertise, it has been determined that fruit of citrus or citrus relatives grown in the infected areas could be contaminated with high levels of citrus canker bacteria, some of which could be trapped in the pores or wounds of the fruit. There does not appear to be a feasible method for inspection or treatment, or other procedures for removing or destroying all of these bacteria. The chlorine treatment required for restricted articles would be adequate to destroy any bacteria on the surface of the fruit, but would not be adequate to destroy bacteria trapped in the pores or wounds of the fruit.

It is unlikely that new citrus canker infections would be established in the United States because of the importation of fruit or peel of citrus or citrus relatives carrying bacteria trapped in the pores or wounds. In order for the bacteria to cause an infection an unlikely sequence of events would have to occur. First, bacteria trapped in the pores or wounds of the fruit would have to be released without coming in contact with any of the natural acid of the fruit, since citrus canker bacteria are quickly killed by contact with the acid. Next, bacteria would have to be brought into intimate contact with young live twigs or leaves of host plants and, in addition, such contact would have to occur under optimum temperature and humidity conditions. However, it has been determined that action should be taken to prevent the introduction of live citrus canker bacteria under circumstances where there is even such an unlikely chance that these bacteria could cause citrus canker disease to become established. Therefore, it is necessary to refuse to allow the importation of all fruit or peel of citrus or citrus relatives, including Mexican lime, from infected areas in Mexico, unless imported by the U.S. Department of Agriculture for experimental or scientific purposes.

Since there are no feasible methods for assuring that Mexican limes offered for importation have not come from infected areas, it is also necessary to refuse to allow the importation of any fruit or peel of any Mexican lime from uninfected areas in Mexico, unless imported by the U.S. Department of Agriculture for experimental or scientific purposes. Approximately sixty percent of the Mexican limes grown in Mexico are grown within the infected areas of Mexico. These Mexican limes are moved and consumed throughout Mexico. As a condition of movement from the infected areas, Mexican limes are required by the Mexican government to be treated by thorough wetting with a

solution containing 200 parts per million active chlorine for a period of at least two minutes. Bacteria present on the surface of the Mexican limes would be destroyed by this treatment. However, some of the citrus canker bacteria could remain trapped in the pores or wounds of the fruit. Consequently, any Mexican limes offered for importation could have live citrus canker bacteria trapped in the pores or wounds, and, as noted above, it has been determined that action should be taken to prevent the introduction of live citrus canker bacteria under circumstances where there is even such an unlikely chance that these bacteria could cause citrus canker disease to become established.

Also, as noted above, the interim rule published on November 17, 1982, provided that fruit or peel of ethrog, grapefruit, lemon, orange, Persian lime, and tangerine from uninfected areas in Mexico would be designated as restricted articles and would be allowed to be imported into the United States by any importer in accordance with certain restrictions. Since the publication of the interim rule of November 17, 1982, further consideration has been given concerning the importation of these articles.

Consideration for restricted article status has been limited to these articles since all other fruit and peel of citrus and citrus relatives are refused importation into the United States because of citrus canker disease (with certain exceptions for importation by the U.S. Department of Agriculture) or are in effect prohibited from being imported under the fruits and vegetables regulations (7 CFR 319.56 *et seq.*).

Based on all of the available information, including that submitted at the public hearing, it has been determined that fruit and peel of ethrog, grapefruit, lemon, orange, Persian lime, and tangerine should be designated as restricted articles and be allowed to be imported into the United States by any importer if such movement is in conformity with all of the restrictions set forth in the interim rule of November 17, 1982, and in conformity with additional restrictions designed to keep the articles from being distributed in citrus producing areas in the United States. The basis for this determination is as follows.

Restricted articles are required to come only from uninfected areas in Mexico. Even so, because of the possibility of natural spread of the bacteria and because of the possibility of spread of the bacteria by the movement of Mexican limes from infected areas, there is a slight risk that fruit or peel of ethrog, grapefruit, lemon, orange, Persian lime, and tangerine from uninfected areas, could become lightly contaminated with surface bacteria. However, the restrictions set forth in the interim rule of November 17, 1982, including the chlorine treatment, appear to be adequate to destroy any surface contamination that could occur on the restricted articles. Accordingly, it appears that these treated articles from uninfected areas would not transmit any live bacteria.

If any new infections were to occur in the areas that are currently uninfected areas, then treated, restricted articles could contain bacteria trapped in the pores or wounds. As discussed above, it has been determined that action should be taken to prevent the introduction of live citrus canker bacteria under circumstances in which there is even the unlikely chance that these bacteria could cause citrus canker to become established. Therefore, as a precautionary measure, geographical restrictions are added as a condition of importation for restricted articles as further explained below.

The disease caused by citrus canker bacteria could be spread by the movement of twigs or leaves from infected trees. However, action is being taken to prevent this from occurring. The Mexican government has established a quarantine which prohibits the movement from the infected areas of any plant material as well as all nursery stock of citrus and citrus relatives.

Also, there is a theoretical risk that new infections could be caused by the natural spread of citrus canker bacteria, or from the movement of treated Mexican limes from infected areas to other areas throughout Mexico.

However, it does not appear that the disease would move by natural spread out of the areas where the disease currently is present. The citrus canker bacteria are moved in nature by wind and splashing rain. Such natural movement is limited to distances of no more than one and one-half miles. The infected areas are not in close enough proximity with other areas where significant amounts of citrus are grown to allow natural spread of the disease.

Further, it does not appear that new infections would be caused by the movement of Mexican limes. Mexican limes are the only citrus or citrus relatives allowed to move out of the infected areas in Mexico. As noted above, Mexican limes are required to be treated with a chlorine treatment prior to movement out of the infected areas. The treatment would be sufficient to destroy surface bacteria but may not kill bacteria trapped in the pores or wounds. It is unlikely that new citrus canker infections would be established in Mexico due to the movement within Mexico or Mexican limes carrying citrus canker bacteria in the pores or wounds because, in accordance with the principles explained above, an unlikely sequence of events would have to occur in Mexico. Bacteria would have to be released without coming into contact with any of the natural acid of the fruit, would have to be brought into contact with young live twigs of host plants, and would have to have such contact under optimum temperature and humidity conditions.

It does not appear that it is necessary to provide additional precautions with respect to restricted articles to assure that they would not be mixed with the same types of peel or fruit grown in the infected areas. Only small amounts of the types of fruit designated as restricted articles are grown in the infected areas. Further, it appears that such restricted articles grown in the infected areas are used in the infected areas. Also, Mexico has established procedures which appear to be adequate to prevent the movement of such restricted articles out of the infected areas.

The Department is continuing to participate with Mexico in conducting surveys designed to detect any new infections that could occur in Mexico outside of the infected areas, and it appears that any new infections would be quickly detected. However, as an additional precaution against the establishment of citrus canker disease caused by bacteria trapped in pores or wounds of restricted articles from possible undetected infections in Mexico, it has been determined that it is necessary to establish procedures designed to prevent restricted articles from being destined to areas in the United States where host plants are grown either commercially or noncommercially in significant amounts. As explained above, certain lemon and lime species have been found to be host plants, and calamondin may be a host plant. Further, additional testing may indicate that plants of other citrus or citrus relatives are hosts. Significant numbers of known host plants are grown either commercially or noncommercially in Arizona, California, Florida, Guam, Hawaii, Louisiana, Puerto Rico, Texas, and the Virgin Islands of the United States. It should also be noted that these States and Territories are the only places in the United States where significant numbers of any types of citrus or citrus relatives

are grown either commercially or noncommercially.

Under these circumstances, it has been determined that it is necessary to amend the interim rule of November 17, 1982, to allow restricted articles to be imported only for movement to and use in a location other than Arizona, California, Florida, Hawaii, Louisiana, Puerto Rico, Texas, and the Virgin Islands of the United States (the rationale for not including Guam is explained below); to require that the restricted articles move from the port of entry in the United States to destination only pursuant to a restricted destination permit issued by an inspector of the U.S. Department of Agriculture; and to require the outer container of the restricted articles to bear the statement "Not to be distributed within Arizona, California, Florida, Hawaii, Louisiana, Puerto Rico, Texas, or the Virgin Islands of the United States." The interim rule is also amended to provide that a restricted destination permit will be issued for the movement of an article only upon the presentation of evidence, such as a U.S. Customs bond, invoice, or other shipping document indicating destination, sufficient to establish that the articles would be shipped to a location in the United States other than a location in the specified States or Territories. Further, a definition of "restricted destination permit" is added to explain that a restricted destination permit is a statement added by a U.S. Department of Agriculture inspector to a shipping document of the importer stating that restricted articles referred to in the shipping document are allowed to be shipped to the destination specified on the shipping document. These provisions appear to be adequate to advise affected persons of the restrictions and to provide a mechanism for assuring that the articles are not shipped to a location in the United States in which significant amounts of any types of citrus or citrus relatives are grown either commercially or noncommercially.

As noted above, the geographical restrictions do not apply to the importation of fruit into Guam. Pursuant to the provisions of the Federal Plant Pest Act and the Plant Quarantine Act there is authority to regulate the importation of fruit and peel of citrus and citrus relatives into Guam. However, Guam is not listed as a jurisdiction subject to the provisions of the interim rule and it is not proposed to regulate the importation of these articles into Guam under the proposed rule. Citrus canker occurs in Guam and the introduction of citrus canker into Guam from Mexico would not cause significant additional damage to crops in Guam. Also, there appears to be adequate protection against the risk of spread of citrus canker disease from Guam into other parts of the United States since the provisions in 7 CFR 318.82–2 in essence prohibit the importation into other parts of the United States from Guam of the classes of articles subject to the provisions of this interim rule.

Under these circumstances, it appears that there is no basis for refusing to allow the importation of the fruit or peel of ethrog, grapefruit, lemon, orange, Persian lime, or tangerine from uninfected areas in Mexico if imported in compliance with the conditions set forth in the interim rule of November 17, 1982, and in accordance with the additional conditions designed to keep the articles from being distributed in uninfected citrus producing areas in the United States as set forth above.

Clarification

This document also makes a clarification with respect to § 319.27–5(a) of the interim rule. Prior to the effective date of this document § 319.27–5(a) provided that:

(a) Any restricted article at the time of importation shall plainly and correctly bear on the outer container (if in a container) or on the restricted article (if not in a container) the following information:

(1) General nature and quantity of the contents,

(2) Country or locality of origin,

(3) Name and address of shipper, owner, or person shipping or forwarding the article,

(4) Name and address of consignee,

(5) Identifying shipper's mark and number,

(6) A letter "C" within the figure of a diamond or a rectangle if the article had been treated in Mexico in accordance with § 319.27–4, and

(7) A statement, such as "origin in a citrus canker free zone," to represent origin outside of the infected areas.

As explained above, these provisions remain in effect and this document also provides that the outer container must bear the statement "Not to be distributed within Arizona, California, Florida, Hawaii, Louisiana, Puerto Rico, Texas, or the Virgin Islands of the United States." Obviously, the information required by § 319.27–5(a) could not be included feasibly on the fruit itself under the provisions of this section. Accordingly, § 319.27–5(a) is amended by deleting the provisions allowing the information to be borne on the fruit.

Comments

Many of the comments presented at the public hearing and other comments that have been received were fully or partially in favor of the provisions of the interim rule of November 17, 1982; however, many of the comments opposed the interim rule in one or more respects and are discussed below.

Assertions were made that restricted articles (some comments referred only to lemons and limes) should not be allowed to be imported into the United States in accordance with the conditions set forth in the interim rule of November 17, 1982, because some Mexican limes are moved from the infected areas to other locations in Mexico and could have bacteria trapped in the pores or wounds of the fruit. This issue and the basis for allowing restricted articles to be imported in accordance with specified restrictions are fully discussed above under the heading "Basis for Requirements."

Many comments were made concerning the imposition of geographical restrictions on the importation into the United States of restricted articles. In this connection:

(1) It was asserted that lemons and Persian limes from uninfected areas should not be allowed to be imported into lemon or lime producing areas of the United States,

(2) It was asserted that lemons and limes from uninfected areas should not be allowed to be imported into any citrus producing areas in the United States,

(3) It was asserted that restricted articles should not be allowed to be imported into citrus producing areas in the United States,

(4) It was asserted that restricted articles should not be allowed to be imported into States east of the Mississippi River,

(5) It was asserted that restricted articles (some comments referred only to lemons and limes) should not be allowed into Alabama, Florida, Georgia, Louisiana, Mississippi, South Carolina, and Tennessee. These issues are fully discussed above under the heading "Basis for Requirements," and the interim rule is amended to contain provisions to help assure that restricted articles are not destined to locations in Arizona, California, Florida, Hawaii, Louisiana, Puerto Rico, Texas, or the Virgin Islands of the United States. As explained above, this list includes only those States in which significant amounts of citrus or citrus relatives are grown.

It was also asserted that buffer zones should be established around citrus growing areas in the United States and that restricted articles should not be allowed to be shipped to areas in the buffer zones. No changes are made

based on this assertion. As noted above, it is provided that any restricted article may move only pursuant to a restricted destination permit and must bear on the outer container the statement "Not to be distributed within Arizona, California, Florida, Hawaii, Louisiana, Puerto Rico, Texas, or the Virgin Islands of the United States." This appears to provide adequate protection against the distribution of restricted articles in citrus producing areas in the United States and it does not appear that the establishment of buffer zones is necessary.

Assertions were made that restricted articles (some comments referred only to lemons and limes) should not be allowed to be imported into the United States, unless more safeguards were established or until more testing should occur. In this connection:

(1) It was asserted that not enough is known about the disease at this time to make a judgment concerning what measures should be taken to prevent its spread,

(2) It was asserted that the effect of the disease in Mexico should be observed for one full year,

(3) It was asserted that Mexican limes should be prohibited from moving out of the infected areas, and

(4) It was asserted that Mexican limes should be prohibited from moving from the infected areas into the State of Veracruz, the principal Persian lime growing area in Mexico.

No changes are made based on these comments. Based on data from field observations and greenhouse testing, it has been determined that the strain of citrus canker bacteria present in Mexico does not infect any fruit, but only infects twigs or leaves of host plants. Further, as explained above under the heading "Basis for Requirements," it has been determined that the provisions of the interim rule are adequate to allow the importation of restricted articles without causing citrus canker disease to become established in the United States. In addition, it should be noted that based on current field observations it has been determined that the disease has been present in the infected areas for at least two years, and that this factor has been considered in determining the characteristics of the disease.

Assertions were made that it is necessary to prohibit the importation of restricted articles (some comments referred only to lemons and limes) because of damage that could arise if the citrus canker disease from Mexico were to become established in citrus producing areas in the United States. In this connection:

(1) It was asserted that it is unknown what effect this disease would have on citrus or citrus relatives in the United States because of differences between temperature and rainfall levels in the areas in Mexico where citrus canker occurs and the citrus producing areas in the United States,

(2) It was asserted that it is possible that the bacteria causing this disease could mutate and attack the fruit of citrus or citrus relatives or attack additional plants of citrus or citrus relatives,

(3) It was asserted that this disease is a new strain and there has not been adequate field testing to determine what types of citrus or citrus relatives in the United States are susceptible to damage from this disease,

(4) It was asserted that even if this disease were found to cause little damage to citrus or citrus relatives, its establishment in citrus producing areas in the United States could cause confusion and delay in identifying any other strain of citrus canker disease that could become established in these citrus producing areas,

(5) It was asserted that there are no adequate control measures which could be taken if the disease were to become established in citrus growing areas in the United States, and

(6) It was asserted that if the disease were to become established in the lime producing area in Florida (which is the only major commercial lime producing area in the United States) it would totally destroy the lime industry and that this could result in approximately $190 million worth of damage.

No changes are made based on these comments. The Department does not dispute that, for the most part, these assertions would have some validity if this strain of citrus canker were to become established in citrus producing areas in the United States. However, as explained above under the heading "Basis for Requirements," it has been determined that the provisions of the interim rule are adequate to allow the importation of restricted articles without causing the establishment of citrus canker disease in the United States. Also, it should be noted that survey programs are continually being conducted in Florida, and that if the disease were to appear in Florida it would almost certainly be detected and eradicated before it became extensive.

Further, the following should be noted with respect to the issue of mutation. If mutations were to occur and to cause additional plants to become infected or to cause the fruit of any plants to become infected the mutations would almost certainly occur in the infected areas. This would be readily detected as a result of the ongoing research being conducted in the infected areas.

It was asserted that vegetables from infected areas, and fruits not subject to the provisions of the interim rule, including mangoes, from infected areas should be prohibited from being imported into the United States, or at least should be required to be treated as a condition of importation. One commenter also asserted that citrus canker bacteria could be spread from infected areas in Mexico to uninfected areas in Mexico by people, crates, farm equipment, and vehicles. No changes are made based on these comments. The Mexican government prohibits the movement from infected areas of crates, farm equipment, and vehicles used for citrus production in infected areas. Based on departmental expertise, it has been determined that (except for actions concerning citrus or citrus relatives) it is not necessary to require additional restrictions on the movement of persons or articles because of citrus canker disease. Any article or object from the infected areas could be lightly contaminated with citrus canker bacteria. However, the survival time on articles or objects other than citrus fruits would be likely to be very short and, based on departmental expertise, it has been determined that new infections would not be caused by such means.

Assertions were made that restricted articles (some comments referred only to lemons and limes) should not be allowed to be imported into the United States because of a lack of effectiveness of activities being conducted in Mexico. In this connection:

(1) It was asserted that the interim rule was based in part on an agreement between the United States and Mexico in which, among other things, Mexico has agreed to require Mexican limes to be free of leaves, stems, and other debris, and to be treated with a chlorine treatment prior to movement from infected areas; but that Mexican limes are moving out of the infected areas without compliance with these procedures,

(2) It was asserted that Plant Protection and Quarantine (the unit within the United States Department of Agriculture which is assigned to administer the citrus canker program; referred to below as PPQ) and "impartial" monitoring teams should participate in monitoring compliance of the agreement within Mexico,

(3) It was asserted that a PPQ official should be assigned to each Mexican packing house to assure compliance

with the agreement, and that the costs for the PPQ officials should be paid by the packers.

(4) It was asserted that all required treatments should be allowed to be conducted only in the United States under PPQ supervision.

(5) It was asserted that it would be difficult to assure the effectiveness of the treatments since there could be some difficulty in maintaining the chlorine treatments at proper strengths.

(6) It was asserted that Mexico may not have the capability and willingness to exercise controls, particularly to assure that adequate measures are taken during other than working hours and that the Mexican control program would be compromised by bribes, and

(7) It was asserted that Mexico should be required to establish a feasible program to eradicate the disease before any fruit or peel of citrus is allowed to be imported into the United States.

No changes are made based on these assertions. PPQ supervisory personnel regularly visit packing houses in infected areas, border stations on roads leaving these areas, and wholesale markets outside of the infected areas in Mexico, and have found that fruit is being moved in compliance with the agreement referred to in item (1) above, and in compliance with the provisions of the interim rule of November 17, 1982. Further, an employee of PPQ is assigned on a full time basis in the infected areas in Mexico to monitor the treatment of Mexican limes. In addition, it should be noted that the Department is working with Mexico to develop appropriate technology to be used to eradicate this disease from infected areas in Mexico. However, as explained above, there is currently no basis for refusing to allow the importation of restricted articles in accordance with the specified restrictions.

Persons stated at the public hearing that a plant pathologist from a university in Texas while in Colima observed citrus canker disease on citrus other than limes. No changes are made based on these comments. These comments apparently referred to activities of Dr. Mike Davis of Texas A & I University who was not present at the public hearing. However, in a telephone conversation with representatives of the Department and in a confirmation letter, Dr. Davis stated that he had not observed citrus canker disease on any citrus other than limes.

One commenter asserted that there should be a total embargo on all citrus from Mexico until a hearing is held in Florida. The commenter did not raise issues that were not already raised at the public hearing that was held in San Antonio, Texas, on December 7, 1982, and it does not appear that there is a need for holding an additional hearing in Florida. Accordingly, an additional hearing is not scheduled. Also, it should be noted that many of the comments presented at the public hearing were from representatives of various Florida citrus interests.

It was asserted that the public hearing was illegal based on the contention that it did not conform to the provisions of 5 U.S.C. 556 and 557. The hearing was not conducted in accordance with these provisions. These provisions only apply to hearings required by statute to be made "on the record". The Department has authority to regulate the importation of articles because of citrus canker disease under the Federal Plant Pest Act and the Plant Quarantine Act. The November 17, 1982, interim rule was established by the Department, on an emergency basis, pursuant to authority contained in the Federal Plant Pest Act. The Federal Plant Pest Act authorizes Department action on an emergency basis without a public hearing. Further, any public hearings held under the Federal Plant Pest Act or the Plant Quarantine Act are not required to be made "on the record."

It was asserted that the public hearing was illegal based on the contention that the notice that the hearing concerned the interim rule was not proper and timely. As noted above, the public hearing was held on December 7, 1982. The interim rule and the proposed rule which were published in the **Federal Register** on November 17, 1982, announced that the public hearing would concern the proposed rule. The rule change as a result of injunction, which was published on December 2, 1982, announced that the public hearing would also serve as a forum for soliciting comments on the interim rule. The proposed rule and the interim rule concern the same issues, i.e., what provisions should apply concerning the importation of fruit and peel of citrus and citrus relatives from Mexico. Accordingly, notice concerning the relevant issues to be discussed at the hearing was given in the **Federal Register** on November 17, 1982, and given again on December 2, 1982, and it appears that these notices were proper and timely in all respects.

Executive Order and Regulatory Flexibility Act

The emergency nature of this action makes it impracticable for the Agency to follow the procedures of Executive Order 12291 with respect to this interim rule. Immediate action is necessary to establish provisions in accordance with the statutory mandate to prevent the introduction into the United States of citrus canker disease.

This emergency situation also makes compliance with section 603 and timely compliance with section 604 of the Regulatory Flexibility Act impracticable. Since this action may have a significant economic impact on a substantial number of small entities, the Final Regulatory Impact Analysis, if required, will address the issues required in section 604 of the Regulatory Flexibility Act.

List of Subjects in 7 CFR Part 319

Agricultural commodities, Imports, Plant diseases, Plants (agriculture), Transportation, Citrus canker, Fruit.

PART 319—[AMENDED]

Under the circumstances referred to above, "Subpart—Citrus Canker—Mexico" in 7 CFR Part 319 is amended as follows:

§ 319.27 [Amended]

1. Section 319.27 is amended by deleting "1a" in the heading, by deleting "1a" in both places it occurs in paragraph (b), and by removing footnote 1a.

2. Secton 319.27–1 is amended by adding the following definition in alphabetical order:

* * * * *

§ 319.27–1 [Amended]

Restricted destination permit. A statement added by an inspector to a shipping document of the importer stating that restricted articles referred to in the shipping document are allowed under this Subpart to be shipped to the destination specified on the shipping document.

* * * * *

§ 319.27–5 [Amended]

3. Section 319.27–5(a) is amended by removing "[if in a container) or on the restricted article [if not in a container]"; by removing "and" in paragraph (a) (6), by changing "areas." to "areas, and" in paragraph (a) (7); and by adding a new paragraph (a)(8) to read as follows:

* * * * *

(8) The Statement "Not to be distributed within Arizona, California, Florida, Hawaii, Louisiana, Puerto Rico, Texas, or the Virgin Islands of the United States."

4. A new § 319.27–9 is added to read as follows:

§ 319.27-9 Destination requirements.

Any restricted article may be imported only for movement to and use in locations other than Arizona, California, Florida, Hawaii, Louisiana, Puerto Rico, Texas, or the Virgin Islands of the United States.

5. A new § 319.27-10 is added to read as follows:

§ 319.27-10 Restricted Destination Permits.

Any restricted article may be moved from the port of entry to locations other than Arizona, California, Florida, Hawaii, Louisiana, Puerto Rico, Texas, or the Virgin Islands of the United States only pursuant to a restricted destination permit issued by an inspector. A restricted destination permit will be issued for the movement of a restricted article only upon the presentation of evidence, such as a U.S. Customs bond, an invoice, or other shipping document indicating destination, sufficient to establish that the articles would be shipped to a location in the United States other than a location in the specified States or Territories.

(Secs. 105, 106, and 107; 71 Stat. 32-34; 7 U.S.C. 150dd, 150ee, 150ff; secs. 5, 7, and 9; 37 Stat. 316-18; 7 U.S.C. 159, 160, 162; 7 CFR 2.17, 2.51, and 371.2(c))

Done at Washington, D.C., this 3rd day of January 1983.

Harvey L. Ford,

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

[FR Doc. 83-363 Filed 1-4-83; 8:45 am]

BILLING CODE 3410-34-M

FEDERAL HOME LOAN BANK BOARD

12 CFR Part 563

[No. 82-810]

Examination Fees

Dated: December 16, 1982

AGENCY: Federal Home Loan Bank Board.

ACTION: Final rule.

SUMMARY: The Federal Home Loan Bank Board is amending its regulations concerning payment of costs for examinations of insured institutions to provide explicitly for annual assessments on all insured institutions to cover the indirect costs of examinations. The proposal is intended to conform the regulatory language to long-standing administrative practice and to clarify the method for implementing planned increases in examination fees and annual assessments that should permit the entire cost of examinations to be recovered by 1987.

EFFECTIVE DATE: January 1, 1983.

FOR FURTHER INFORMATION CONTACT: David A. Felt, (202-377-6240), Attorney, Office of General Counsel, Federal Home Loan Bank Board, 1700 G St., N.W., Washington, D.C. 20552.

SUPPLEMENTARY INFORMATION:

Background

Pursuant to Section 403(b) of the National Housing Act, 12 U.S.C. 1726(b) (1980), the Federal Savings and Loan Insurance Corporation ("FSLIC") is authorized to require insured institutions to pay the costs of examinations necessary for the protection of the FSLIC and the protection of other insured institutions. Section 563.17-1(a) of the Board's Regulations for the FSLIC (12 CFR 563.17-(a)) makes it clear that the cost of examinations includes overhead and other indirect costs as computed by the FSLIC.

In order to recover some of the indirect costs of examinations, the Board for some time has imposed an annual assessment on all insured institutions whether or not a given institution was examined during the year. The assessments were in addition to charges for examiner time levied when institutions were actually examined. In an effort to conform the language of the Board's regulations to long-standing administrative practice, the Board, by Resolution No. 82-706, dated October 27, 1982 (47 FR 49663 (1982)), proposed an amendment to its regulations to provide explicitly for such annual assessments, which, in practice, are levied against gross assets.

In Resolution No. 82-706, aside from proposing the formal regulatory amendment, the Board also announced the intention of the FSLIC to increase both direct examination fees and annual assessments incrementally to ensure the full recovery of examination costs, direct and indirect, by 1987. Under current practice, only about half these costs are met. The announcement included a schedule which set out staff estimates of the yearly increases contemplated.

Summary of Comments

The Board received a total of 32 comment letters from 11 federally chartered associations, 10 other FSLIC-insured institutions, 4 trade organizations, and 7 agencies of state governments. Twelve of the commenters opposed the regulatory amendment, most of them suggesting that the annual assessment be eliminated or restructured. Four of the commenters favored the amendment and the remaining 16 commenters did not address it. The letters generally were critical of both the amount and the timing of the estimated increases in examination fees and assessments. Concerning the Board's intention to have the cost of examinations paid entirely through fees and assessments, 13 of the commenters approved, although all but one of them suggested various means to modify the method of assessment or to reduce the total cost of examinations. Eight commenters expressed no opinion, but discussed other aspects of the Board's Resolution. Eleven commenters opposed the contemplated increases in fees and assessments.

Annual Assessment

Two categories of comments critical of the annual assessment were received. One group of commenters recommended that in states where state banking authorities shared the examination responsibilities with the Board's examiners, a lesser assessment should be charged state-chartered institutions because lower overhead costs are incurred by the board in connection with those institutions. The other group suggested that the assessment schedule unfairly benefits small or unsound institutions to the detriment of large or healthy insured institutions.

In the Board's view, the overhead costs of examinations are not reduced by the participation of state authorities. The same amount of data and reports must be processed, reviewed, analyzed, and stored for state and federal institutions. Participation of state authorities results in a reduction only of direct costs, a reduction reflected in lower direct examination fees.

The other group of comments advanced the theory that the assessment method caused large institutions and sound institutions to pay an inordinately high proportion of the cost of examinations. The suggestion was made that, because small institutions take more time to examine relative to their total assets, those institutions should pay assessments at a higher percentage of assets. Alternatively, it was suggested that the annual assessment be eliminated and all costs be recouped from direct fees. With regard to weak or failing institutions, arguments were advanced that such institutions consume a greater proportionate share of examiner time than healthy institutions and should pay

a larger proportionate share of overhead costs.

The Board finds no merit in such arguments. Large institutions require the storage, processing, and analysis of more voluminous data than small institutions. Supervisory time (an overhead cost) is greater in reviewing examinations of large institutions. However, directly charged examiner time is not significantly greater for large institutions. Overhead costs are not related to examiner time billed to each institution. Incorporation of overhead costs into a direct charge would burden small institutions with costs disproportionate to FSLIC expenses related to their examination and supervision. The Board has also found no significant increase in overhead costs for weak or failing institutions.

The Board does not believe that the interests of the FLSIC would be advanced by changing the long-established method by which the costs of examinations are charged. On the basis of the foregoing, the Board has decided to adopt the changes to § 563.171(a) as proposed.

Increases in Fees and Assessments

Most comments regarded the estimated increases in charges as excessive. Many commenters believed that charges should not be raised at a time when the industry has been experiencing great financial difficulties. Others complained about perceived inefficiencies of the examination process, including poor utilization of time by examiners, and suggested no increases in rates until the examination process is improved.

With respect to objections to the timing or amount of the increases, all costs of examinations currently are paid by insured institutions either through fees and assessments or by transfers from the insurance fund. If the estimated increases in fees and assessments were not implemented, it would be necessary to increase insurance premiums. The Board believes that paying the cost of examinations through the proposed fees and assessments is a fairer and more accurate method of distributing costs of examinations than raising insurance premiums.

Three institutions were of the impression that the estimated increases in charges represented projected increases in FSLIC costs. This is not the case. Examination fees and assessments have not been increased since 1972. Even in 1972, charges did not recover the full cost of examinations. The Board has attempted to cushion the impact of the overall increase by phasing it in over a five-year period.

Fees and Assessments—Types of Costs Included

Two state government agencies and one trade group incorrectly assumed that directly charged fees for examiner time would not include travel, per diem charges, or fringe benefits of examiners. The Board intends to include all such costs in the daily rate by 1987.

One state government agency commented that examiners' time for processing merger or branching applications should be charged directly to the applicant. Examiners ordinarily do not process merger or branching applications. Should examiner time be required for this type of work, the applicant would be charged.

Charging the Same Rate for All Examiners

Two institutions commented that the Board should not charge the same daily rate for all personnel working on examinations. From past experience, the Board is of the view that charging different rates based upon salary levels or experience would create more inequities than it would resolve because institutions would have no control over the rates paid for examiners sent to them. The task that institutions face in budgeting examination costs would be further complicated and examination overhead costs would be increased.

Eliminate Regulatory Burdens

One trade association and one institution urged that the Board decrease examination costs by decreasing regulatory review and requirements in the areas of consumer protection, discrimination, and civil rights. While these comments were not within the scope of the proposal under review, the Board takes this opportunity to emphasize its commitment to enforcement of its fair-lending responsibilities through appropriate, cost-effecitve examination procedures.

Review of Examination Costs by the Board

One commenter suggested that the Board combine the increase in charges with an annual accounting and review of the costs of examinations and refund any excess payments *pro rata*. The Board does, however, carefully review costs of all operations, including each examination field office, on an annual basis and maintains detailed records of examination costs. Costs of examinations are budgeted carefully and any excess payments collected are applied to the following year's expenses to reduce that year's budget.

Final Regulatory Flexibility Analysis

Pursuant to Section 3 of the Regulatory Flexibility Act, Pub. L. No. 96-354, 94 Stat. 1164 (September 13, 1980), the Board is providing the following regulatory flexibility analysis.

1. *Reasons, objective and legal basis underlying the proposed rule.* These elements are incorporated above in the supplementary information regarding the regulation and in Board Resolution 82-706, which proposed the regulation.

2. *Small entities to which the proposed rule would apply.* The rule would apply equally to all institutions insured by the FSLIC.

3. *Overlapping or conflicting Federal rules.* There are no known Federal rules that may duplicate, overlap, or conflict with the proposal.

4. *Alternative to the proposed rule.* The proposal would not have a disproportionate impact on small institutions. Alternative payment methods would defray a larger portion of the cost of examinations through fees based upon hours of examiner time directly used in each examination. Those alternatives would, however, all place a greater proportionate share of the cost on small institutions than does the adopted regulation.

Because the Board views this amendment as a technical change that would have no substantive effect on regulatory requirements, and because there is a present need for clarification in order to provide for timely implementation of the 1983 examination fee schedule, the Board finds that the full delay of the effective date of the amendment for 30 days after publication pursuant to 5 U.S.C. 553(d) and 12 CFR 508.14 is unnecessary.

List of Subjects in 12 CFR Part 563

Savings and Loan Associations.

Accordingly, the Board hereby amends Part 563 of Subchapter D, Chapter V of Title 12, *Code of Federal Regulations*, as set forth below.

SUBCHAPTER D—FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION

PART 563—OPERATIONS

Amend § 563.17-1 by revising paragraph (a) as follows:

§ 563.17-1 Examinations and audits; appraisals; establishment and maintenance of records.

(a) *Examinations and audits.* (1) Each insured institution and affiliate thereof shall be examined periodically, and may be examined at any time, by the Corporation, with appraisals when deemed advisable, in accordance with

general policies from time to time established by the Board. The costs, as computed by the Corporation, of any examinations made by it, including office analysis, overhead, per diem, travel expense, other supervision by the Board, and other indirect costs, shall be paid by the institutions examined, except that in the case of service corporations of Federal savings and loan associations the cost of examinations, as determined by the Corporation, shall be paid by the service corporations. Payments shall be made in accordance with a schedule of annual assessments based upon each institution's total assets and of rates for examiner time in amounts determined by the Corporation.

* * * * *

(Secs. 401–405, 48 Stat. 1255–1260, as amended (12 U.S.C. 1724–1730); Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR, 1943–48 Comp., p. 1071)

By the Federal Home Loan Bank Board.

J. J. Finn,

Secretary.

[FR Doc. 83-178 Filed 1-4-83; 8:45 am]

BILLING CODE 6720-01-M

SMALL BUSINESS ADMINISTRATION

13 CFR Part 133

Display of Office of Management and Budget (OMB) Control Numbers for Reporting and Recordkeeping Requirements

AGENCY: Small Business Administration.

ACTION: Addition of Part 133.

SUMMARY: The Small Business Administration is amending its regulations to indicate Office of Management and Budget (OMB) approval of information collection requirements contained in or authorized by the regulations. This action is required by the Paperwork Reduction Act of 1980.

EFFECTIVE DATE: December 29, 1982.

FOR FURTHER INFORMATION CONTACT: Elizabeth M. Zaic, Chief, Paperwork Management Branch, Small Business Administration, 1441 "L" Street, N.W., Washington, D. C. 20416. Telephone No. (202) 653–8538.

SUPPLEMENTAL INFORMATION: This amendment is administrative in nature and is intended to comply with the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3512) that agencies display a current OMB control number assigned by the Director, OMB on each agency information collection requirement. This subpart collects and displays current OMB control numbers and expiration dates. Where the information collection requirement exists as a document separate from the regulations, the Small Business Administration will also display the current OMB number on the document. Because this is a nonsubstative amendment dealing with procedural matters, it is not subject to the provisions of the Administrative Procedure Act (5 U.S.C. 551 et seq.) requiring advance notice and comment.

List of Subjects in 13 CFR Part 133

OMB control numbers assigned, Reporting and recordkeeping requirements.

Accordingly, it is effective on December 29, 1982 and 13 CFR Chapter I is amended by adding Part 133 consisting of § 133.1 to read as follows:

PART 133—INDEX TO APPROVED SBA REPORTING AND RECORDKEEPING REQUIREMENTS

Sec.

§ 133.1 Control numbers assigned by OMB under the Paperwork Reduction Act.

(a) Purpose. This part collects and displays the control numbers and expiration dates assigned to the SBA reporting and recordkeeping requirements that have been approved by the Office of Management and Budget (OMB) according to the Paperwork Reduction Act. SBA intends that this part comply with the requirements of Section 3512 of that Act to display a current control number assigned by the Director, OMB on each approved reporting and recordkeeping requirement. This part contains current OMB control numbers, expiration dates, regulatory cross-references, and, where applicable, form numbers. Where the reporting and recordkeeping requirements exist as documents separate from SBA regulations, they will also display the current OMB approval numbers.

(b) Index to OMB-approved Reporting and Recordkeeping Requirements.

Current OMB control No.	Information collection requirement	13 CFR Part or section where identified and described	Expiration date
3245-0001	SBA 707	112.9	6-30-83
3245-0003	SBA 745	125.9	4-30-85
	SBA 745A	125.9	4-30-85
3245-0007	SBA 912	115.5	5-31-85
	SBA 990	115.5	5-31-85
	SBA 994	115.5	5-31-85
	SBA 994B	115.5	5-31-85
	SBA 994F	115.5	5-31-85
	SBA 994H	115.5	5-31-85
	SBA 994J	115.5	5-31-85
3245-0009	SBA 480	107.301	3-31-84
3245-0012	SBA 770	123.9	7-31-84
3245-0013	SBA 74	125.5	3-31-83
	SBA 74A	125.5	3-31-83
	SBA 74B	125.5	3-31-83
	SBA 183	125.5	3-31-83
3245-0015	SBA 1010A	124	3-31-83
	SBA 1010B	124	3-31-83
	SBA 1010C	124	3-31-83
	SBA 1010D	124	3-31-83
	SBA 1010E	124	3-31-83
	SBA 1010I	124	3-31-83
3245-0016	SBA 4	122.309	8-31-83
	SBA 4I	122.309	8-31-83
3245-0017	SBA 5	123	8-31-84
	SBA 413	123	8-31-84
	SBA 739A	123	8-31-84
3245-0018	SBA 5C	123.1	8-31-83
	SBA 739	123.9	8-31-84
	SBA 143	123.9	8-31-84
3245-0019	SBA 1099	101.2-7	11-30-84
	SBA 933	101.2-7	11-30-84
	SBA 1107	101.2-7	11-30-84
	SBA 1100	101.2-7	11-30-84
3245-0020	SBA 1136	111.5	6-30-85
	SBA 1136A	111.5	6-30-85
3245-0023	SBA 2006	101.2-6	9-30-85
3245-0024	SBA 1167	125.10	3-31-83
	SBA 1167A	125.10	3-31-83
3245-0046	SBA 1174	101.2-7	9-30-83
3245-0053	SBA 24	101.2-7	12-31-82
3245-0062	SBA 415	107.102	5-31-83
	SBA 415A	107.102	5-31-83
	SBA 415B	107.102	5-31-83
3245-0063	SBA 468	107.1102	5-31-83
	SBA 468, Pts. 1, 2, 3	107.1102	5-31-83
3245-0066	SBA 1261	112.15	8-31-83
3245-0070	SBA 18	101.2-7	11-30-83
3245-0071	SBA 1244	108.503	3-31-84
3245-0072	SBA 22	101.2-7	11-30-83
3245-0073	SBA 1246	108.503	3-31-84
3245-0074	SBA 1253	108.503	1-31-84

Current OMB control No.	Information collection requirement	13 CFR Part or section where identified and described	Expiration date
	SBA 1253A	108.503	1-31-84
	SBA 1253B	108.503	1-31-84
3245-0075	SBA 20	101.2-7	3-31-84
3245-0076	Non-Discriminatory Requirements	112.9, 113.5	4-30-85
3245-0077	Reporting & Recordkeeping Requirements on Non-Bank Lenders.	120.5 and 120.6	6-30-84
3245-0078	Small Business Investment Company Records and Reports.	107.1102	4-30-84
3245-0079	SBA 419	125.4	6-30-84
3245-0080	SBA 1081	120.4	3-31-84
3245-0081	Funds to Licensee	107.201	6-30-84
	SBA 1022	106.201	6-30-84
	SBA 1022A	107.201	6-30-84
3245-0083	Amendments to License	107.1105	7-31-84
	SBA 415C	107.1105	7-31-84
3245-0084	SBA 700	123	8-31-84
3245-0085	SBDC Impact Study	Pub. L. 96-302	3-31-83
3245-0090	SBA 59	101.2-7	9-30-84
3245-0091	SBA 641	101.2-7	11-30-84
3245-0095	SBA 1175		11-30-84
3245-0096	SBA 883	Presidential Proclamation Designating Small Business Week.	12-31-83

(44 U.S.C. 3512)

Dated: December 29, 1982.

Heriberto Herrera,

Acting Administrator.

[FR Doc. 83-141 Filed 1-4-83; 8:45 am]

BILLING CODE 8025-01-M

CIVIL AERONAUTICS BOARD

14 CFR Part 326

[Procedural Reg. Enactment of Part 326, Docket 40916; Reg. PR-253]

Procedures for Bumping Subsidized Air Carriers From Eligible Points

AGENCY: Civil Aeronautics Board.

ACTION: Final rule.

SUMMARY: The Civil Aeronautics Board (CAB) adopts procedures under which an airline serving a community with subsidy may be replaced by another airline offering to provide better service or offering to provide service at a lower subsidy cost. The Small Community Air Service section of the Federal Aviation Act provides for this sort of replacement as of January 1, 1983, and these procedures are needed to implement the statute.

DATES: Adopted: December 22, 1982. Effective: January 1, 1983.

FOR FURTHER INFORMATION CONTACT: William Boyd, Chief, Essential Air Services Division, Bureau of Domestic Aviation, Civil Aeronautics Board, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428; 202-673-5408; or David Schaffer, Office of the General Counsel, Civil Aeronautics Board, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428; 202-673-5442.

SUPPLEMENTARY INFORMATION:

Introduction

By PDR-81, 47 FR 37914, August 27, 1982, as corrected by 47 FR 43986, October 5, 1982, the Board proposed procedures under which an airline serving a small community with subsidy could be replaced by another carrier offering to provide better service or essential service with less subsidy. This would implement sections 491 (a)(11) and (b)(8) of the Federal Aviation Act (the Act), which provide for this sort of replacement. These sections are commonly known as the "bumping provisions."

As proposed, a bumping proceeding would be initiated by the filing of a bumping application. Any person could file an answer to the application. The incumbent carrier's answer could include a counter-proposal offering to match or better the applicant's proposed service pattern or subsidy request. After receiving the pleadings, an investigation of the applicant's operation would be made to make sure that it is able to provide the essential service in a reliable manner and a rate conference would be held to evaluate the subsidy request. The case would usually be processed by show-cause procedures although a procedure for holding oral evidentiary hearings was also proposed.

PDR-81 also proposed standards that the Board would use in deciding bumping cases. It incorporated the standards of section 419 of the Act as well as other criteria that the Board has used in carrier selection cases. It proposed $50,000 or 10 percent of the incumbent carrier's subsidy rate, whichever is greater, as the minimum subsidy decrease that would usually have to be proposed by the applicant to justify bumping the incumbent.

General Comments

The proposal was met by a generally favorable reaction. The Mississippi Aeronautics Commission termed it satisfactory, the Illinois Department of Transportation found it generally sound, the Metropolitan Airport Commission in Minnesota supported it and the Michigan Aeronautics Commission concurred in most of its contents. Ponca City, Oklahoma, said that it "appreciated the care that the Civil Aeronautics Board is taking in its proposed rulemaking." American Samoa stated that it was encouraged by the proposal's general tone.

The only general objection was raised by Northwest Airlines. Although Northwest characterized the proposed procedures as acceptable, it attacked the 406 subsidy program. At the time PDR-81 was issued, carriers subject to bumping were receiving their subsidy under either section 406 (49 U.S.C. 1376) or section 419 (49 U.S.C. 1389) of the Act. Section 406 was enacted in 1938 in the original Civil Aeronautics Act. It was directed toward developing a national air transportation system although, more recently, it has been viewed as a means of ensuring small community air service. Section 419 was enacted in 1978 as part of the Airline Deregulation Act (Pub. L. 95-504), and is directed toward ensuring air service at small communities.

Northwest attacked section 406 on the grounds that it does not ensure continued service at small communities. It stated that subsidized carriers have used the funds received under section 406 to buy larger aircraft, rather than aircraft more suited to service at small communities. It was particularly concerned that Republic, one of its major domestic competitors and the nation's seventh largest airline, had received a subsidy of 38 million dollars last year.

The Board has long shared Northwest's views about the inefficiencies of section 406 subsidy. For example, on March 3, 1981, the Board's Chairman told a Subcommittee of the Senate Committee on Appropriations that the "CAB believes that early termination of the section 406 program as proposed by the President and the administration is a sound proposal and we support it."

In the recent budget resolution, Congress provided that notwithstanding any other provision of law, no appropriated funds shall be expended for section 406 subsidy for services provided after September 30, 1982, Pub. L. 97-276, October 2, 1982. This has the effect of terminating section 406 subsidy.

At the same time, however, Congress created a special program with a 13.5 million dollar ceiling to continue to pay subsidy to carriers that had formerly received section 406 money. It therefore appears that the issue of 406-type payments has been settled by Congress, at least until next October.

Two-Year Grace Period

The Act provides that no carrier may file a bumping application until January 1, 1983. In the case of incumbent carriers receiving their subsidy under section 419, the Act further provides for a 2-year grace period. It reads:

> After January 1, 1983, any air carrier may file an application with the Board seeking to have the compensation provided under this section to the air carrier then serving an eligible point, and which has been serving such eligible point for at least two years preceding the date on which such application is filed, terminated in order to allow the applicant air carrier to provide essential air transportation to such eligible point for compensation under this section.

In the proposal (§ 326.3(c)), the Board read this provision to mean that the 2-year grace period begins when the carrier commences service at the point involved. Alaska Airlines, however, argued that the Board should use its "interpretative authority" rather than following "the literal wording of the statute" and read this provision as allowing the grace period to start when the carrier begins receiving 419 payments. Alaska considered it unfair that carriers such as itself, which have been receiving 406 subsidy, would be immediately subject to bumping even if they converted to section 419 subsidy, while carriers serving a point for the first time under section 419 would have the benefit of the grace period. This result, it contended, was inconsistent with the Congressional intent that the experience of a carrier in providing service to a point be a selection factor, and would cause uncertainty at the communities involved. For similar reasons, the North Dakota State Aeronautics Commission favored a 4-year grace period for carriers being subsidized under section 419, and the State of Alaska asked that the service provided under a subcontract agreement not be counted as part of the grace period if the carrier should later become the primary subsidized carrier on that route.

In the Board's view, the statute is unambiguous in this respect and it is therefore unnecessary to look beyond the plain words to discern Congressional intent. The Act refers to a carrier that "has been serving such eligible point for at least two years." It does not limit that to service with subsidy or to non-subcontract service. Nor does it authorize the Board to extend the grace period. In any event, the commenters have not cited any Congressional report that indicates that the Board should read this provision differently from the proposal.

Concerns about disruption to the community are misplaced here. Section 326.3 merely states when a carrier may file a bumping application, not when it will be granted. The basis for granting an application is governed by § 326.7. Paragraph (d)(7) of that section addresses this potential problem. It states that in deciding a bumping case, the Board will consider the amount of time that the incumbent carrier was on the subsidy rate being challenged. Thus, a bumping applicant that filed soon after the incumbent had been placed on a new or revised section 419 subsidy rate would have to overcome a heavier burden to have its application granted. The Regional Airline Association specifically commented in favor of this provision.

Bumping Applications

Section 326.3 of the rule sets forth the information that must be included in a bumping application. It requires identifying, fitness, service, and subsidy information. Republic and Big Sky Airlines asked that additional information be required.

Big Sky was concerned about an applicant that merely sought to terminate the incumbent carrier's subsidy without requesting any subsidy to serve the point itself. These are considered bumping applications under the rule. Sections 326.2(b) and 326.3(a) have been revised to make this clear. Big Sky stated that these applications should include forecast income and traffic statements to ensure that the claim that there is no need for subsidy is legitimate.

Republic was concerned that the service and subsidy projections in a bumping application would be based on the assumption that the incumbent carrier would stop serving the point if it lost the case. Republic argued that this would not necessarily occur and, if it did not, the projections of the applicant would be affected. It suggested that applicants should be required to indicate what they would do if the incumbent continued its service. It also asked that applicants include information or fares, yield, schedules and the other issues in § 326.7, *Standards for decision.*

It is not the Board's intention to use the application requirements in § 326.3(c) to effectively bar bumping applications. The purpose of that provision is to obtain the information necessary to process the case. If more information is needed in a particular case, it can be obtained by the Board under § 326.6(a)(2) of this rule or section 407 of the Act. One situation where the Board might request more information is where it appears that the incumbent carrier will stay even it it loses the subsidy.

It does not seem necessary to require an applicant to address the issues raised in § 326.7. An applicant is not, however, prohibited from doing so. Indeed, one of the reasons for listing the Board's decisional criteria in § 326.7 was to give applicants some idea of the issues to be addressed. It is therefore in the applicant's interests to address these issues, but not required of it.

We do, however, see merit in Big Sky's comment. The Board does not want the procedures adopted here to be used by a carrier to wedge its way into a market with a no-subsidy proposal, only to request a subsidy later. Section 326.3(c)(5) has been revised to help prevent this. Applicants will have to provide the information required by § 204.6(c)(2) and (3) of the Board's fitness rule even if they are not requesting a subsidy for themselves. This will help the Board to determine whether the no-subsidy proposal should be given credence.

Answers and Replies

Section 326.4 provides for answers to bumping applicants, and for replies to those answers. Answers must be filed within 30 days and replies within 15 days. The incumbent carrier, in its answer, may attach the bumping application or the capability of the applicant to provide the service it proposes, or file a counterproposal. At the request of the Regional Airline Association, paragraph (c) of § 326.4 has been revised to make clear that the incumbent carrier may both attach the application and submit a counterproposal. It does not have to choose between those two approaches.

The California Department of Transportation and Big Sky Airlines asked that the answer and reply periods be lengthened. The Board has decided not to make changes in these time periods, but to deal with the need for more time on a case-by-case basis. In other cases, the Board has generally taken a liberal view toward granting more time where good cause is shown. Authority has already been delegated to officials of the Board's Bureau of Domestic Aviation to give interested

persons additional time to submit their views (§§ 385.14(a) and 385.14a(d)).

Service of Documents

Section 326.5 lists the persons upon whom the applications, answers, and replies must be served. The State of Oregon asked that copies of the application be filed with the mayor and appropriate State agency. This is already required by paragraphs (a)(1) and (a)(2) of § 326.5. American Samoa sought assurances that the reference to State agency in paragraph (a)(2) includes agencies of U.S. territories. A change has been made in this paragraph to clarify that issue.

American Samoa, the Regional Airline Association (RAA), and the California DOT raised the issue of the confidentiality of the document submitted. The RAA stated that other carriers should not have access to the bumping application until they file their answers. It favored merely notifying them that an application had been filed as is now done in essential service carrier selection cases. In this way the applicant would not be giving every other carrier a target to shoot at. California and American Samoa also favored some confidentiality provisions. American Samoa, however, felt that the community should have access to all the data submitted so that it could evaluate the capabilities, particularly the financial capabilities, of the applicant.

The Board does not consider it necessary to include any confidentiality provisions in this rule. Information in previous essential service cases has been routinely made available at the end of the application period, without any noticeable harm to the community or carriers involved. Bumping cases are different, of course, because there is no specified application period. As a result, an application would become available as soon as it was received. The Board is not persuaded that it should withhold this information in order to avoid giving the incumbent carrier a target to shoot at. Indeed, due process and procedural fairness to the incumbent seem to require that. As other commenters have noted, the incumbent may have made a substantial investment in service to the community. It seems only fair that it have the chance to show that it can meet the applicant's service or subsidy proposal, or that those proposals are unrealistic. It can only do this if it has access to the bumping application. Denying access to other carriers would tend to undermine the competitive aspects of the bumping provisions and might result in a denial of due process.

Information on an applicant's financial capabilities may present some problems. It is directed primarily toward the applicant's fitness rather than toward the service it will provide or the subsidy it will need. As such, it may not even have to be submitted in a bumping proceeding if the applicant has already been found fit. See § 326.3(d)(4)(i). If the applicant submits this information and considers confidential treatment of it to be necessary, it may request such treatment under § 302.39 of the Board's rules. Communities and carriers, in turn, may request access to that information under Part 310 of the Board's rules.

Conferences and Hearings

After the application and responses have been filed, the Board may request additional information, hold rate conferences with the airlines involved, hold a conference with the community, set the matter for a trial-type hearing, or issue a show-cause order with a tentative decision. See § 326.6. Several commenters asked that conferences with the community or formal hearings be mandatory rather than at the discretion of the Board.

With respect to community conferences, Oregon stated that they were necessary to deal with the complexity and individual circumstances of an essential service case. It had found these conferences to be "very worthwhile and a positive step in the EAS process." The Local Airline Service Action Committee (LASAC) considered community conferences to be necessary to examine the applicant with respect to its "proposed service and its ability to provide such service."

The Board recognizes the value of informal conferences with communities and will try to hold them whenever possible. Unfortunately, given budgetary constraints, it will not always be possible for the Board or its staff to travel to distant communities. See S. Rep. No. 97-546, 97th Cong., 2d Sess. 29 (1982). Community officials are of course welcome to come to Washington to discuss their situation with Board officials. They may also request that the bumping applicant appear at their community for discussions and evaluation. Although there is no requirement in this rule that the applicant appear, clearly one that refused a reasonable request to do so would be running a risk of a negative community response.

With respect to oral evidentiary hearings, it was suggested that they be held when a majority of the interested parties request them (Mississippi), when any of the interested parties request them (North Dakota), when the community requests them (Minnesota), or when "material facts are in dispute which could affect the outcome of the Board's decision" (Metropolitan Airports Commission). Michigan stated that a full evidentiary hearing is the only way to protect the economic interests of the community. California favored a flexible approach to this issue.

Republic presented a more detailed analysis. It argued that the statutory language giving the incumbent carrier the right to request a hearing granted the incumbent an unconditional right to an oral hearing. It noted that revocation of authority as opposed to refusal to grant it in the first instance has generally been considered more serious and given rise to a right to a hearing on due process grounds. It stated that where Congress did not want to require hearings in the Act it stated so specifically, citing section 401(p). Republic considered an oral hearing to be consistent with the directive in the Conference Report to "meticulously evaluate" bumping applications. It did not consider this overriden by the additional directive in that report to handle these applications "expeditiously." In Republic's view, these could be reconciled by expediting the oral hearing. *Marine Space Enclosures, Inc.* v. *Federal Maritime Commission*, 420 F.2d 577 (D.C. Cir. 1969). Republic further contended that the cases the Board had relied on in PDR-81 to support its discretionary approach involved rulemaking rather than adjudication, or different statutory language.

The Board is not persuaded that it is prohibited from using show-cause procedures from bumping cases. This sort of hearing will still allow for a full ventilation of the issues. We are therefore adopting the flexible approach toward hearings that was proposed and supported by some of the commenters. Communities will have an ample opportunity to question the applicant in their answers to the application and show-cause order, and to examine the applicant in community meetings. Similar procedures have been used in other essential air service cases. Likewise, the incumbent carrier will have the opportunity to protect its interests during the answer and response period, and will have the option of requesting an oral evidentiary hearing where necessary to resolve material facts in the case.

The Board does not agree that the language in the bumping provisions of the Act require oral hearings. It has long been held that "hearing on the record" is the language that is used when an oral evidentiary hearing is to be required, *United States* v. *Florida East Coast Ry. Co.*, 410 U.S. 224 (1972) and that

agencies have discretion to use non-oral procedures in contested cases. *Eastern Air Lines* v. *CAB*, 185 F.2d 426 (D.C. Cir 1950), *Yellow Forwarding Co.* v. *ICC*, 369 F. Supp. 1040, 1048 (D. Kan. 1973). Where Congress wanted to specify this type of hearing in the Act, it used specific language. See section 401(g)(1). In other cases, the Board should be free to fashion its own rules of procedure. *Vermont Yankee Nuclear Power Corp.* v. *National Resources Defense Council*, 435 U.S. 519 (1978).

It does not follow from the section 419(a)(11)(A) hearing language that the incumbent carrier has the right to demand a specific type of hearing such as an oral evidentiary hearing. What type of hearing is called for depends on the facts and issues in each case. *See Marine Space Enclosure, Inc.* v. *FMC*, 420 F.2d at 589, ft. 36. Where there are significant decisional facts in dispute that can best be resolved in an oral evidentiary hearing, the Board will adopt that approach. But in most instances, the issues in a bumping case are likely to be questions of how to interpret or apply a given set of facts. There is no reason why such questions ordinarily cannot be resolved on the basis of pleadings and a written record. In such cases, the community and incumbent can make their views known by filing written pleadings.

As discussed in PDR–81, the Board's approach toward the hearing question is consistent with courts' treatment of the subject. Although the case primarily relied on there involved rulemaking, courts have taken a similar approach to the hearing question in cases involving adjudication and the revocation of authority. See *Gallagher & Ascher Co.* v. *Simon, 51 LW 2177 (7th Cir. 1982)*, 3 Davis, *Administrative Law Treatise*, § 14.3 (2nd Ed. 1980).

Decisional Criteria

General

Section 326.7 lists the factors that the Board will consider in deciding a bumping case. These reflect the criteria established by section 419 of the Act as well as others that the Board has considered in initial essential service carrier selection cases.

The two basic criteria on which a decision will rest are the service and subsidy levels proposed. An incumbent carrier receiving subsidy under section 406 cannot be bumped unless the applicant shows that it can provide substantially improved service at a substantially decreased subsidy level. An incumbent carrier receiving subsidy under section 419 can be bumped if the applicant shows that it can provide substantially improved service with no increase in subsidy or that it can provide the essential service at a substantially decreased subsidy level.

Northwest advocated adopting the lesser standard applicable to 419 incumbents for 406 incumbents as well. It stated that 406 subsidy is wasteful and that there is no reason for the stiffer test for section 406 incumbents.

These tests, however, are mandated by section 419(a)(11)(A) of the Act. They were reconsidered again in the recent appropriations legislation. Congress determined that carriers that had been receiving subsidy under section 406 should continue to have the benefit of the stricter standard of section 419(a)(11)(A). Pub. L. 97–276, section 126 (last proviso). The Board considers itself bound by that decision.

Big Sky urged the Board to place upon the applicant the burden of proving that its proposal meets the standards of improved subsidy or service. It suggested that the standard of proof be "clear and convincing evidence."

The rule, as proposed, already places the burden of proof on the applicant, but without a specific standard. Paragraphs (a)(3) and (a)(4) of § 326.7 state that the Board will not decide in favor of the applicant unless "the applicant shows" that it can meet statutory standards of improved service and/or subsidy. Under these provisions, the mere filing of the bumping application does not shift the burden of proof to the incumbent. The Board has the discretion to deny the application if it finds that the applicant has not made the required showing. It could do this even if the incumbent had not filed an answer.

A standard of "preponderance of the evidence" has been added to the rule. This means that if the weight of evidence and argument with respect to the § 326.7 standards is evenly balanced, the Board's decision will be for the incumbent. This standard of proof, rather than the one suggested by Big Sky, has been chosen because it is the standard typically used in administrative proceedings. Davis, *Administrative Law Treatise*, § 16.9. The highest standard suggested by Big Sky is more appropriate where some wrongdoing is being imputed, which is not the case in bumping situations.

It should be noted that the Act imposes a significant burden on the applicant. It already requires that the proposed improvement in service and/or decrease in subsidy be substantial. It therefore seems unnecessary to impose a stricter burden of proof than would otherwise be required to protect the interests of the incumbent. An incumbent cannot be bumped unless the applicant shows by a preponderance of the evidence that it will provide substantially improved service and/or service at a substantially decreased subsidy level.

Subsidy Threshold

To meet the required showing with respect to the subsidy level, the applicant would have to propose, under § 326.7(b), a decrease of at least $50,000 per year or 10 percent of the incumbent's subsidy rate, whichever is greater. $50,000 was chosen because that is somewhat more than the approximate cost to the Board and the community in processing a bumping case. Savings of a lesser amount would usually not compensate for the administrative costs and the disruption to the community in changing air carriers.

Big Sky Airlines, the Wisconsin Department of Transportation, and the Minnesota Department of Transportation favored a higher subsidy threshold. The State of Alaska favored a lower one. The Mississippi Aeronautics Commission strongly supported this aspect of the Board's proposal. The Virginia Department of Transportation supported the threshold levels but asked that it be the lesser of $50,000 or 10 percent, not the greater.

Minnesota, supported by several other commenters, suggested as an alternative to raising the threshold that the applicant be required to post a performance bond to ensure that it performs the service it proposes. Alaska favored a lower threshold because it was concerned that a point where the carrier was receiving less than $50,000 per year would not have the benefits of bumping even if that point were part of a cluster for which the carrier was receiving more than $50,000. Virginia asked the Board to clarify what it would do if an applicant met the subsidy threshold but the service it would provide would not be as good.

After considering the comments, the Board has decided to adopt the subsidy threshold as proposed. It should be emphasized that meeting this threshold does not automatically guarantee a favorable decision. An applicant meeting the threshold whose service would, in the Board's view, be unreliable § 326.7(a)(2)), less than essential, or inadequate under § 326.7 (d) and (e) might not be chosen. Similarly, a carrier proposing a subsidy decrease somewhat less than the threshold level might still be chosen if it could show that, in light of the proposed decrease and its relative merits under. § 326.7 (d) and (e), it is the better carrier. Thus, the subsidy threshold in the rule

can be viewed as creating a rebuttable presumption that the applicant has proposed a substantial decrease in subsidy.

Viewed this way, it appears that most of the commenters' objections have been satisfied. None have demonstrated that the subsidy threshold proposed is not a reasonable approximation of the cost of a bumping proceeding. In response to Alaska's concern, it should be noted that the $50,000 threshold should not be read as "$50,000 per eligible point." An applicant proposing to bump a carrier serving several communities would have to propose a subsidy decrease of at least $50,000 or 10 percent of the incumbent's rate for all communities on which that subsidy rate is based. It would not have to propose a decrease of $50,000 per community.

Minnesota's suggested performance bond, while it would have some advantages, may be expensive for an applicant to obtain. Bumping applicants are likely to be small businesses. Imposing an expensive requirement on a small business may be viewed as inconsistent with the Regulatory Flexibility Act (Pub. L. 96–354), which is designed to reduce regulatory burdens on these small entities. A bond requirement would also not comport with the scheme established by Congress for ensuring the provision of essential air service. A successful applicant that finds that it is unable to provide the service at its established subsidy level must, under section 419(a)(3) of the Act, file a termination notice and risk losing its subsidy as well as its credibility for future cases. In the Board's view, this provides a sufficient incentive to discourage unrealistically low bidding by bumping applicants.

Of course, it is still possible that a carrier may try to obtain a subsidy by proposing an unrealistic subsidy decrease. In such cases, the Board is free to reject the proposal if it finds that the applicant cannot reasonably be expected to provide the essential service at that subsidy level. This conclusion is reached through rate conferences, comparisons of similar communities and carriers, and by evaluating the data supplied by the incumbent carrier and the community. This process will guard against abuses of the bumping process without imposing the kind of barrier to bumping that a performance bond might.

Service Factors

The Board proposed several factors that it would consider in evaluating whether a proposed service change would be a substantial improvement (§ 326.7(c)). The Board also proposed other factors it would consider in evaluating a bumping case (§ 326.7(d)). These were taken from section 419(a)(4) of the Act and from various Board orders choosing a carrier to provide essential service where the incumbent had voluntarily filed notice to withdraw.

California asked for clarification of two of the factors: § 326.7(d)(3) (relative efficiency of the aircraft) and § 326.7(d)(4) (relative financial stength of the competing carriers). The first refers primarily to the operating cost characteristics of the carriers' aircraft. A carrier that has lower operating costs will not have to enplane as many passengers to break even and will therefore have a better chance of eventually providing the service subsidy-free, one of the goals of the small community program. See, for example, Order 82–11–77, November 18, 1982, where Air Chaparral was selected to provide essential service at Modesto, California at least in part because of its potential for eventually providing subsidy-free service there. It is also relevant to the question of whether a proposed decrease in subsidy is realistic. The second refers to the capital at the carrier's disposal. As California well knows, undercapitalized carriers may go bankrupt and leave a community without any air service until a replacement can be found.

Alaska asked that paragraph (d)(2) of § 326.7 be expanded to include the language of section 419(a)(4)(A)(iii) of the Act relating to the experience of the carrier in providing scheduled or nonscheduled air service in that State. A new paragraph (d)(10) has been added to accomplish this.

Several commenters asked that the Board consider factors in addition to those listed in § 326.7. The additional factors suggested were the adequacy of the applicant's resources, whether the applicant has equipment equivalent to that of the incumbent, whether the incumbent is serving one of a group of points, system access, community support, quality of service, cargo carrying capability, investment and marketing efforts of the incumbent, whether the carrier is based at the local airport, and timeliness of flights.

It is not the purpose of § 326.7 to create an exhaustive list of factors that the Board will consider in bumping cases. Parties are free to bring others to the Board's attention and the Board will consider them if they have a bearing on the issues of service improvement or subsidy decrease. The purpose of the list is to provide standards for the Board's decision and to help the parties focus their pleadings on the issues the Board usually considers important.

Most of the additional factors suggested are already included in the factors listed in § 326.7. Cargo-carrying capability was not included because the definition of essential air transportation in section 419(f) of the Act refers specifically to persons. The incumbent's investment and marketing efforts in the community were not listed because loss of those investments is one of the risks inherent in the bumping provisions. Congress must have been aware that carriers could lose substantial sums if they were bumped, but considered that outweighed by the benefits of improved service and decreased subsidy. The procedures and standards discussed above provide an adequate opportunity for an incumbent to protect its investment.

In PDR–81, the Board stated that "timing changes or other minor service improvements" would not be considered substantial improvements in service. Yet several commenters considered timeliness of flights to be an important factor that the Board should consider. The Board agrees that this is important. To qualify as essential air transportation, however, the incumbent carrier must have been providing flights at reasonable times of the day, according to § 398.7 of the Board's rules. Assuming compliance, it seems unlikely that an applicant could propose flight times that would be so different as to be fairly characterized as a substantial improvement.

The Board has decided to add one new factor: system access or slots. Since the strike by the air traffic controllers in August 1981, the Federal Aviation Administration (FAA) has found it necessary to limit the number of take-offs and landings (slots) at some large airports. It has also limited flights through some flow-control centers.

By letter dated November 1, 1982, the Associate Administrator for Policy and International Aviation of the FAA asked that the slot question be clarified in this rule. He suggested that the Board either require the incumbent carrier to give up its slots if it is bumped or require the applicant to provide the slots from its own pool.

Since nothing was proposed on this important issue, the Board is not adopting a specific approach to that issue here. Each situation will be dealt with on a case-by-case basis, utilizing one of the approaches favored by the FAA. An applicant will be required to state whether it has slots available for its proposed service, and the Board will consider the slot question in deciding the case.

Some commenters argued that there were factors that the Board should not consider. Simmons Airlines stated that aircraft size (§ 326.7(c)(3)) should not be considered, because that would place non-jet operators at a disadvantage and result in the Board subsidizing "inefficiency for the sake of passenger comfort." New York asked that the Board not consider increased flights with smaller aircraft (§ 326.7(c)(4)) unless that is the expressed wish of the community.

The Board has decided that it should not eliminate from consideration such important factors as aircraft size and flight frequencies unless they could not be considered at all under the Act. It is not necessary for an applicant to show that it is the better candidate under all the listed factors in order to prevail. To the extent that non-jet operators are disadvantaged by considerations of aircraft size, they will generally benefit from considerations of aircraft efficiency and flight frequencies (§ 326.7 (d)(3) and (c)(4)). Similarly, increased frequencies with small aircraft may represent a substantial improvement and lead to increased traffic. In weighing the competing considerations, the Board will give great weight to the views of the affected community (§ 326.7(e)).

In PDR-81, the Board specifically requested comments on whether it should consider proposals to provide more than essential air service. It noted that there may be a legal impediment to doing so. This problem arose because section 419(a)(5) of the Act only authorizes the Board "to pay compensation to any air carrier to provide essential air transportation." It does not authorize payments for service above the essential level. If the Board cannot subsidize this sort of improvement in service, it reasoned that it should not raise false hopes by proposing to consider increases above the essential level.

This view was opposed by eight commenters and supported by the State of Alaska. The Regional Airline Association (RAA) agreed that the Board can only compensate a carrier for that level of service required to continue essential air transportation. It did not agree, however, that this precluded the Board's consideration of improvements in air service above that level. It noted that the Board has offered to consider which hub or hubs will be served, the number of stops that will be made between the eligible point and the hub, and the size and type of aircraft to be used. These are, like the number of seats and flights, subject to essential air service minimums. RAA considered it inconsistent for the Board to take into account these factors beyond the definition of essential air transportation but not to consider seats or flights above that level. RAA argued that the Board could consider the latter but still limit subsidy to that which is necessary to maintain only essential air service. It claimed that there have been cases where carriers have provided more than essential service and "the Board has had no difficulty in deciding how much it would cost to subsidize only that service required by the essential service definition." RAA further stated that it would be in the public interest to encourage carriers to provide a higher level of service.

RAA admitted that the notice (section 419(a)(3)) and service (section 419(a)(6)) issues raised in the proposal were difficult. It recognized that the Board would not want to allow a bumping and then find that the additional service was not being provided. On the other hand, the bumping carrier would not want to be bound to provide the higher level of service indefinitely if it proved to be highly unprofitable. In RAA's view, this should be a matter to be decided on a case-by-case basis, and whether a proposal to provide more than essential service is realistic should affect the weight to be given it and not be a basis for refusing to consider it altogether.

The Illinois Department of Transportation argued that Congress intended for the Board to consider service above the essential level. It cited the Senate Report (S. Rep. No. 631, 95th Cong., 2d Sess. 92 (1978), which stated:

> "Since there may be some temptation on the part of applicants under the latter "bumping" provision to either propose *unrealistically high service levels* without regard to costs or unrealistically low subsidy forecasts without regard to service levels, the Committee cautions the Board to meticulously evaluate applications to determine what if any changes are in the long-term public interest." (Emphasis added.)

It read this as authorizing the Board to consider higher service levels as long as those levels were not "unrealistically high." Illinois saw no inconsistency with section 419(a)(5) because that section does not, in its view, limit the amount of subsidy, but only the amount of time ("for so long as the Board determines it is necessary") that it may be paid.

Illinois further argued that the Board's proposed approach would be inconsistent with the procompetitive policies of the Act, in removing the competitive incentive of the incumbent to upgrade its service. It considered the problems of notice and service enforceability to be misplaced. It suggested that notice and service conditions could be attached to the Board order granting the bumping application. RAA, however, claimed that the Board lacked the statutory authority to impose notice and service requirements for service reductions above the essential level.

After considering these comments, the Board has decided that we will not automatically preclude applications proposing to provide more than the previously established essential air service level. Applicants seeking to bump on the basis of increased flights or seats would, under revised § 326.7(c)(4)(ii), have to include a petition for modification of the point's essential service level under § 325.10 of the Board's rules with their bumping application. The proceeding on this petition would give the incumbent the opportunity to challenge, and the Board the opportunity to evaluate, the proposed level of service under the Board's essential service guidelines (14 CFR Part 398). The incumbent would also have the option of supporting the petition and offering to provide the higher level of service itself. This approach provides the benefits to the communities noted by the commenters without the statutory, notice, and service enforceability problems that concerned the Board. The higher level of service would, if the petition were granted, become the essential level. And even if the petition were not granted, the incumbent carrier would still have the discretion to provide a higher level of service on its own initiative.

Smith, Member, Concurring and Dissenting

The statute provides that a carrier receiving subsidy under section 419 may be bumped by another carrier if the result is:

"(i) improvement in the air transportation being provided such eligible point with no increase in the amount of compensation then being paid; or

(ii) decrease in the amount of compensation that will be required to continue essential air transportation to that point."

The rule states that the "Board can only compensate a carrier for that level of service required to continue essential air transportation" and that premise is used to require a modification of the essential air service level in order to consider service proposals greater than the essential air service definition.

This is a narrow interpretation and a distortion of the intent of the bumping provisions. The reasoning is to prevent a carrier "overbidding" service at the original subsidy rate in order to be selected and then subsequently reducing service to the essential level, which could be done at any time at the carrier's discretion.

A more proper approach would be to accept service proposals greater than the essential level and fix the subsidy to that level of performance, the subsidy being paid at or below the incumbent subsidy level as proposed. If service reductions occur thereafter, subsidy would be reduced as well, so the result would be no less than essential air transportation, with a decrease in the "amount of compensation," as Congress intended.

The requirement for a modified essential air service definition each time a proposal exceeds the essential air service level provides an unnecessary exercise and has a chilling effect on the prospects of "improvement in air transportation being provided" as one of the options mandated by Congress.

James R. Smith.

Regulatory Flexibility Act

For the reasons stated in PDR-81, the Board certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act. It merely provides procedures for bumping cases. The right to try to bump an incumbent carrier is established by the Act itself.

Final Rule

Since the bumping provisions of the Act take effect on January 1, 1983, and these procedures are important in implementing those provisions, the Board finds good cause for making this rule effective on less than 30 days' notice.

List of Subjects in 14 CFR Part 326

Administrative practice and procedure, Air carriers, Essential air service, Grant programs—Transportation.

Accordingly, the Board adds a new Part 326 to Chapter II of 14 CFR, as follow:

PART 326—PROCEDURES FOR BUMPING SUBSIDIZED AIR CARRIERS FROM ELIGIBLE POINTS

Sec.

Authority: Secs. 204, 401, 406, 407, 419, and 1001, Pub. L. 85-726, as amended, 72 Stat. 743, 754, 763, 766, 788, 92 Stat. 1732; 49 U.S.C. 1324, 1371, 1376, 1377, 1389, 1481.

§ 326.1 Purpose.

The purpose of this part is to establish procedures for an air carrier applying under section 419(a)(11) or (b)(8) of the Act to provide essential air transportation to an eligible point, where it would be displacing another carrier that is providing essential air transportation under a subsidy rate previously established by the Board under either section 406 or section 419 of the Act. This part applies even if the applicant is not applying for a subsidy for itself but is merely seeking to terminate the incumbent carrier's subsidy.

§ 326.2 Definitions.

As used in this part:

(a) "Applicant" means an air carrier that files a bumping application.

(b) "Bumping application" means an application by an air carrier proposing to provide essential air transportation at an eligible point and requesting the Board to terminate the subsidy paid to an incumbent carrier for providing essential air transportation at that eligible point. The application may also request a subsidy to provide essential air transportation to that point.

(c) "Eligible point" means—

(1) Any community in the United States, the District of Columbia, and the several territories and possessions of the United States to which any direct air carrier was authorized, under a certificate of public convenience and necessity issued by the Board under section 401 of the Act, to provide passenger air transportation on October 24, 1978, whether or not such service was actually provided;

(2) Any point in the United States and its several territories and possessions that was deleted from a section 401 certificate between July 1, 1968 and October 24, 1978, that the Board designates as eligible under the criteria in Part 270 of this chapter; or

(3) Any other point in Alaska or Hawaii that the Board designates as an eligible point under Part 270 of this chapter.

(d) "Essential air transportation" means the level of air service that is guaranteed an eligible point by the Board under section 419 of the Act and the guidelines in Part 398 of this chapter.

(e) "Hub" means a point annually enplaning more than 0.05 percent of the total annual enplanements in the United States or listed as such by the joint Civil Aeronautics Board—Department of Transportation publication "Airport Activity Statistics of Certificated Route Carriers."

(f) "Incumbent carrier" means the air carrier serving an eligible point with subsidy at the time a bumping application is filed.

(g) "Subsidy under section 406" means payments made under section 406 of the Federal Aviation Act, P.L. 97-276, or any other appropriation act or continuing resolution that authorizes payments to air carriers based upon rate orders issued under section 406 of the Act.

§ 326.3 Application to bump an incumbent carrier.

(a) To replace an incumbent carrier at an eligible point, an air carrier shall file a bumping application in the Board's Docket Section.

(b) If the incumbent carrier is receiving its subsidy under section 406 of the Act, the application may be filed at any time after January 1, 1983.

(c) If the incumbent carrier is receiving its subsidy under section 419 of the Act, the application may not be filed until the incumbent carrier has been serving the eligible point for at least 2 years.

(d) The application shall include:

(1) The name and address of the carrier filing the application;

(2) The name of the incumbent carrier;

(3) The name of the eligible point involved;

(4) Fitness information, as follows:

(i) If the applicant has already been found by the Board to be fit, willing, and able to provide scheduled service, it shall cite the most recent order establishing the finding.

(ii) If the applicant has not yet been found by the Board to be fit, willing, and able to provide a scheduled service, it shall include the fitness information required by Part 204 of this chapter to support such a finding. In making this showing, the applicant may incorporate by reference material submitted in a prior proceeding before the Board.

(5) The information required by § 204.6(c) (2) and (3) of this chapter, even if the applicant is not seeking subsidy for itself;

(6) The service pattern proposed, including the hub and hubs to be served from the eligible point, the number of flights to be provided, whether the flights will be nonstop, and the type of aircraft to be employed. If the applicant is basing its application on improved service at the eligible point, it shall state how its proposed service represents an inprovement over the incumbent carrier's service;

(7) If the applicant is seeking a subsidy, the assurances required by §§ 379.4 and 382.21 of this chapter;

(8) The earliest date or season that the applicant is prepared to begin service; and

(9) The availability of slots at the hub airport it proposes to serve.

(e) All information supplied by an air carrier in its application is subject to verification by Board auditors.

§ 326.4 Answers and replies to bumping applications.

(a) Any person may file an answer to an application filed under this part.

(b) To be considered by the Board, an answer should be filed not later than 30 days after the filing of the application to which it responds.

(c) An answer by the incumbent carrier may refute the fitness and reliability of the applicant to provide the essential air transportation, refute its ability to provide the service at the amount of compensation requested, deny that the applicant's proposed service represents a substantial improvement, and/or offer a counterproposal to that offered by the applicant. If the incumbent desires a hearing, it should request it at this time.

(d) An answer by representatives of the eligible point should state whether they consider the service pattern proposed by the applicant to be a substantial improvement in service and the reasons for their views.

(e) Any other carrier may submit a bumping application during the answer period. Such an application should include the information required by § 326.3(d).

(f) Any person may submit a reply to a counterproposal filed under paragraph (c) of this section or to another application filed under paragraph (e) of this section within 15 days of the end of the answer period.

§ 326.5 Service of applications and answers.

(a) The application shall be served upon:

(1) The chief executive of the principal city or other unit of local government of the eligible point. The principal city is the one named, or previously named, in the section 401 certificate by virtue of which the point qualifies as an eligible point. For points in Alaska or Hawaii that are named by the Board as eligible points without having been listed on a section 401 certificate, the principal city is the most populous municipality at the point.

(2) The agency of the State, territory, or possession with jurisdiction over transportation by air in the area containing the eligible point. If there is no such agency, the application shall be served on the Governor of the State, territory, or possession.

(3) The manager of, or other individual with direct supervision over and responsibility for, the airport at the eligible point.

(4) Each air carrier providing scheduled passenger service at the eligible point.

(5) The CAB Office of Congressional, Community, and Consumer Affairs Field Office for the region in which the eligible point is located.

(6) Any other person designated by the Board.

(b) Answers to applications and replies to answers shall be served on the persons listed in paragraph (a) of this section, on the applicant, and on the person that filed the answer to which the reply is directed.

§ 326.6 Board action.

(a) After an application is filed under this part and the answer and reply period has elapsed, a rate conference will be held with the applicant or applicants and with the incumbent carrier, if it has filed a counter proposal, to determine the reasonableness of the compensation requested. One or more of the following actions may also be taken:

(1) A conference may be held with the eligible point concerned to determine its view on the relative merits of the present and proposed service pattern.

(2) Additional information may be requested.

(3) The application may be consolidated with the incumbent carrier's rate renegotiation proceeding if the incumbent's rate term is close to expiration.

(4) Additional service and subsidy proposals may be solicited.

(b) After the Board completes its reviews and conferences, and obtains any necessary information, it will take one or more of the following actions:

(1) Issue an order to show cause proposing to grant the application;

(2) Deny the application if the applicant fails to meet the criteria set forth in § 326.7;

(3) Set the application for an oral evidentiary hearing under the following circumstances:

(i) There are material facts in dispute;

(ii) These facts are of decisional significance; and

(iii) The Board finds that the disputed facts can best be resolved in an oral evidentiary hearing.

(4) Set the application for oral arguments before the Board.

§ 326.7 Standards for decision.

(a) The Board will not grant an application under this part unless:

(1) It finds, or previously found, that the applicant is fit, willing, and able to provide scheduled air transportation;

(2) It finds that the applicant will provide the essential air transportation at the eligible point in a reliable manner; and

(3) If the incumbent carrier is receiving its subsidy under section 406 of the Act, the applicant shows by a preponderance of the evidence that its proposal will result in both of the following:

(i) A substantial improvement in the air service being provided to the eligible point; and

(ii) A substantial decrease in the amount of subsidy that will be required to provide air service to the eligible point.

(4) If the incumbent carrier is receiving its subsidy under section 419 of the Act, the applicant shows by a preponderance of the evidence that its proposal will result in either of the following:

(i) A substantial improvement in the air service being provided the eligible point with no increase in subsidy; or

(ii) A substantial decrease in the amount of subsidy that will be required to provide essential air transportation at the eligible point.

(b) To be considered substantial, the proposed decrease in the amount of subsidy should be at least $50,000 per year or 10 percent of the incumbent carrier's subsidy rate, whichever is greater.

(c) In deciding whether a proposed service pattern represents a substantial improvement in air service, the Board will consider the following factors:

(1) Which hub or hubs the applicant proposes to serve from the eligible point;

(2) The number of stops that the applicant will make between the designated hub and the eligible point;

(3) The size and type of aircraft, including whether they are pressurized, that the applicant intends to use at the eligible point;

(4) An increase in the number of flights or seats that the applicant proposes to provide at the eligible point, if—

(i) The increased frequencies are combined with a change in aircraft so as not to result in the Board paying a subsidy for more than essential air transportation; or

(ii) A petition has been filed under § 325.10 of this chapter to raise the eligible point's essential air transportation level.

(5) Service-related advantages held by the applicant such as computerized reservation systems or joint fares.

(d) In addition to the factors described above, the Board, in evaluating an application, will consider the following:

(1) The desirability of developing an integrated linear system of air transportation whenever such a system most adequately meets the air transportation needs of the eligible point involved;

(2) The experience of the applicant in providing scheduled air service in the vicinity of the eligible point involved;

(3) The relative efficiency of the aircraft that the competing carriers use or propose to use;

(4) The relative financial strength of the competing carriers;

(5) The time necessary for the applicant to begin providing the service it proposes;

(6) The performance of the incumbent carrier in serving the eligible point involved;

(7) The amount of time that the incumbent carrier was on the subsidy rate to question;

(8) The effect of granting the bumping application on other points in the incumbent carrier's system;

(9) The availability of slots for the applicant at the hub or hubs that it proposes to serve; and

(10) In Alaska, the experience of the applicant in providing scheduled air service, or significant patterns of nonscheduled air service under Part 298 of this chapter, in that State.

(e) In evaluating the standards described above, the Board will give great weight to the views of representatives of the eligible point involved.

§ 326.8 Transition from the incumbent carrier to the applicant.

(a) If an applicant is successful in its bid to replace an incumbent carrier and receive a subsidy for serving the eligible point, it shall notify the Board and the incumbent carrier of the date that it is prepared to begin service at the eligible point. It shall allow the incumbent 45 days to close down its operation at the eligible point, unless another date is agreed on.

(b) The incumbent carrier shall continue service at the eligible point until the successful applicant begins service there.

(c) The Board will continue to pay the subsidy to the incumbent carrier for at least 45 days after it grants the bumping application, unless the two carriers agree to a different date for the transfer of service. The Board will continue to pay the subsidy to the incumbent carrier thereafter until the successful applicant begins service at the eligible point.

§ 326.9 Conformity with Subpart A of Part 302.

Except where they are inconsistent, the provisions of Subpart A of Part 302 of this chapter shall apply to proceedings under this part.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 83-227 Filed 1-4-83; 8:45 am]

BILLING CODE 6320-01-M

14 CFR Part 385

[Organization Reg. Amdt. No. 130 to Part 385, Reg. OR-205]

Delegations and Review or Action Under Delegation; Nonhearing Matters

AGENCY: Civil Aeronautics Board.

ACTION: Final rule.

SUMMARY: The CAB is revising its filing fee schedule and is setting procedures by which persons can apply for refunds. This rule delegates authority to the Comptroller to decide whether refunds are owed and to order payment. This rule is at the Board's own initiative to expedite refund procedures.

DATES: Effective: January 10, 1983. Adopted: December 20, 1982.

FOR FURTHER INFORMATION CONTACT: For financial information, Joseph L. Kull, Office of Comptroller, 202-673-5476; for legal information; Joseph A. Brooks, Office of the General Counsel, 202-673-5442, Civil Aeronautics Board, 1185 Connecticut Avenue, N.W., Washington, D.C. 20428.

SUPPLEMENTARY INFORMATION: The reasons for the rule are fully explained in OR-204, issued contemporaneously.

List of Subjects in 14 CFR Part 385

Administrative practice and procedure, Authority delegations.

PART 385—[AMENDED]

Accordingly, the Civil Aeronautics Board amends 14 CFR Part 385, Delegations and Review of Action Under Delegation; Nonhearing Matters, as follows:

1. The authority for Part 385 is:

Authority: Secs. 102, 204, 401, 402, 403, 407, 416, Pub. L. 85-726, as amended; 72 Stat. 740, 743, 754, 758, 766, 771, 49 U.S.C. 1302, 1324, 1371, 1372, 1373, 1377, 1386; Reorganization Plan No. 3 of 1961, 26 FR 5969.

2. A new paragraph (g) is added to § 385.27 to read:

§ 385.27 Delegation to the Comptroller.

The Board delegates to the Comptroller the authority to:

* * * * *

(g) Grant or deny applications under § 389.27(b) of this chapter for refunds of fees paid, consistent with Board policy, and to order amounts refunded as necessary.

By the Civil Aeronautics Board.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 83-226 Filed 1-4-83; 8:45 am]

BILLING CODE 6320-01-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 946

Approval of Permanent Program Amendments From the State of Virginia Under Surface Mining Control and Reclamation Act of 1977

Correction

In FR Doc. 82-33680 beginning on page 55675 in the issue of Monday, December 13, 1982 make the following correction:

On page 55675, third column, second line from the bottom should read, **"EFFECTIVE DATE:** This approval is effective December 13, 1982."

BILLING CODE 1505-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 173

[OPP 00159; PH-FRL 2215-3]

Federal Insecticide, Fungicide, and Rodenticide Act, State Primary Enforcement Responsibilities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final interpretive rule.

SUMMARY: This rule states EPA's interpretation of several of the key provisions in sections 26 and 27 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), but does not impose substantive requirements on the States. Sections 26 and 27 established a standard and procedure for according States the primary enforcement responsibility for pesticide use violations (primacy). The rule also provides operational substance to the criteria used by EPA for primacy related decisionmaking, and ensures that such decisionmaking is consistent throughout the regions.

EFFECTIVE DATE: This rule will not take effect before the end of 60 calendar days of continuous session of Congress after

the date of publication. EPA will publish a notice of the actual effective date of this rule. See **SUPPLEMENTARY INFORMATION** for further details.

FOR FURTHER INFORMATION CONTACT: Laura Campbell, Pesticides and Toxic Substances Enforcement Division (EN-342), Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm. M-2624E, 401 M St., SW., Washington, D.C. 20460, (202-382-5566).

SUPPLEMENTARY INFORMATION:

Background

In 1978, Congress enacted Pub. L. 95-396 which contained numerous revisions to the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136 *et seq.*). One of the changes added two new sections to FIFRA, sections 26 and 27, U.S.C. 136w-1 and 136w-2, which together established a standard and procedure for according States the primary enforcement responsibility for pesticide use violations (primacy).

Section 26 provides three methods by which a State can obtain primacy. Section 26(a) requires a State to be accorded primacy if the Administrator finds that the State has (1) adopted adequate use laws, (2) adopted adequate procedures for implementing those laws, and (3) agreed to keep such records and make such reports as the Administrator may require by regulation. Section 26(b) allows a State to obtain primacy if the State has an approved section 4 certification plan that meets the criteria set forth in section 26(a), or if a State enters into a cooperative agreement for the enforcement of pesticide use restrictions under section 23.

Section 27 authorizes the Administrator to override or rescind a grant of primacy in certain situations. Section 27(a) requires the Administrator to refer significant allegations of pesticide use violations to the States. If a State does not commence appropriate enforcement action within 30 days of such referral, EPA may bring its own enforcement action.

Section 27(b) authorizes the Administrator to rescind the primary enforcement responsibility of a State if she finds that the State is not carrying out such responsibility. The Administrator initiates a rescission proceeding by notifying the State of those aspects of the State's pesticide use enforcement program which the Administrator has found to be inadequate. If the State does not correct the deficiencies in its program within 90 days, the Administrator may rescind the States's primary enforcement responsibility in whole or in part. EPA has promulgated procedures which govern the conduct of a proceeding to rescind State primacy. These procedures were published in the **Federal Register** of May 11, 1981 (46 FR 26058). (40 CFR Part 173).

Section 27(c) authorizes the Administrator to take immediate action to abate an emergency situation where the State is unable or unwilling to respond to the crisis.

As is evident from the above description, several of the operative terms in sections 26 and 27 require further definition. This rule clarifies the meaning of such words as "adequate" and "appropriate" which FIFRA sets forth as the criteria for most of the decisions which will be made under these two sections. The rule also sets guidelines to be used by EPA in making primacy-related decisions, and ensures that such decisionmaking is consistent by limiting, although not eliminating, Agency discretion in the primacy area.

Specifically, this rule addresses the following issues:

1. Procedures EPA will follow when referring allegations of pesticide use violations to the State and tracking State responses to these referrals (see Unit I, Subdivision A below).

2. The meaning of "appropriate enforcement action" (see Unit I, Subdivision B).

3. Clarification of when a State will be deemed to have (1) adopted adequate pesticide use laws and regulations, and (2) implemented adequate procedures for the enforcement of such laws and regulations (see Unit II).

4. The criteria the Administrator will use to determine whether a State is adequately carrying out its primary enforcement responsibility for pesticide use violations (see Unit III).

5. The factors which constitute an emergency situation, and the circumstances which require EPA to defer to the State for a response to the crisis (see Unit IV).

Comments Received

Four comments were received in response to the proposal of the Interpretive Rule. (47 FR 16799, April 20, 1982).

In the proposed rule, a determination of the gravity of violation was based on two factors: (1) risk associated with the violative action, and (2) risk associated with the pesticide. Some of the comments stated that EPA should determine the gravity of each violation based on whether actual harm occurred as a result of the violation. If the Agency were to determine the seriousness of a violation based on the actual harm which occurred in a particular case, pesticide users would be encouraged to take the risk of misusing a pesticide, with the hope that no actual harm would result from their unlawful act. Congress charged EPA with regulating pesticide use in a manner which will prevent unreasonable risk of pesticide exposure to man or the environment. Congressional intent would not be carried out if EPA encouraged pesticide users to engage in unsafe activities by not charging violations in cases where no actual harm occurred. For this reason, the final rule retains the language of the proposed rule.

Two comments concerning the imposition of criminal penalties for pesticide misuse were received. One comment stated that Congress intended criminal sanctions to be applied only in cases involving unlawful manufacture of pesticides. Nothing in FIFRA or its legislative history so limits the use of criminal penalties. The only criterion in the statute for the imposition of criminal penalties is that a violation is "knowing". The language referring to criminal penalties in the proposed rule has been largely retained in the final rule.

Another comment expressed the concern that imposing more stringent sanctions where violations are found to be "knowing" penalizes persons who are informed about the law. Section 14 of FIFRA states that "knowing" violations are subject to criminal penalties. Knowledge of the violator is a valid criterion to use in determining gravity because of a "knowing" violation shows a disregard for the law.

One comment stated that no State with more stringent pesticide use laws than the Federal law should be granted primacy. Although EPA cannot require a State to enact a pesticide use law that is more stringent than FIFRA, there is no prohibition against granting primacy to a State whose pesticide use law is more stringent.

One comment suggested a change in the requirement that State laboratories conducting sample analysis participate in EPA's check sample program. The comment stated that the National Enforcement Investigation Center (NEIC) check sample program should be coordinated with the American Association of Pest Control Officials (AAPCO). The NEIC check sample program is currently coordinated with the AAPCO check sample program. The rule has been changed to reflect this comment.

Further Information on Effective Date of This Rule

On December 17, 1980, the Federal Insecticide, Fungicide, and Rodenticide Act extension bill (Pub. L. 96–539) became law. This bill amended several sections of FIFRA, including section 25 on rulemaking. Section 4 of the Extension Act adds a new paragraph, section 25(e), to FIFRA which requires EPA to submit final regulations to Congress for review before the regulations become effective. Copies of this rule have been transmitted to appropriate offices in both Houses of Congress.

Under section 4 of the 1980 FIFRA Extension Act, this rule will not take effect before the end of 60 calendar days of continuous session of Congress after the date of publication of this rule. Since the actual length of this waiting period may be affected by Congressional action, it is not possible, at this time, to specify a date on which this regulation will become effective. Therefore, at the appropriate time EPA will publish a notice announcing the end of the legislative review period and notifying the public of the actual effective date of this regulation.

Compliance With the Regulatory Flexibility Act

I hereby certify that this rule will not have a significant economic impact on small entities. The rule affects only State pesticide control agencies, which are not small entities under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*

Compliance With Executive Order 12291

Under Executive Order 12291, EPA must judge whether a regulation is "Major" and therefore subject to the requirement of a Regulatory Impact Analysis. This regulation is not Major since it is interpretive in nature and does not contain new substantive requirements. The regulation:

1. Does not have an annual effect on the economy of $100 million or more.
2. Will not substantially increase costs to consumers, industry, or government.
3. Will not have a significant adverse effect on competition, employment, investment, productivity, or innovation.

This regulation was submitted to the Office of Management and Budget for review as required by Executive Order 12291. (Sec. 25(a)(1) (7 U.S.C. 136w)). [Note: This rule will not appear in the Code of Federal Regulations.]

I. Appropriate Enforcement Action

A. *Procedures Governing Referrals.* 1. *General.* Section 27(a) requires EPA to refer to the States any information it receives indicating a significant violation of pesticide use laws. If a State has not commenced appropriate enforcement action within 30 days, EPA may act on the information.

Given current resource limitations, EPA is not in a position to monitor State responses to every allegation of pesticide misuse referred by the Agency. Rather, the Agency will focus its oversight activities on evaluating the overall success of State pesticide enforcement programs, and will track, on a case-by-case basis, only those allegations involving particularly serious violations. Such "significant" allegations will be formally referred to the States and tracked by EPA, while other less serious complaints will be forwarded to the States for information purposes only.

2. *Criteria for significant cases.* To determine which alleged violations are sufficiently significant to warrant formal referral and tracking, the regions will go through a two step process. First, the regions, in consultation with each State, will identify priority areas for referral. These priority areas will consist of those pesticide activities in the State which present the greatest potential for harm to health or the environment (e.g. the application of a pesticide by a certain method to a particular crop, such as ground application of endrin to apple trees). The selection of these priority areas will depend primarily on the results of pesticide enforcement program evaluations conducted by the States and the regions. The priority areas will be revised on an annual basis based upon the effectiveness of the program in reducing the harm associated with pesticide use.

Thereafter EPA will determine on a case-by-case basis which allegations in these priority areas involve sufficiently "significant" violations to be formally referred to the State and tracked. If a complaint received by EPA alleges a minor infraction which clearly presents little or no danger to health or the environment, or if the information contains patently spurious allegations, such as those from sources which have repeatedly proved unreliable, the matter will be forwarded to the State for information purposes only.

3. *The 30-day time period.* The Agency interprets the term "commence appropriate enforcement action" in section 27(a) to require States to initiate a judicial or administrative action in the nature of an enforcement proceeding, if one is warranted. Starting an investigation of the matter would not be sufficient. If the State does not commence an appropriate administrative, civil, or criminal enforcement response, EPA would then be permitted, although not required, to bring its own enforcement action.

Although section 27(a) permits EPA to act if the State has not commenced an enforcement action within 30 days, the Agency recognizes that States may not be able to complete their investigation of many formal referrals in so short a time. The time needed to investigate a possible use violation will vary widely, depending upon the nature of the referral. A referral which simply conveys an unsubstantiated allegation will usually require more investigation than a referral which partially or fully documents a pesticide use violation. Consequently, the Agency wishes to develop a flexible approach towards the tracking of referrals.

To accomplish this objective, EPA is adopting a system in which the referral process is broken down into two stages, investigation and prosecution.

4. *The investigation stage.* Following the formal written referral of an allegation of a significant pesticide use violation, the appropriate regional pesticide official will contact the State to learn the results of the investigation and the State's intended enforcement response to the violation. If the State has not conducted an adequate investigation of the alleged violation, the region may choose to pursue its own investigation or enforcement action after notice to the State. As a general rule, however, the regional office will attempt to correct any deficiencies in the investigation through informal communication with the State.

An investigation will be considered adequate if the State has (1) followed proper sampling and other evidence-gathering techniques, (2) responded expeditiously to the referral, so that evidence is preserved to the extent possible, and (3) documented all inculpatory or exculpatory events or information.

5. *The prosecution stage.* After completion of the investigation, the State will have 30 days, the prosecution stage, to commence the enforcement action, if one is warranted. An appropriate enforcement response may consist of required training in proper pesticide use, issuance of a warning letter, assessment of an administrative civil penalty, referral of the case to a pesticide control board or State's Attorney for action, or other similar enforcement remedy available under State law. The 30-day period may be extended when necessitated by the procedural characteristics of a State's regulatory structure (see Unit V.A. Hypothetical 1).

If, after consultation with the State, EPA determines that the State's intended enforcement response to the violation is inappropriate (see subdivision B), EPA may bring its own action after notice to the State. Regional attorneys will not, however, initiate an enforcement proceeding sooner than 30 days after the matter was referred to the State.

At times, a State may find that the particular enforcement remedy it views as the appropriate response to a use violation is not available under the State's pesticide control laws. Therefore the State may, at any time, request EPA to act upon a violation utilizing remedies available under FIFRA. In these instances, of course, EPA will immediately pursue its own action, if one is warranted.

To illustrate better the proposed referral system, two hypothetical situations are described in Unit V. A.

B. *Appropriate Enforcement Action.* 1. *General.* After the Agency learns of the enforcement action, if any, the State proposes to bring against the violator, the EPA regional pesticide office will consider, in consultation with the State, whether the proposed action is "appropriate", relative to the remedies available to the State under its pesticide control legislation. EPA interprets the modifier "appropriate" in section 27(a) of FIFRA to require that the severity of the proposed enforcement action correlate to the gravity of the violation.

It is not possible in this Interpretive Rule to prescribe the specific enforcement action which will constitute an appropriate response to a particular violation. There are too many variables which will influence the treatment of a use violation, including the disparity between the types of enforcement remedies available under the various State pesticide control statutes. This document can, however, establish criteria to be employed in evaluating the appropriateness of a proposed State enforcement action. More detailed guidance on evaluating relative gravity is contained in EPA's "Guidelines for the Assessment of Civil Penalties under Section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act, as amended", published in the Federal Register of July 31, 1974 (39 FR 27711). The Guidelines establish dollar amounts to be applied under the Federal statute to use violations in civil penalty proceedings. Regional personnel can use these figures as a guide in evaluating the gravity of a particular violation. The Agency will not require that a State response to a violation have a monetary impact equivalent to that of a civil penalty which EPA would impose under the Guidelines. Rather, the dollar amounts contained in the penalty matrices can be used by regional personnel to define the relative gravity of a violation by comparing the figures applicable to different violations.

2. *Gravity of the violation.* The Agency believes that the gravity of a pesticide use violation is dependent upon the risk the violation poses to human health and the environment. The factors which determine the degree of risk presented by a use violation can be divided into two categories: factors related to the particular action which constituted the violation and factors related to the pesticide involved in the incident.

a. *Risk associated with the violative action.* The circumstances surrounding the violative action partially determine the risk the violation presents to human health or the environment. To assess the degree of such risk, State and regional personnel should ask such questions as:

i. Did the violation occur in a highly populated area, or near residences, schools, churches, shopping centers, public parks or public roads, so that health was endangered?

ii. Did the violation occur near an environmentally sensitive area, such as a lake or stream which provides drinking water to the surrounding community, a wildlife sanctuary, a commercial fishery, or other natural areas?

iii. Did a structural application threaten to contaminate food or food service equipment?

iv. Did the violation have the potential to affect a large or a small area?

v. What was the actual harm which resulted from the violation?

vi. Was the nature of the violation such that serious consequences were likely to result?

This last question is designed to take into account the variation in the inherent risk associated with different categories of use violations. For example, a drift violation resulting from improper aerial application generally presents a greater risk of harm than a storage violation, since the latter infraction does not necessarily involve the improper exposure of the pesticide to the environment.

b. *Risk associated with the pesticide.* The factors which will be crucial in evaluating the risk associated with the pesticide itself include:

i. The acute toxicity of the pesticide or pesticides involved in the incident. The toxicity of a pesticide will be indicated by the "human hazard signal word" on the labels (see 40 CFR 162.10). "Danger" or "Poison" are indicators of a highly toxic pesticide while "Warning" and "Caution" signify successively less toxic substances.

ii. The chronic effects associated with the pesticide, if known.

iii. The amount of the pesticide involved in the incident, relative to the manner of application (e.g., aerial versus structural).

iv. Other data concerning the harm a pesticide may cause to human health or the environment, such as data concerning persistence or residue capability.

An analysis of the interrelationship between these two categories of risk factors should yield a notion of the relative gravity of the violation and the severity of the action which should be taken in response.

3. *Category of applicator, size of business, and history of prior violation.* Gravity is not the only factor which EPA will take into account in evaluating the propriety of an enforcement action. Section 14 of FIFRA requires that distinctions in the severity of an enforcement response be made between the categories of persons who commit use violations. The intent of Congress, as expressed in section 14, is that commercial pesticide applicators who violate use requirements will be subject to more stringent penalties that other persons who violate use restrictions. Congress also envisioned that the size of the violator's business will be a factor in determining the severity of the penalty. In addition, section 14 distinguishes between violators who have committed previous infractions and those who are first offenders. Thus, the issuance of a warning letter by a State to a person or firm who has been repeatedly warned in the past about a certain violation would not generally be considered an appropriate response to the violation.

4. *Knowing violations; criminal penalties.* The state of mind of the violator is another important consideration. In extreme circumstances where the civil penalty remedy is inappropriate, it is the Agency's policy to pursue a criminal action against persons who knowingly violate a provision of FIFRA. EPA will be particularly interested in pursuing criminal prosecution for those violations which involve a death or serious bodily injury or in which the violator has demonstrated a reckless or wanton disregard for human safety, environmental values or the terms of the statute. To be appropriate, a State's response to a knowing violation under the circumstances indicated above must be similarly severe.

5. *Deterrence.* It should be noted that the appropriateness of an enforcement

action is a dynamic, rather than a static, concept. Because it is dynamic, penalties must be periodically evaluated. If a certain violation is occurring more frequently, the leniency of the remedies which have been applied to this infraction in the past should be questioned. Consequently, what is appropriate in one year may be viewed as an inadequate response in the next.

The factors described above, together with the aforementioned Guidelines, should help to clarify the Agency's definition of "appropriate enforcement action." To understand better how the criteria described above can be used to evaluate whether a proposed State enforcement action is appropriate, the reader is referred to the hypothetical fact situations in Appendix B.

II. Criteria Governing Grants of Primacy

Section 26 of FIFRA sets forth the general criteria which apply to EPA's decision whether to grant primacy to a State:

> "(a) For the purposes of this Act, a State shall have primary enforcement responsibility for pesticide use violations during any period for which the Administrator determines that such State—
>
> "(1) has adopted adequate pesticide use laws and regulations; *Provided*, That the Administrator may not require a State to have pesticide use laws that are more stringent than this Act;
>
> "(2) has adopted and is implementing adequate procedures for the enforcement of such State laws and regulations; and
>
> "(3) will keep such records and make such reports showing compliance with paragraphs (1) and (2) of this subsection as the Administrator may require by regulation.
>
> "(b) Notwithstanding the provisions of subsection (a) of this section, any State that enters into a cooperative agreement with the Administrator under section 23 of this Act for the enforcement of pesticide use restrictions shall have the primary enforcement responsibility for pesticide use violations. Any State that has a plan approved by the Administrator in accordance with the requirements of section 4 of this Act that the Administrator determines meets the criteria set out in subsection (a) of this section shall have the primary enforcement responsibility for pesticide use violations. The Administrator shall make such determinations with respect to State plans under Section 4 of this Act in effect on September 30, 1978 not later than March 31, 1979.

Thus, a State may obtain primacy in two ways: (1) by demonstrating that the elements of its use enforcement program, or of its approved certification program, satisfy the two main criteria in section 26(a), (adequate laws and adequate procedures implementing those laws), or (2) by entering into a cooperative agreement for the enforcement of use restrictions, provided the terms of the agreement do not specify otherwise. The Agency will also evaluate the adequacy of a State's use enforcement program before conferring primacy by this latter method.

A. *Adequate Laws and Regulations.* To be considered adequate, a State's pesticide control legislation must address at least the following areas:

1. *Use restrictions.* State pesticide control legislation will be considered adequate for purposes of assuming full primacy if State law prohibits those acts which are proscribed under FIFRA and which relate to pesticide use. The activities presently proscribed under FIFRA include:

a. Use of a registered pesticide in a manner inconsistent with its label (FIFRA section 12(a)(2)(G)).

b. Use of a pesticide which is under an experimental use permit contrary to the provisions of the permit (section 12(a)(2)(H)).

c. Use of a pesticide in tests on humans contrary to the provisions of section 12(a)(2)(P).

d. Violation of the provision in section 3(d)(1)(c) requiring pesticides to be applied for any restricted use only by or under the direct supervision of a certified applicator. Violations of suspension or cancellation orders are not considered use violations for purposes of the primacy program.

States may be granted partial primacy if they regulate less than all categories of use violations. For example, EPA may in the future decide to issue "other regulatory restrictions" on use under section 3(d)(1)(C)(ii), (such as a requirement to notify area residents before pesticide spraying). If such a restriction were issued, (and not reflected on pesticide product labels), each State would automatically have partial primacy extending to all of the categories listed above which are proscribed by State law, unless the State already has authority to enforce such restrictions. A State with partial primacy would obtain full primacy by enacting a prohibition tracking the section 3(d)(1)(C)(ii) restriction.

2. *Authority to enter.* To carry out effectively their use enforcement responsibilities, State officials should be able to enter, through consent, warrant, or other authority, premises or facilities where pesticide use violations may occur. States should also have concomitant authority to take pesticide samples as part of the use inspection process.

3. *Flexible remedies.* Finally, State legislation must provide for a sufficiently diverse and flexible array of enforcement remedies. The State should be able to select from among the available alternatives an enforcement remedy that is particularly suited to the gravity of the violation. Without such flexibility, a State may frequently be forced to underpenalize violators, and thereby fail significantly to deter future use violations. Thus, in order to satisfy the "adequate laws" criterion, States should demonstrate that they are able to:

a. Issue Warning Letters or Notices of Noncompliance;

b. Pursue administrative or civil actions resulting in an adverse economic impact upon the violator, e.g., license or certification suspensions or civil penalty assessments; and

c. Pursue criminal sanctions for knowing violations.

B. *Adequate Procedures for Enforcing the Laws.* In order to obtain primacy, States must not only demonstrate adequate regulatory authority, but must also show that they have adopted procedures to implement the authority. These procedures must facilitate the quick and effective prevention, discovery, and prosecution of pesticide use violations.

1. *Training.* One step towards this objective is the training of enforcement personnel. At a minimum, States, in cooperation with EPA, should implement procedures to train inspection personnel in such areas as violation discovery, obtaining consent, preservation of evidence, and sampling procedures. Enforcement personnel should be adequately versed in case development procedures and the maintenance of proper case files.

Instruction in these techniques should take the form of both on-the-job training and the use of prepared training materials. The Agency also considers a continuing education program to be a crucial training procedure, so that enforcement personnel can be kept abreast of legal developments and technological advances.

2. *Sampling techniques and laboratory capability.* Requests for primacy should also show that the State is technologically capable of conducting a use enforcement program. States must have ready access to the equipment necessary to perform sampling and laboratory analysis, and should implement a quality assurance program to train laboratory personnel and protect the integrity of analytical data. Laboratories conducting sample analyses must also agree to participate in EPA (NEIC) Check Sample programs which are designed to ensure minimum standards of analytical capability. (Such a program is already operational for formulation samples, and a residue sample program is also under consideration). The EPA Check Sample program is coordinated with the Association of American Pesticide Control Officials (AAPCO) to reduce unnecessary duplication of effort. The EPA will be guided in evaluating the adequacy of State analytical procedures by official compilations of approved analytical methods, such as the Food and Drug Administration's (FDA) Pesticide Analytical Manual, the CIPAC (Collaborative International Pesticides Analytical Council) Handbook, the EPA Manual of Chemical Methods for Pesticides, and Official Analytical Chemists Analytical Procedures. For additional guidance on adequate sampling techniques, States should consult EPA's FIFRA Inspectors Manual or contact the appropriate regional office.

3. *Processing complaints.* Since a significant portion of pesticide use violations are identified through reports from outside EPA or the State lead agency, the State must implement a system for quickly processing and reacting to complaints or other information indicating a violation. An adequate referral system should contain:

a. A method for funneling complaints to a central organizational unit for review.

b. A logging system to record the receipt of the complaint and to track the stages of the follow-up investigation.

c. A mechanism for referring the complaint to the appropriate investigative personnel.

d. A system for allowing a rapid determination of the status of the case.

e. A procedure for notifying citizens of the ultimate disposition of their complaints.

4. *Compliance monitoring and enforcement.* Along with the above described enforcement procedures, States must provide assurance that sufficient manpower and financial resources are available to conduct a compliance monitoring program, i.e., either planned or responsive use inspections. In addition, States must implement procedures to pursue enforcement actions expeditiously against violators identified through compliance monitoring activities.

The Agency also believes that program planning and the establishment of enforcement priorities is an integral part of an adequate enforcement program. Such planning, taking into account the national program priorities as manifested through the grant negotiation process, as well as the priorities specific to the individual State, will help assure that compliance monitoring and enforcement resources are properly allocated.

5. *Education.* States should implement a program to inform their constituencies of applicable pesticide use restrictions and responsibilities. Examples of education methods include disseminating compliance information through cooperative extension services, seminars, publications similar to the **Federal Register**, newspapers, and public assistance offices where persons can call to ask questions or report violations. Such an educational program will promote voluntary compliance and is essential to effective enforcement. States should also develop procedures for soliciting input from the public regarding the administration of the pesticide use enforcement program.

III. Criteria Governing Rescission of Primacy Under Section 27(b)

Section 27(b) authorizes the Administrator to rescind primacy from a State in certain situations:

> "(b) Whenever the Administrator determines that a State having primary enforcement responsibility for pesticide use violations is not carrying out (or cannot carry out due to the lack of adequate legal authority) such responsibility, the Administrator shall notify the State. Such notice shall specify those aspects of the administration of the State program that are determined to be inadequate. The State shall have ninety days after receipt of the notice to correct any deficiencies. If after that time the Administrator determines that the State program remains inadequate, the Administrator may rescind, in whole or in part, the State's primary enforcement responsibility for pesticide use violations.

In deciding whether a State is not carrying out, or cannot carry out, its use enforcement responsibilities, the Administrator will apply the criteria for an adequate program set forth in Unit II to the performance of the State during the time the State had primacy.

A. *Adequate Laws.* The legal authority can conduct an adequate use enforcement program is a criterion which affects both the decision to grant primacy and the decision to rescind it. Within the context of rescission, the Administrator will assess the impact of any amendments or supplements to the State's pesticide use laws and regulations. If legislative changes have adversely affected the State's ability to collect information or bring enforcement actions, the State may be subject to a rescission action on grounds of inadequate laws.

B. *Adequate Procedures.* In determining whether a State which has adequate legal tools is carrying out its use enforcement obligations, the Agency will examine the efficacy of the procedures adopted by the State to implement its pesticide laws. The Agency will be particularly interested in the remedies the State has actually applied to the various use violations. The lack of sufficient correlation between the gravity of a use violation and the severity of the enforcement response would be evidence that the State's arsenal of remedies is not being applied in a flexible manner.

In addition, EPA will evaluate each program element listed in Unit II.B., in light of the performance of the State during the period the State had primary use enforcement responsibility.

1. *Training.* The Administrator will note whether any difficulties encountered by the State in enforcing pesticide use restrictions have resulted from a lack of adequate training of State enforcement personnel.

2. *Sampling techniques and laboratory capability.* The Administrator will consider whether the State's sampling techniques and

analytical capabilities are enhancing or hindering the State's ability to unearth and prosecute successfully persons who misuse pesticides. Another important consideration will be the degree to which State laboratory and sampling procedures have kept pace with developments in analytical technology.

3. *Processing complaints.* The Administrator will examine whether complaints have been processed quickly and efficiently. The degree to which citizens alleging a use violation seek redress from EPA after first directing their complaint to the State will be considered. In addition, the Administrator will take into account the performance of the State in responding to allegations referred to the State by EPA under section 27(a) of FIFRA.

4. *Compliance monitoring and enforcement.* Under this element, the Administrator will compare the State's level of compliance monitoring activities with that of other comparable States. The EPA will review State case files to determine whether the State has aggressively investigated a case before deciding on the disposition of the matter. The EPA will also investigate whether a State's Attorney General's office or other prosecutorial authorities have demonstrated a willingness to pursue cases referred by the State's pesticide control lead agency.

The Agency will examine whether State enforcement resources have been directed towards the more significant enforcement problem areas, and whether enforcement priorities have been reevaluated as the demands of an adequate program change over time.

5. *Education.* The Administrator will evaluate whether the State's education program is encouraging voluntary compliance with pesticide use restrictions. As part of this process, the Administrator will note those use violations which are at least partially attributable to the violator's lack of familiarity with applicable laws and regulations. The Administrator will also review State procedures for facilitating public participation in the enforcement program.

These criteria are indices of the adequacy of a State's use enforcement program, but they do not conclusively determine whether a State is discharging its primacy responsibilities. Since the Agency's goal is to protect the public from the risks associated with pesticides, one of EPA's central inquiries will be whether the State's primacy program assures compliance with pesticide use restrictions. EPA, in evaluating State program adequacy, will consider both the deficiencies of the program and the success of the program in achieving compliance.

IV. Emergency Response

Notwithstanding other provisions of sections 26 and 27, the Administrator may, after notification to the State, take immediate action to abate emergency situations if the State is "unwilling or unable adequately to respond to the emergency."

FIFRA does not define "emergency conditions." Other EPA-administered statutes, however, characterize emergencies in fairly consistent terms. The consensus of these statutes is that an emergency presents a risk of harm to human health or the environment that is both serious and imminent, and that requires immediate abatement action.

Examples of use-related emergency situations are:

1. Contamination of a building by a highly toxic pesticide.

2. Hospitalizations, deaths, or other severe health effects resulting from use of a pesticide.

3. A geographically specific pattern of use or misuse which presents unreasonable risk of adverse effects to health or sensitive natural areas. This situation may occur, for example, if a hazardous pesticide is consistently misused in a particular area so that the net effect is the creation of substantial endangerment to the environment, such as runoff into a water supply.

A. *"Unwilling".* When EPA learns of an emergency situation, Agency representatives must notify the affected State. These representatives will try to obtain a commitment from the State as to (a) what the State is capable of doing in response to the situation, and (b) when the State intends to respond to the crisis.

Emergencies, by nature, require the quickest possible response. In most cases, due to proximity, the State will have the opportunity to be first on the scene. If the State manifests an unwillingness to respond rapidly to the situation, or if the State cannot give assurances that it will respond more quickly than EPA could respond, Agency emergency response teams will be activated.

B. *"Unable".* The EPA will immediately take action to abate an emergency if the State is unable to do so. The Agency interprets "unable" to mean that either the State does not have the authority to adequately respond or that the State is incapable of solving the problem due to the lack of technology or resources.

1. *Authority.* The EPA can utilize its authority in section 16(c) of FIFRA to seek, in conjunction with the Department of Justice, a district court order preventing or restraining misuse of a pesticide. States should also be able to address a use-related emergency in this manner or by the rapid issuance of an enforceable stop-use order or other similar means. If the State lacks this authority and the emergency conditions warrant a legal response in the nature of specific enforcement or equitable relief, EPA may initiate its own action after notice to the State.

2. *Technical capability.* Some emergency situations may present problems which the States are technologically incapable of solving. In these instances, if EPA possesses the requisite technology or equipment, the Agency will immediately respond to the crisis. For example, where a dissolved organic pesticide has contaminated a surface water system, EPA would activate its portable advanced waste treatment unit, a resource that is not generally available to the States.

The EPA will also take action if the State cannot rapidly commit the necessary manpower to the emergency situation. In most cases EPA will not, however, initiate a response on this basis if the State has developed an emergency response plan detailing the procedures to be followed in counteracting a pesticide emergency.

V. Hypothetical Situations

In reading the hypotheticals in Units A and B, assume that the cases discussed fall under priority referral areas discussed in Unit I.A.2.

A. *Action by Citizen. Hypothetical 1.* EPA refers to the State a citizen's allegation that an aerial applicator has allowed pesticides to drift over his property. After 25 days, the EPA Region obtains the results of State's investigation and learns that the State plans to issue a warning letter to the applicator. The EPA advocates a more firm response and, after discussion, the State agrees to suspend the applicator's certification. The State certification board does not meet, however, until two months later. In this instance, the Region may decide to extend the normal 30 day prosecution stage to accommodate the schedule of the board.

Hypothetical 2. A citizen calls EPA with information concerning a fish kill which occurred in a stream near his residence. The citizen claims that he reported his information to the State, but State officials have not responded to his complaint. The EPA's Regional official calls the State, and learns that the State did indeed know of the problem, but has not yet had the opportunity to investigate the allegation. The Regional

official, believing the allegation to be significant, formally refers the complaint to the State, and the State agrees that the matter should be investigated within 20 days. After 20 days, the Region learns that the State has not yet begun its investigation. In this case, the Region will begin its own inquiry into the matter, and may commence its own enforcement action, after notice to the State, provided that 30 days have elapsed from the date of the referral.

B. *Action by State.* In both of these hypotheticals, assume that the State has chosen a Warning Letter as the appropriate enforcement response.

Hypothetical 1. Mr. Smith operates a one-man crop dusting company. Smith is hired to spray Herbicide A over a power company's lengthy right-of-way. The right-of-way is bounded on one side by a residential development and on the other by a wooded area. Smith performs the aerial application amidst high swirling winds in contravention of the instructions on the herbicide's label. A significant portion of the herbicide drifts onto the wooded area. Herbicide A, which contains the hazard word "danger" on its label, is a highly toxic and persistent restricted use pesticide. Smith has no record of prior pesticide-related violations with government pesticide control offices.

The Agency would consider the issuance of a warning letter to be an inappropriate response to this violation.

a. *Risk associated with the violative action.* Fortunately in this instance, the herbicide did not result in damage to humans or sensitive environmental areas. But at the time the violation was committed, the risk that harm would result from the misuse was quite significant, given the high swirling winds and the proximity of a residential neighborhood. Only chance prevented the herbicide from drifting into an inhabited area. The risk of harm was also increased by the fact that a great deal of land was subject to drift given the length of the target area.

b. *Risk associated with the pesticide.* Herbicide A is labelled "danger" and is therefore an acutely toxic Category I pesticide under 40 CFR 162.10. The harm that would result from exposure to this persistent substance is substantial, regardless of whether chronic effects or residue properties have been ascribed to it. In addition, a large amount of herbicide A was involved in the violation.

c. *Other factors.* Smith is a commercial applicator under FIFRA and would be subject to the maximum penalty. As a mitigating factor, however, Smith could point to the absence of prior FIFRA violations.

In summary, since Smith's actions were highly likely to result in serious harm to human health, his drift violation warrants a severe enforcement response, such as assessing a fine or suspending his certification. Despite Smith's clean record, a warning letter would not be deemed "appropriate enforcement action."

Hypothetical 2. A small food processing firm which markets frozen TV dinners utilizes company maintenance personnel to accomplish its pest control needs. No particular training is provided for such employees but they are instructed to read and follow the label directions. They are provided all appropriate application equipment and protective clothing. A company employee applied a non-persistent general-use (Category IV) pesticide which was registered for structural pest control to combat a particularly serious cockroach infestation. Despite label instructions requiring the user to avoid contaminating food, food containers, or cooking utensils, the employee applied the pesticide directly upon and below counter tops and related surfaces in the room where food cooking racks are stored. The application took place late Friday afternoon. The cooking racks were not utilized again until Monday morning. An inspection took place on Monday morning. This was the third pesticide use inspection which the State had conducted at the firm in the last four years. None of the prior inspections had revealed a pesticide-related violation. Residue samples taken Monday morning revealed no trace residue of the pesticide on the treated surfaces.

Since the violation constitutes a first offense by an "other person" under section 14(a)(2) of FIFRA, the maximum federal enforcement response would be a Notice of Warning. Accordingly, the Warning Letter issued by the State would constitute an appropriate enforcement action.

a. *Risk associated with the violative action.* The direct application of any pesticide to a cooking rack in a food processing establishment poses some risk of exposure to humans. Although the pesticide used in this case was not applied in great amounts or over large areas, the inherent risk associated with the violation is relatively high, since violation results in the introduction of the pesticide into non-target surfaces with the likelihood of human exposure.

b. *Risk associated with the pesticide.* In this instance, the risk associated with the pesticide itself is relatively small. This Category IV pesticide is not acutely toxic or persistent, and is not known to cause any chronic effects. Sample analysis revealed no trace of the product at the time the exposed cooking racks were to be used.

c. *Other factors.* Under FIFRA, the issuance of a Notice of Warning is the maximum enforcement response to a use violation committed by a private applicator with no history of prior violations. Thus, the Agency would, of course, view the proposed State enforcement action as appropriate. If the violation were repeated, a more stringent enforcement action would be warranted.

Dated: December 22, 1982.

John W. Hernandez, Jr.,

Acting Administrator.

[FR Doc. 83-8 Filed 1-4-83; 8:45 am]

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40 CFR Part 180

[OPP-300069A; PH-FRL 2277-7]

Tolerances and Exemptions From Tolerances for Pesticide Chemicals in or on Raw Agricultural Commodities; Methyl Bis (2-Hydroxyethyl)Alkyl Ammonium Chloride

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule exempts methyl bis (2-hydroxyethyl)alkyl ammonium chloride from the requirement of a tolerance, where the carbon chain (C_8–C_{18}) is derived from coconut, cottonseed, soya, or tallow acids, when used as a surfactant in pesticide formulations. This regulation was requested by the Armak Company.

EFFECTIVE DATE: January 5, 1983.

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

FOR FURTHER INFORMATION CONTACT: Roland Blood, Process Coordination Branch (TS–767C), Registration Division, Office of Pesticide Programs, Environmental Protection Agency, Rm. 716D, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202 (703–557–7700).

SUPPLEMENTARY INFORMATION: EPA issued a notice of proposed rulemaking published in the **Federal Register** of November 3, 1982 (47 FR 49874) which announced that at the request of Armak Company, 300 South Wacker Drive, Chicago, IL 60606, the Administrator proposed to amend 40 CFR 180.1001(d)

by including methyl bis (2-hydroxyethyl)alkyl ammonium chloride.

There were no comments or requests for referral to an advisory committee received in response to the proposed rule.

The pesticide is considered useful for the purpose for which the exemption is sought. It is concluded that the exemption will protect the public health and is established as set forth below.

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

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

List of Subjects in 40 CFR Part 180

Administrative practice and procedures, Raw agricultural commodities, Pesticides and pests.

(Sec. 408(d)(2), 68 Stat. 512 (21 U.S.C. 346a(d)(2)))

Dated: December 22, 1982.

Edwin L. Johnson,

Director, Office of Pesticide Programs.

PART 180—[AMENDED]

Therefore, 40 CFR 180.1001(d) is amended by adding and alphabetically inserting methyl bis (2-hydroxyethyl) alkyl ammonium chloride to read as follows:

§ 180.1001 Exemptions from the requirement of a tolerance.

* * * * *

(d) * * *

Inert ingredients	Limits	Uses
* * * * *		
Methyl bis (2-hydroxyethyl) alkyl ammonium chloride, where the carbon chain (C_8-C_{18}) is derived from coconut, cottonseed, soya, or tallow acids.	.....	Surfactant
* * * * *		

[FR Doc. 83-191 Filed 1-4-83; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 3130

[Circular No. 2517]

Amendment to the National Petroleum Reserve—Alaska Oil and Gas Leasing Regulations

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rulemaking.

SUMMARY: This final rulemaking amends the regulations in 43 CFR Part 3130 to provide procedures for consolidation of leases in the National Petroleum Reserve—Alaska into a single lease, not larger than 60,000 acres in size, in accordance with the Department of the Interior Appropriations Act, Fiscal Year 1981.

EFFECTIVE DATE: February 4, 1983.

ADDRESS: Any inquiries or suggestions should be sent to: Director (530), Bureau of Land Management, 1800 C Street, N.W., Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: Jan Daniels, (202) 343-7753.

SUPPLEMENTARY INFORMATION: The proposed rulemaking amending the existing regulations providing Procedures for Leasing Oil and Gas in the National Petroleum Reserve—Alaska allowing consolidation of leases was published in the **Federal Register** on April 20, 1982 (47 FR 16807), with a 30-day comment period. During the comment period, 10 comments were received, with 9 from industry sources and one from a Federal source.

In general, the comments favored the amendment allowing consolidation of leases made by the proposed rulemaking. While the amendment was recognized as a "step in the right direction" by the majority of the comments, there was general recognition that the amendment fell short of meeting industry's concerns with operating in the National Petroleum Reserve—Alaska. At the same time, the comments contained an awareness of the inability of the Department of the Interior to fully resolve the problems presented by operating in the Reserve without the granting of additional authority by legislation. In this vein, a majority of the comments recommended that the Department pursue legislation to allow for unitization; to provide for the extension of lease terms for shut-in wells capable of production pending the availability of transportation; and for the suspension of lease terms as directed or approved by the authorized officer.

The Bureau of Land Management recognizes that the provisions of the Appropriations Act, Fiscal Year 1981, do not provide the optimum basis for leasing in the National Petroleum Reserve—Alaska and agrees that the leasing program would be aided by legislative changes covering the three areas discussed in the comments. The Department of the Interior is considering recommending to Congress legislation addressed to these issues. One comment suggested that the 60,000 acre limitation is not applicable to consolidated leases because the Appropriations Act is silent on that issue. While the Appropriations Act is silent on the question of consolidation of leases, it expressly states in proviso 7 that the size of lease tracts may be up to 60,000 acres. Since existing leases are limited to 60,000 acres by the legislation, leases cannot be consolidated into a single operating lease that exceeds 60,000 acres. Language has been added to the final rulemaking clarifying this point.

A number of comments expressed concern about the provision in section 3135.1-6(b) of the proposed rulemaking that "(L)eases to different lessees for different terms, rental and royalty rates or those containing provisions of law which cannot be reconciled shall not ordinarily be considered for consolidation." The comments noted that this provision would have very limited application because the combination of circumstances would apply only to leases with the same lessee or with identical terms, royalty rates, rental and reconcilable provisions of the law in an area not to exceed 60,000 acres. After careful review of the comments and the language of the proposed rulemaking, the final rulemaking has been changed to make it clear that conflicting provisions will be permitted in consolidated leases, except that all parties to an undivided interest in a lease must agree to enter into the same lease consolidation.

One comment raised questions concerning the lease stipulations and suggested that the final rulemaking specify which stipulations would be applicable to the consolidated lease if there are differing stipulations for the leases that are being consolidated. Any special lease stipulations would remain attached to the individual tracts or portions of tracts even after consolidation. Since the consolidation of noncontiguous tracts is allowed, and because stipulations are tract-specific, they will continue to apply to those areas specified in the original lease. The

final rulemaking contains changes that clarify this point.

There was a comment which inquired as to whether leases must be contiguous to qualify for consolidation. There is no requirement in the proposed rulemaking that leases or portions of leases be contiguous to qualify for consolidation. No change has been made on this point in the final rulemaking.

The provisions for lease consolidation in the National Petroleum Reserve in Alaska contained in this Subpart 3135 differ from the provisions for lease consolidation under the Mineral Leasing Act of 1920, as amended (30 U.S.C 181 et seq.) contained in Subpart 3105 of this title. The latter permits consolidation only when the royalty, rental, lease stipulations and other lease terms are the same. Under Subpart 3135 of this title, leases containing different terms can be consolidated. After consolidation they retain their individual identities except for the effective date, anniversary date and the primary term which, for the consolidated lease, will be the same as the dates of the oldest lease involved.

Several questions were raised in the comments regarding the provisions for segregation of leases for inclusion in a consolidated lease. Provisions for segregation and subdivision of existing leases in the National Petroleum Reserve—Alaska are provided under the existing regulations for oil and gas leasing in the National Petroleum Reserve—Alaska.

There were a few comments that requested changes in the final rulemaking to clarify minor items. These changes and necessary editorial changes and corrections have been made in the final rulemaking.

The principal author of this final rulemaking is Jan Daniels, Division of Oil and Gas, Bureau of Land Management, assisted by the staff of the Office of Legislation and Regulatory Management, Bureau of Land Management and the Office of the Solicitor, Department of the Interior.

It is hereby determined that this rulemaking does not constitute a major Federal action significantly affecting the quality of the human environment and that no detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is required.

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291 and will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.).

The change made by this final rulemaking will only have a minor impact on the leasing program authorized by 43 CFR Part 3130. The opportunity to consolidate leases will apply to all entities who have leased lands in the National Petroleum Reserve—Alaska, without regard to their size.

The information collection requirements contained in this final rulemaking amending 43 CFR Part 3130 have been approved by the Office of Management and Budget as required by 44 U.S.C. 3507 and assigned clearance number 1004–0108.

List of Subjects in 43 CFR Part 3130

Alaska, Mineral royalties, Oil and gas reserves, Public lands—mineral resources, Surety bonds.

Under the authority of the Department of the Interior Appropriations Act, Fiscal Year 1981 (Pub. L. 96–544), Part 3130, Group 3100, Subchapter C, Chapter II of Title 43 of the Code of Federal Regulations is amended as set forth below.

Dated: December 11, 1982.

Garrey E. Carruthers,

Assistant Secretary of the Interior.

1. The title to subpart 3135 is revised to read:

Subpart 3135—Assignments, Transfers and Extensions

2. Subpart 3135 is amended by adding a new § 3135.1–6 to read:

§ 3135.1–6 Consolidation of leases.

(a) Leases may be consolidated upon written request of the lessee filed with the State Director Alaska, Bureau of Land Management. The request shall identify each lease involved by serial number and shall explain the factors which justify the consolidation.

(b) All parties holding any undivided interest in any lease involved in the consolidation shall agree to enter into the same lease consolidation.

(c) Consolidation of leases not to exceed 60,000 acres may be approved by the State Director, Alaska if it is determined that the consolidation is justified.

(d) The effective date, the anniversary date and the primary term of the consolidated lease shall be those of the oldest original lease involved in the consolidation. The term of a consolidated lease shall be extended beyond the primary lease term only so long as oil or gas is produced in paying quantities or approved constructive or actual drilling or reworking operations are conducted thereon.

(e) Royalty, rental, special lease stipulations and other terms and conditions of each original lease except the effective date, anniversary date and the primary term shall continue to apply to that lease or any portion thereof regardless of the lease becoming a part of a consolidated lease.

[FR Doc. 83–207 Filed 1–4–83; 8:45 am]

BILLING CODE 4310–84–M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1157

[Ex Parte No. 293 (Sub-8)]

Standards for Determining Commuter Rail Service; Continuation Subsidies

AGENCY: Rail Services Planning Office, Interstate Commerce Commission.

ACTION: Adoption of final rules.

SUMMARY: On August 30, 1982 the Rail Services Planning Office (RSPO) issued a notice of proposed rulemaking and requested comments on regulations precribing the necessary contents of a Notice by Amtrak Commuter Services Corporation (CSC) to discontinue commuter rail operations, 47 FR 39700. These regulations were required by the Northeast Rail Service Act of 1981 (NERSA). No comments were received and RSPO is adopting the proposed regulations as final rules.

EFFECTIVE DATE: January 3, 1983.

FOR FURTHER INFORMATION CONTACT: Stephen Grimm, (202) 275–0839.

Elaine Kaiser, (202) 275–0907.

SUPPLEMENTARY INFORMATION: Section 1137 of NERSA creates a new Title V of the Rail Passenger Service Act (45 U.S.C. 501) which provides for the establishment of a new corporation, CSC, to replace Conrail as the operator of commuter rail services. As of January 1, 1983, CSC is required to take over the commuter operations currently provided by Conrail if a commuter authority offers a subsidy payment which complies with RSPO's Standards (45 U.S.C. 504(c)). CSC may, however, discontinue these operations upon 60 days notice if (1) a commuter authority fails to offer an operating payment in accordance with the RSPO Standards or (2) an applicable commuter service operating payment is not paid when it is due.

Section 1137 or NERSA (45 U.S.C. 504(d)(2)) directs RSPO to issue regulations prescribing the necessary content of a discontinuance notice by CSC. Accordingly, on August 30, 1982 we issued a notice of proposed rulemaking. No comments were received

and we are now adopting the proposed rules as final.

This is not a major Federal action significantly affecting the quality of the human environment or the conservation of energy resources. Also, the final rules do not appear to have a negative impact on small entities.

The final rules are published under authority of 45 U.S.C. 504(d)(2).

List of Subjects in 49 CFR Part 1157

Railroads.

Decided: December 22, 1982.

By the Commission, William Southard, Director, Rail Services Planning Office.

Agatha L. Mergenovich,

Secretary.

PART 1157—[AMENDED]

1. Sections 1157.1 through 1157.10, including appendices I, II, and III are redesignated as Subpart A, the heading of which is added to read as follows:

Subpart A—Determination of Commuter Rail Service Continuation Subsidies

2. A new Subpart B is added to Part 1157 to read as follows:

Subpart B—Notice of Discontinuance of Commuter Service by Amtrak Commuter Services Corporation

Sec.

1157.20 Purpose.
1157.21 Content and form of the notice.
1157.22 Service and posting.

Authority: 49 U.S.C. 504(d)(2).

Subpart B—Notice of Discontinuance of Commuter Service by Amtrak Commuter Services Corporation

§ 1157.20 Purpose.

Section 1137 of the Northeast Rail Service Act, 45 U.S.C. 504(d)(2), directs the Rail Services Planning Office (RSPO) to issue regulations prescribing the necessary contents of a notice by Amtrak Commuter Services Corporation (Commuter Services Corporation) to discontinue commuter service operations. Commuter Services Corporation may discontinue commuter service upon 60 days notice if (a) a commuter service operating payment (subsidy payment) is not made by a commuter authority in accordance with the Standards For Determining Commuter Rail Service Continuation Subsidies issued by RSPO, or (b) an applicable subsidy payment is not paid when it is due.

§ 1157.21 Content and form of the notice

The notice to discontinue commuter service operations shall contain the following information and shall be in the following form:

Notice of Discontinuance of Commuter Services Corporation's Operation of [Name of Subsidizer] Commuter Rail Service

Commuter Services Corporation hereby gives 60 days notice that on [date of proposed discontinuance] it intends to discontinue the operation of commuter rail service currently subsidized by [name of subsidizer] in [identify general area to be affected].

Commuter Services Corporation intends to discontinue the service because [name of subsidizer] has [cite reason for discontinuance in accordance with 45 U.S.C. 504(d)(1) (A) or (B)] as required by section 1137 of the Northeast Rail Service Act of 1981.

Timetables for the commuter service to be discontinued are [list timetables for the affected commuter service]. For further information contact [specify name and telephone number of a designated representative for Commuter Services Corporation and the subsidizer].

Commuter Services Corporation.

By: (Commuter Services Corporation Authorizing Official and Title).

[Date of Notice]

§ 1157.22 Service and posting.

(a) The notice shall be served by certified mail on the subsidizer, the governor, and the designated state agency, and by first class mail on the Rail Services Planning Office and the National Railroad Passenger Corporation. Service shall be made no less than 3 days prior to the date of the notice.

(b) The notice shall be posted in a conspicuous place in each car of all trains affected by the proposed discontinuance and in each station, depot, and other facility involved. The posting of the notice shall be completed prior to the date of the notice.

[FR Doc. 83-160 Filed 1-4-83; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 611

[Docket No. 21215-251]

Foreign Fishing; Hake Fisheries of the Northwestern Atlantic

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of amendment to preliminary fishery management plan.

SUMMARY: NOAA issues notice that the Assistant Administrator for Fisheries has approved an amendment to the Preliminary Fishery Management Plan for the Hake Fisheries of the Northwestern Atlantic and requests comments on the amendment. The amendment (1) decreases the optimum yield (OY) for the Georges Bank silver hake management unit and the total allowable level for foreign fishing; (2) eliminates the reserve specification for Georges Bank silver hake; (3) reduces the estimate for domestic annual processing capacity (DAP) for Georges Bank silver hake; and (4) revises the DAP for the Southern New England/Mid-Atlantic silver hake management unit. These charges reflect the latest available information on stock conditions and updated estimates of DAP. The reduced OY is intended to maintain adequate spawning stock size.

DATES:

Effective date: January 4, 1983.

Comment date: Comments on the amendment must be submitted on or before January 20, 1983.

ADDRESSES: Copies of the amendment are available from Frank Grice, Chief, Management Division, National Marine Fisheries Service, State Fish Pier, Gloucester, Massachusetts 01930.

FOR FURTHER INFORMATION CONTACT: Peter D. Colosi, Jr. (Atlantic hakes plan coordinator), 617-281-3600.

SUPPLEMENTARY INFORMATION: The foreign fisheries for Atlantic silver and red hake have been governed since 1977 by the Preliminary Fishery Management Plan for the Hake Fisheries of the Northwestern Atlantic (PMP), implemented at 50 CFR 611.50 and 611.53. The PMP has been amended twice; the amended PMP continues in effect until further changed. Fishing for silver and red hake in the fishery conservation zone (FCZ) is restricted to "windows" located in the Georges Bank and Southern New England/Mid-Atlantic management areas, whose locations are identified in Figure 1, Appendix II, of § 611.9.

The Magnuson Fishery Conservation and Management Act (Magnuson Act) requires annual reevaluation of specifications contained in fishery management plans. The OYs and the estimates of domestic annual harvest (DAH) and DAP for silver and red hake have been reviewed. Of the four hake stocks regulated by the PMP (silver and red hake from the Georges Bank management area and silver and red hake from the Southern New England/Mid-Atlantic management area), this action only amends the specifications for the Georges Bank and the Southern New England/Mid-Atlantic silver hake stocks. The changes adjust an OY, the

DAPs, the total allowable levels of foreign fishing (TALFF), and reserves, and are made in response to updated scientific information on stock conditions and revised estimates of DAP. The changes were approved by the Assistant Administrator for Fisheries, NOAA, on December 20, 1982. The revised values are presented in the following table.

SPECIFICATIONS FOR GEORGES BANK AND SOUTHERN NEW ENGLAND/MID-ATLANTIC SILVER HAKE

[Values in metric tons]

Specification	OY	DAH	DAP	TALFF	Reserve
Areas:					
Georges Bank (5Ze)[1] (includes foreign fishing area 5)	13,000	9,000	2,000	4,000	0
Southern New England Mid-Atlantic (5Zw + SA6)[1] (includes foreign fishing areas 1–4)	30,000	20,600	5,600	9,400	0

[1] Management area designation used by PMP and based on ICNAF designations.

Silver Hake—Georges Bank

The latest available assessment data for the Georges Bank silver hake stock indicate a stock size considerably less than that suggested by previous data. The assessment data indicate that an annual harvest of 13,000 metric tons (mt) would maintain an adequate spawning stock through 1983. Accordingly, the OY for this stock is reduced from 25,000 mt to 13,000 mt. DAH is unchanged at 9,000 mt and includes potential U.S. harvest for joint ventures in the near future. The TALFF is adjusted downward from 10,000 mt to 4,000 mt. The DAP is decreased from 9,000 mt to 2,000 mt to reflect recent performance by U.S. processors. The difference between DAH and DAP (7,000 mt) is available for joint ventures.

The reserve is reduced to zero. Establishment of a reserve is not necessary for this fishery; it is impractical to consider reallocation from reserve to TALFF during the foreign fishing season because the foreign fishery is completed before the domestic fishery gets underway.

Silver Hake—Southern New England/Mid-Atlantic

The DAP is revised downward from 20,000 mt to 5,600 mt to provide a more current estimate, which is still adequate to meet projected domestic fishery needs. The difference between DAH and DAP (15,000 mt) is available for joint ventures, for which applications are anticipated in the near future. The DAH is left unchanged based on projected U.S landings and the U.S. harvest in joint ventures.

Classification

An environmental assessment (EA) was prepared to determine whether this action would have a significant impact on the environment, as required by the National Environmental Policy Act of 1969. Based on the EA, the Assistant Administrator determined on October 5, 1982 that there will be no significant environmental impact resulting from this action.

The changes in OY, DAH, DAP, TALFF, and reserve made by this amendment to the PMP do not change any existing regulations. A "TALFF Table" previously contained in § 611.20 (Appendix 1) of the foreign fishing regulations (50 CFR Part 611) showed the values for OYs and the distributions among DAH, TALFF, reserve, and joint venture processing. Notice of a final rule to withdraw this table from the Code of Federal Regulations was published on October 7, 1982 (47 FR 44264) and made effective on November 8, 1982. This notice is issued to inform the public of changes in PMP specifications made by this amendment.

Dated: December 28, 1982.

Carmen Blondin,

Deputy Assistant Administrator for Fisheries Resource Management, National Marine Fisheries Service.

[FR Doc. 83-142 Filed 1-4-83; 8:45 am]

BILLING CODE 3510-22-M

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50 CFR Parts 611 and 680

[Docket No. 21222-256]

Foreign Fishing and International Agreements

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule; technical revocations.

SUMMARY: NOAA issues this final rule which revokes Part 680, International Agreements. Part 680 implemented Pub. L. 95-73 which provided for the collection of catch and effort statistics of U.S. fishermen fishing in Canadian waters in the Atlantic and Pacific Oceans. Also, NOAA is revoking 611.95 which regulated fishing for herring in parts of the Bering Sea and the North Pacific Ocean. The intended effect is to remove codified regulations, the authority for which are obsolete.

EFFECTIVE DATE: January 5, 1983.

FOR FURTHER INFORMATION CONTACT: Donna D. Turgeon, Regulations Coordinator, Permits and Regulations Division, National Marine Fisheries Service, 202-634-7432.

SUPPLEMENTARY INFORMATION: NOAA revokes obsolete § 611.95 and Part 680 from 50 CFR for the following reasons.

The U.S. District Court in Alaska nullified the regulations for the Bering Sea and Aleutian Islands herring fishery, which were codified at § 611.95 (*Napoleon v. Hodges*, February 8, 1980, affirmed by the Ninth Circuit Court of Appeals on January 20, 1982.) The regulations governed a foreign fishery under preliminary fishery management plan authority.

Part 680, International Agreements, implemented Pub. L. 95-73, an amendment to the Fishery Conservation Zone Transition Act, Pub L. 95-6. This act provided for the collection of catch and effort statistics on U.S. fishermen fishing in Canadian waters in the Atlantic and Pacific Oceans under Article XIII of the Reciprocal Fisheries Agreement between the United States and Canada (Agreement) signed on February 24, 1977. The agreement entered into force on July 26, 1977. A second one-year interim agreement was negotiated and signed for 1978; however, it was never brought into force due to differing interpretations of certain provisions.

The Assistant Administrator for Fisheries, NOAA, finds that it is impracticable and contrary to the public interest to provide notice and opportunity for comment upon, or to delay for 30 days the effective date of this regulatory action under the provisions of the Administrative Procedure Act, because the underlying authority is obsolete for both sets of fisheries regulations being revoked from codified law.

List of Subjects in 50 CFR Parts 611 and 680

Fish, Fisheries, Foreign relations, Reporting requirements.

PART 611—[AMENDED]

§ 611.95—[Removed]

PART 680—[REMOVED]

50 CFR Part 680 and 50 CFR 611.95 are hereby revoked and removed and the Part and Section numbers are reserved.

(16 U.S.C. 1801 *et seq.*, unless otherwise noted)

Dated: December 28, 1982.

Carmen Blondin,

Deputy Assistant Administrator for Fisheries Resource Management, National Marine Fisheries Service.

[FR Doc. 83-143 Filed 1-4-83; 8:45 am]

BILLING CODE 3510-22-M

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50 CFR Part 653

[Docket No. 21209-246]

Atlantic Herring Fishery

AGENCY: National Oceanic and Atmospheric Administration(NOAA), Commerce.

ACTION: Final rule and notice of withdrawal of plan approval.

SUMMARY: NOAA announces the withdrawal of Secretarial approval of the Fishery Management Plan for the Atlantic Herring Fishery of the Northwest Atlantic (FMP), and the repeal of regulations implementing the FMP. Withdrawal of FMP approval is necessitated by serious operational difficulties in implementing the FMP, which no longer meets the national standards of the Megnuson Fishery Conservation and Management Act. The intended effect of the repeal of the regulations is to eliminate Federal management of the Atlantic herring fishery until such time as the New England Fishery Management Council prepares a new management plan which can be approved and implemented.

EFFECTIVE DATE: January 5, 1983.

ADDRESS: A copy of the environmental assessment and regulatory impact review may be obtained from Frank Grice, Chief, Management Division, National Marine Fisheries Service, State Fish Pier, Gloucester, Massachusetts, 01930.

FOR FURTHER INFORMATION CONTACT: Barbara S. Claflin, Herring Plan Coordinator, 617-281-3600, extension 351.

SUPPLEMENTARY INFORMATION: The FMP, developed by the New England Fishery Management Council (Council), was approved in December 1978. It was implemented on March 19, 1979 (44 FR 17186), under the Magnuson Fishery Conservation and Management Act (Magnuson Act). Amendment 1 to the FMP revised the procedure for determining when a quota is reached (44 FR 37616). Amendment 2 extended the optimum yield (OY) and seasonal allocations for the Georges Bank and Gulf of Maine management areas through the 1979-80 fishing year (44 FR 56700).

Amendment 3, the most recent amendment to the FMP, was implemented in August 1980 (45 FR 52810). Amendment 3 expanded the management unit to include the herring fisheries from the shoreline of all States out to the seaward limit of the fishery conservation zone (FCZ). Amendment 3 also increased the Gulf of Maine OY and quotas for age-3 and older fish (age 3+), modified the area/period allocation system, and placed heavy reliance on the States to maintain fixed quotas.

Shortly after the approval and implementation of Amendment 3, problems with the herring management system became apparent. The National Marine Fisheries Service (NMFS) was unable to implement the FMP in accordance with the Magnuson Act during the 1980-81 fishing year. Subsequent review of the FMP revealed that erroneous assumptions were made in approving the FMP, and that changed circumstances in the fishery have rendered the FMP invalid and inoperative over the time period since its approval. The FMP's management measures cannot be successfully implemented by NOAA/NMFS, and the FMP no longer meets the national standards established by the Magnuson Act.

The Assistant administrator for Fisheries, NOAA (Assistant Administrator), made an initial determination on August 10, 1982, to withdraw approval of the FMP. Withdrawal of approval of the FMP necessitates the repeal of the regulations. A notice of the initial decision to withdraw plan approval, the proposed rule to repeal the regulations implementing the FMP, and a request for comments were published on September 28, 1982 (47 FR 42596). The preamble to the notice and proposed rule provided a detailed discussion of the problems and events leading up to the decision to withdraw FMP approval and the rationale for that decision. That discussion is not repeated here. This final rule to repeal the regulations is identical to the proposed rule.

Response to Public Comments

No public comments were received in response to the request for comments on the proposed repeal of regulations.

Classification

An environmental assessment was prepared to determine whether the proposed action will have a significant impact on the environment. The Assistant Administrator has determined that repealing the regulations will not significantly affect the environment; therefore, an environmental impact statement is not required under the National Environmental Policy Act of 1969.

A regulatory impact review (RIR) was prepared. The Administrator, NOAA, has determined, after reviewing the information set forth in the RIR, that this action is not major under E.O. 12291.

The preamble to the proposed rule published at 47 FR 42596 notes that the General Counsel for the Department of Commerce certified that this action will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act.

The Assistant Administrator has waived the 30-day delayed-effectiveness period for final regulations specified by the Administrative Procedure Act (APA). The APA states that the required publication of a substantive rule shall be made not less than 30 days before its effective date, except when the rule relieves a restriction. Since the repeal of the herring regulations removes a restriction, the 30-day delayed-effectiveness period is waived.

List of Subjects in 50 CFR Part 653

Fish, Fisheries, Reporting requirements.

Dated: December 30, 1982.

Carmen J. Blondin,

Deputy Assistant Administrator for Fisheries Resource Management, National Marine Fisheries Service.

For the reason set forth in the preamble, 50 CFR Part 653 is amended as follows:

PART 653—ATLANTIC HERRING FISHERY

1. The authority citation for Part 653 reads as follows:

Authority: 16 U.S.C. 1801 *et seq.*

PART 653—[REMOVED AND RESERVED]

2. Part 653 is revoked and part number 653 is reserved.

[FR Doc. 83-247 Filed 1-4-83; 8:45 am]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 48, No. 3
Wednesday, January 5, 1983

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.

FEDERAL HOME LOAN BANK BOARD

12 CFR Parts 563 and 563c

[No. 82-809]

Amortization Methods for Loan Premiums and Deferred Income; State Concurrence in Use of Deferral Accounting

Dated: December 16, 1982.

AGENCY: Federal Home Loan Bank Board.

ACTION: Proposed rule.

SUMMARY: The Board proposes to prohibit use of the straightline and sum-of-the-years-digits methods to amortize premiums and deferred income (such as discounts) if the amounts of such premiums and deferred income exceed 10 percent of the outstanding principal balances of such loans at the time the loans are made or acquired. Under the proposal, institutions could continue to use the two methods if the premiums and deferred income were ten percent or less of the outstanding loan balances or if the related loans were fully amortizing and had remaining terms to maturity of seven years or less at the time they were made or acquired. The Board also proposes to amend its regulation authorizing the deferral and amortization of gains and losses from the disposition of loans and certain other assets to provide that the concurrence of a state supervisory authority in the use by an institution of such accounting should be sent to the Board's Principal Supervisory Agent at the Federal Home Loan Bank of which the institution is a member. The proposed amendments are intended to preclude the use of the above-mentioned amortization methods where such use would distort reported earnings. If adopted, they would be effective with regard to all loans made or acquired on or after December 16, 1982, excluding loans made or acquired on or after such date pursuant to commitments entered into prior to such date.

DATES: Comments must be received by January 21, 1983. Proposed Effective Date: December 16, 1982.

ADDRESS: Send comments to Director, Information Services, Federal Home Loan Bank Board, 1700 G Street, N.W., Washington, D.C. 20552. Comments will be available for public inspection at this address.

FOR FURTHER INFORMATION CONTACT: Michael S. Joseph (202-377-6392), Professional Accounting Fellow, Office of Examinations and Supervision, or Kenneth F. Hall (202-377-6466), Attorney, Office of General Counsel, at the above address.

SUPPLEMENTARY INFORMATION:

Amorization of Loan Premiums and Deferred Income

Section 563.232-1 of the Board's regulations currently permits insured institutions to amortize premiums and deferred income related to loans using the straight-line, level-yield, or sum-of-the-years-digits methods. 12 CFR 563.23-1(g)(9) (1982). When the Board authorized use of these methods of amortization, accretion of deferred income did not constitute a significant portion of institutions' earnings. Thus, the amortization method used did not materially affect institutions' income statements.

At present, however, market interest rates greatly exceed contract interest rates on a signifiant portion of mortgage loans available for purchase and sale in the secondary market. In addition, institutions are relying to a greater degree on the acquisition of loans to meet their investment requirements. One result of these new circumstances is that the method by which loan discounts are amortized to income can have a significant impact on institutions' reported earnings. The use of an accelerated amortization method tends to overstate the net book value of assets held by an insured institution by permitting income recognition during the early years after loan acquisition of a greater amount of discounts than is necessary to recognize a market rate of return on an institution's investments. The same is true with respect to deferred income related to the making of a loan where the deferred income is intended to compensate an institution for making a below-market-rate loan.

Under the level-yield method of amortization, an institution's reported periodic earnings on a below-market-rate loan are maintained at the same level as if a loan that bears an interest rate equal to a market interest rate had been made or acquired. However, because the greatest distortions of reported earnings occur only from the making or purchase of longer-term loans whose contract interest rates are significantly below market levels, the Board proposes to prohibit use of the straight-line or sum-of-the-years-digits methods only where the premiums or deferred income exceed ten percent of the remaining principal loan balances of the loans made or acquired. In addition, the prohibition would not apply to a loan that provided for full amortization within its term and whose term did not exceed seven years.

The Board also proposes to amend paragraphs (b)(3)(ii) and (c)(2) of § 563c.14 by removing the specific references in those two paragraphs to § 563.23-1. The specific references are unnecessary and have caused some institutions to incorrectly interpret § 563c.14 as making § 563.23-1 applicable to transactions involving securities. In addition, the wording of paragraph (c)(2) would be amended to clarify that the amortization method and period used to amortize a discount and matching loss must be the same (except to the extent a shorter period is appropriate for the discount) and must be appropriate for both the discount and the loss. Finally, the amendment would clarify that an institution may change the method and period used to amortize a loss if necessary to comply with paragraph (c)(2).

If adopted, the proposed prohibition would be effective as of December 16, 1982, and would apply to all loans made or acquired on or after December 16, excluding loans made or acquired pursuant to a commitment entered into prior to that date. The proposed change would permit institutions to continue to use the straight-line and sum-of-the-years-digits method to amortize premiums and deferred income only (1) with regard to loans that were invested in or committed to prior to December 16, 1982, and (2) where the use of such methods was authorized at the time of investment. This announcement of the proposed early effective date (the date of this proposal) is intended to prevent institutions from making or acquiring deeply-discounted loans solely for the

purpose of obtaining a boost to earnings from accelerated amortization of the deferred income during the period that the Board reviews the comments and determines whether to adopt the proposal in final form.

State Concurrence in Use of Deferral Accounting

Section 563c.14(b)(2) provides that a state-chartered insured institution may elect to defer and amortize gains and losses from the disposition of loans and certain other assets only if its state supervisory authority has provided the FSLIC with specific or blanket concurrence for state law purposes in the use of such accounting. 12 CFR 563c.14(b)(2) (1982) (as amended at 47 FR 2857, 22346 (1982)). The regulation does not specify, however, how the concurrence is to be communicated to the FSLIC. The Board proposes to amend § 563c.14 to provide that the concurrence should be sent to the Board's Principal Supervisory Agent at the Federal Home Loan Bank of which the insured institution is a member, with a copy to the Director, Office of Examinations and Supervision, at the Board's headquarters in Washington, D.C.

Regulatory Flexibility Act Certification

Pursuant to section 605(b) of the Regulatory Flexibility Act (Pub. L. No. 96–354; 5 U.S.C. 601 *et seq.*), the Chairman certifies that the proposed amendments would not have a signifiant economic impact on a substantial number of small entities.

List of Subjects in 12 CFR Parts 563 and 563c

Savings and loan associations.

Because of the Board's concern over the current effect of the amortization methods proposed to be prohibited, the Board has determined to accept comments for a limited period of 30 days.

Accordingly, the Federal Home Loan Bank Board proposes to amend Parts 563 and 563c of Subchapter D, Chapter V of Title 12, Code of Federal Regulations, as set forth below.

SUBCHAPTER D—FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION

PART 563—OPERATIONS

1. Amend paragraph (g)(9) of § 563.23–1, as follows:

§ 563.23–1 Premiums, discounts, charges, and credits with respect to loans; sale of real estate; and related items.

* * * * *

(g) *Definitions.* * * *

* * * * *

(9) The term "approved method" means any one of the following methods for computing amortization of a capitalized premium or for recognizing deferred income (*e.g.*, discounts and acquisition credits):

(i) "Straight-line" method, as described in § 1.167(b)–1 of the Federal Income Tax Regulations (26 CFR 1.167(b)–1), but not, as to loans made or acquired on or after December 16, 1982 (excluding loans made or acquired after such date pursuant to a commitment entered into prior to such date), with respect to premiums or deferred income that exceed ten percent of the outstanding principal balance of a related loan on the date it is made or acquired unless the loan will be fully amortized within seven years of the date of closing or acquisition.

(ii) "Sum-of-the-years-digits" method, as described in § 1.167(b)–3 of the Federal Income Tax Regulations (26 CFR 1.167(b)–3), but not, as to loans made or acquired on or after December 16, 1982 (excluding loans made or acquired after such date pursuant to a commitment entered into prior to such date), with respect to premiums or deferred income that exceed ten percent of the outstanding principal balance of a related loan at the time it is made or acquired unless the loan will be fully amortized within seven years of the date of closing or acquisition.

* * * * *

PART 563c—ACCOUNTING REQUIREMENTS

2. Amend § 563c.14 by revising paragraphs (b)(2), (b)(3)(ii) and (c)(2) thereof, as follows:

§ 563c.14 Accounting for gains and losses on the sale or other disposition of mortgage loans, redeemable ground-rent leases, and certain securities; matching the amortization of discounts and losses.

* * * * *

(b) *Amortization.* * * *

* * * * *

(2) If it is a state-chartered institution, exercise this election only if its state supervisory authority has provided the Corporation with either specific or blanket concurrence for state law purposes in the use of this accounting treatment by sending the concurrence to the Board's Principal Supervisory Agent at the Federal Home Loan Bank of which the institution is a member, and sending a copy of the concurrence to Director, Office of Examinations and Supervision, Federal Home Loan Bank Board, 1700 G Street, N.W., Washington, D.C. 20552; and

(3) Account for such gains and losses as follow:

* * * * *

(ii) Such gains or losses shall be amortized by the straight-line or level-yield methods over a period not to exceed the average of the remaining terms to maturity of the disposed mortgage loans or qualifying securities, or, in the case of redeemable ground-rent leases, a period not to exceed 40 years, with the yield calculated to reflect the length of the amortization period. Amortization periods for gains shall be established in the same manner as are amortization periods for losses deferred in the same fiscal year.

(c) *Matching the amortization of discounts and losses.*

* * * * *

(2) When long-term, deep-discount securities are purchased or otherwise acquired within six months preceding or subsequent to the disposition of a mortgage loan, mortgage-related security or debt security with respect to which an election to defer and amortize any loss or gain has been made pursuant to paragraph (a) of this section, the resulting discount shall be amortized over the same period and by the same method used to amortize any matching loss: *Provided*, that (i) The method used for the loss is also an appropriate method by which to amortize a discount, and (ii) if the average of the remaining terms to maturity of the securities purchased is shorter than the period used to amortize the matching loss, then the average of the remaining terms to maturity of the securities purchased may be used as the amortization period for the discount.

(3) If necessary to meet the requirements of paragraph (c)(2) of this section, an institution may change the method and period by which the matching loss is being amortized. When making such a change, the amount of the matching loss shall be that portion of the loss that remains to be amortized as of the date of the change.

* * * * *

(Secs. 402, 403, 407, 48 Stat. 1256, 1257, 1260, as amended (12 U.S.C. 1725, 1726, 1730). Reorg. Plan No. 3 of 1947, 12 FR 4891, CFR 1943–48 Comp., p. 1071)

By the Federal Home Loan Bank Board.

J. J. Finn,
Secretary.

[FR Doc. 83-179 Filed 1-4-83; 8:45 am]
BILLING CODE 6720-01-M

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 710

Voluntary Liquidation of Federal Credit Unions

AGENCY: National Credit Union Administration.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend Part 710 of the NCUA Rules and Regulations by providing for a more democratic process in approving a voluntary liquidation by eliminating the requirement that a majority of the membership must approve the voluntary liquidation. Instead, the will of the majority of members who vote would determine the voluntary liquidation question. In addition, a number of technical, housekeeping and sequential section changes were made for clarification purposes and to bring the regulation current with previous changes made to other regulations.

DATES: Comments must be received on or before February 21, 1983.

ADDRESS: Send comments to Rosemary Brady, Secretary to the Board, National Credit Union Association, 1776 G Street N.W., Washington, D.C. 20456.

FOR FURTHER INFORMATION CONTACT: Lyle Mettler, Department of Insurance, at the above address, (202) 357–1010.

SUPPLEMENTARY INFORMATION: The voluntary liquidation regulation was prepared under the authority contained in Section 120(a) of the Federal Credit Union Act (12 U.S.C. 1766(a)), which authorizes NCUA to prescribe the rules and for the dissolution of Federal credit unions. Accordingly, 12 CFR Part 710 was promulgated, outlining in some detail the process that must be followed when a voluntary liquidation is contemplated. The procedure essentially involves the preparation of a notice that is mailed to each member. This notice informs the member of the decision by the board of directors to place the credit union into voluntary liquidation with a request that the shares and loans be confirmed. The regulation provides that the credit union members shall have the right to approve or disapprove the voluntary liquidation proposal. This provision is in general accord with recognized principles of corporate law and it is not the intent of these proposed amendments to abolish the members' rights to accept or reject a voluntary liquidation in which their credit union will be losing its identity.

It has been determined that the majority affirmative vote of the membership contained in § 710.1 is not in the best interest of credit unions or their members. The provision was originally included to assure that a voluntary liquidation proposal would receive the attention of a majority of the entire membership. In this way a small and aggressive minority of members could not bind the entire membership on a voluntary liquidation proposal.

As a practical matter, however, this concern has proven relatively unfounded. The provisions that are currently contained in Section 710.3 assure that all members will receive adequate notice of the voluntary liquidation proposal and that all are entitled to vote on it.

The Administration sees no reason why the question of whether or not to liquidate the credit union be decided by more than a simple majority of those who vote, provided that all members have been given reasonable notice of the reason for liquidation and on opportunity to vote. In addition to unnecessary delays in a voluntary liquidation caused by attempting to get the majority of the members to vote, another undesirable result is that the majority voting requirement transforms neutral indifference into a negative vote.

In order to bring the proposed rule current with recent regulation and procedural changes, sequential section and format style changes have been made for clarification purposes.

The proposed rule changes are as follows:

Section 710.0 *Scope* and § 710.1 *Definitions* are new sections added to describe the rule intent and define key terms used.

Section 710.1 *Approval of Liquidation.* Section has been retitled § 710.03 *Approval of the Liquidation Proposal by the Members.* The confusing, redundant voting procedures have been deleted. The proposed voting procedures follow the Federal Credit Union Bylaw requirements. Subsection (b) is the major change of the proposed rule changing the membership voting requirement for voluntary liquidation.

Section 710.2 *Notice of Liquidation to National Credit Union Administration.* Section has been retitled §710.4 *Certification of Vote on Liquidation Proposal.* New descriptive title and minor word changes made for clarification purposes.

Section 710.3 *Transactions of Business During Liquidation.* Section has been redesignated § 710.6. *Format style changes made for clarification purposes.* The requirement of NCUA Board approval to sell assets for an amount insufficient to pay shareholders at par has been changed to approval of the Regional Director to conform with current board delegations.

Section 710.4 *Notice of Liquidation to Members.* Section has been retitled § 710.3 *Approval of the Liquidation Proposal by Members.* Minor format changes made for clarification purposes.

Section 710.5 *Notice of Liquidation to Creditors.* Section has been redesignated § 710.7. The membership voting requirement has been changed in accordance with the proposed rule.

Section 710.6 Report of Commencement of Liquidation. Section has been retitled § 710.8 *Reports at Commencement and During Liquidation.* New descriptive title and format style changes made for clarification purposes. The required report forms identify the current financial reports used by Federal credit unions.

Section 710.7 *Reports During Period of Liquidation.* Section has been retitled § 710.8 *Reports at Commencement and During Liquidation.* New descriptive title and format changes made for clarification purposes.

Section 710.8 *Examinations of Federal Credit Unions in Voluntary Liquidation.* Section has been redesignated § 710.12. The elimination of examination fees is to conform with prior rule changes.

Section 710.9 *Responsibility for Conduct of Voluntary Liquidation.* Section has been redesignated § 710.5. Format and style changes made for clarification purposes. The supervisory committee audit requirements have been eliminated to conform with current Administrative policy.

Section 710.9a *Partial Distribution.* Section has been redesignated § 710.9. Redundant wording has been eliminated for clarification purposes.

Section 710.10 *Completion of Liquidation.* Section has been retitled § 710.10 *Distribution of Assets.* New descriptive title and format style change for clarification purposes.

Section 710.11 *Distribution of Assets.* Section has been redesignated § 710.10. Format and style changes made to eliminate redundant references to membership approval in accordance with proposed rule.

Section 710.12 *Final Report.* Section has been retitled § 710.11 *Final Reports.* Title changed as more than one report is necessary. Format style and technical changes made for clarification purposes.

Section 710.13 *Retention of Records.* Redundant wording deleted.

Section 710.14 *Cancellation of Charter.* Charter cancellation by NCUA Board changed to Regional Director to conform to current Board delegation.

Section 710.15 *Further Instructions and Information.* Section has been eliminated as unnecessary.

The Voluntary Liquidation Procedure for Insured Federal Credit Unions, NCUA 8040, Revised June 1972 will be updated in conjunction with the proposed rule change. A number of revised liquidation forms and procedural changes will be made to the manual that will eliminate a number of outdated reports and schedules prepared by the credit union and submitted to the Regional Director.

Regulatory Procedures

Regulatory Flexibility Act

The proposed regulation eliminating the need for an affirmative vote of a majority of the membership in order to enter voluntary liquidation will reduce the time needed to gather the vote which in turn will reduce the liquidation costs and allow a timely share payment to the members.

Therefore, a regulatory flexibility analysis was not prepared for this proposed regulation because it was determined that the proposal will not result in a significant economic impact to a substantial number of small Federal credit unions.

Paperwork Reduction Act

The reporting requirements set forth in the proposed rule are being referred to the Office of Management and Budget in accordance with 44 U.S.C. 3504(h).

List of Subjects in 12 CFR Part 710

Credit unions.

Accordingly, the National Credit Union Administration proposes to amend 12 CFR Part 710 to read as set forth below.

Dated: December 16, 1982.

Rosemary Brady,

Secretary to the National Credit Union Administration Board.

12 CFR Part 710 is proposed to be revised to read as follows:

PART 710—VOLUNTARY LIQUIDATION OF FEDERAL CREDIT UNIONS

Sec.

Authority: 12 U.S.C. 1766(a).

§ 710.0 Scope.

This part prescribes the procedures that must be followed in order for a Federal credit union to enter voluntary liquidation.

§ 710.1 Definitions.

For the purpose of this Part, the following definitions apply:

(a) "Liquidation Date" means the date the board of directors decide to place the question of liquidation to the members.

(b) "Liquidating agent" means the person appointed by the board of directors to liquidate the credit union. The board may delegate all or a part of their responsibilities of the liquidation to the liquidation agent.

§ 710.2 Notice of liquidation to National Credit Union Administration.

Within 10 days after the decision of the board of directors to submit the question of liquidation to the members, the president shall notify the Regional Director in writing, setting forth in detail the reasons for the proposed action.

§ 710.3 Approval of the liquidation proposal by members.

(a) When the board of directors decide to seek the members' approval of the liquidation, the members shall:

(1) Be given advance notice of the meeting at which the liquidation proposal is the be submitted, in accordance with the provisions of Article V, Federal Credit Union Bylaws. The notice shall:

(i) Inform members that they have the right to vote on the liquidation proposal in person at the meeting called for that purpose or by written ballot to be received no later than the time and date indicated in the notice.

(ii) Have incorporated in or be accompanied by a ballot for the liquidation proposal.

(b) The liquidation proposal must be approved by the affirmative vote of a majority of the credit union members who vote on the proposal.

§ 710.4 Certification of vote on liquidation proposal.

Within 10 days after the vote of the members on the question of liquidation, the president shall notify the Regional Director in writing as to whether or not the members approved the proposed liquidation. If the members have not approved the liquidation and the board decides that the credit union should resume operations, the board may rescind its original resolution to present the question of liquidation to the members. However, before rescinding the original resolution, the board shall notify the Regional Director of its intent to resume operations and set forth in detail the action which has been taken to correct the conditions that caused the board to seek liquidation.

§ 710.5 Responsibility for conduct of voluntary liquidation.

(a) The board of directors shall be responsible for conserving the assets, for expediting the liquidation, and for equitable distribution of the assets to the members.

(b) The board may appoint a liquidating agent and delegate all or part of the board's responsibilities to such agent and may authorize reasonable compensation for his services.

(c) The shall determine that the liquidating agent and all persons handling or having access to funds of the credit union are adequately covered by surety bond.

(d) The board or liquidating agent shall appoint a custodian for the credit union's records which are to be retained for 5 years after the charter is canceled.

§ 710.6 Transaction of business during liquidation.

(a) Immediately upon decision by the board of directors to seek approval of the members, payments on shares, withdrawal of shares (except for transfer of shares to loans and interest), transfer of shares to another share account, granting of loans, and making investments other than short-term investments as specified in paragraph (b) of this section shall be suspended pending action by the members on the proposal to liquidate. On approval of the members, payments on shares, withdrawal of shares (except for transfer of shares to loans and interest), transfer to shares to another share account, granting of loans and making of investments other than short-term investments as specified in paragraph (b) of this section shall be discontinued permanently. Necessary expenses to complete the liquidation shall, however, continue to be paid on authorization by the board of directors or liquidating agent during the period of liquidation.

(b) While the primary duty of the board of directors during liquidation is to convert loans and investments to

cash at the earliest possible date, there may be intervals during which funds being accumulated prior to distribution may be advantageously placed in short-term, interest-bearing savings accounts in institutions whose accounts are insured by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation. Common trust funds approved as legal investments for Federal credit unions, deposits in credit unions insured by the Board, and short-term U.S. Government obligations, or short-term securities fully guaranteed as to principal and interest by the U.S. Government may be used as a source for the investment of such excess funds. These deposits should be withdrawable upon demand. The liquidation of such investments should be timed so as to facilitate the planned distribution to the members.

(c) The board of directors or the liquidating agent must obtain approval from, the Regional Director prior to consummating any sale of assets which would not provide sufficient funds to pay shareholders at par.

§ 710.7 Notice of liquidation to creditors.

On approval of the members of a proposal to liquidate the credit union, the board of directors shall immediately have prepared and mailed to all creditors a notice of liquidation containing instructions to present their claims to the credit union within 120 days for payment.

§ 710.8 Reports at commencement and during liquidation.

(a) Within 20 days following the liquidation date, the treasurer or liquidating agent conducting the liquidation shall file the following reports with the Regional Director:

(i) A combined report of operations, which includes all the information reported in (a) (ii), (iii) and (iv), with (v) and (vi) of this section; or

(ii) Statement of Financial Condition, FCU 109A.

(iii) Statement of Income, FCU 109B.

(iv) Statistical Report, FCU 109F.

(v) A schedule of members' share and loan accounts showing account number, name, share and loan balances, and

(vi) A schedule of delinquent loans showing comments as to the collectibility of each loan.

(b) Within 10 days from the close of each calendar quarter, the treasurer or liquidating agent will forward current reports, as specified in paragraph (a) of this section to the Regional Director.

§ 710.9 Partial distribution.

With the written approval of the Regional Director, a partial distribution of the credit union's assets may be made to its members from cash funds available on authorization by its board of directors or liquidating agent.

§ 710.10 Distribution of assets.

(a) After all assets of the credit union have been coverted to cash or round to be worthless and all loans and debts owing to it have been collected or found to be uncollectable and all obligations of the credit union have been paid, with the exception of shares due its members, the books shall be closed and the pro rata distribution to members computed.

(b) Promptly after the pro rata distribution to members has been computed, checks shall be drawn for the amounts to be distributed to each member who has given a written confirmation of his balance. The checks shall be mailed to such members at their last known address or handed to them in person. The written confirmations submitted by members to verify balances shall be retained with the credit union records.

(c) The Regional Director shall be notified promptly of the date final distribution of assets to the members is started.

(d) Unclaimed share accounts which have been dormant for the period which makes them subject to the escheat or abandoned property laws of the State in which the credit union is located shall be paid to the State as required by such laws.

§ 710.11 Final reports.

Within 120 days after the final distribution to members is started, the Federal credit union shall furnish to the Regional Director the following:

(a) A schedule of unpaid claims, if any, due members who failed to confirm their balances in writing during liquidation and whose share accounts are not payable to the state under applicable escheat or abandoned property laws, and of unpaid claims, if any, due members or creditors who failed to cash final distribution checks within the 120 days.

(b) This schedule shall be accompanied by a certified check or money order payable to the National Credit Union Administration in the exact amount of the total of these unpaid claims. The Administration will deposit said funds in a special account where they will be held for the individuals. Each individual, or any authorized person on his behalf may submit to the Administration a written claim for the amount of such funds held for him.

(c) A schedule showing the book number, name share balance at the commencement of liquidation, pro rata share of gain, the amount distributed to each member and the amount of each unclaimed share account paid to the state under applicable escheat or abandoned property laws. The check number and date of payment to the member or state should be included in the schedule.

(d) A Summary Report on Liquidation and Analysis of Assets Sold.

(f) The Certificate of Dissolution and Liquidation signed under oath by the president, treasurer, or agent who conducted the liquidation and made the final distribution of assets to the members.

(g) The name and address of the custodian of the Federal credit union's records.

(h) The charter and insurance certificate of the Federal credit union.

§ 710.12 Examinations of Federal Credit Unions in voluntary liquidation.

When deemed advisable by the Regional Director, an examination of the books and records of a Federal credit union may be made prior to, during, or following completion of voluntary liquidation.

§ 710.13 Retention of records.

All records of the liquidated credit union necessary to establish that creditors were paid and that member's shareholdings were equitably distributed shall be retained by a custodian appointed by either the board or liquidating agent for a period of 5 years following the date of charter cancellation.

§ 710.14 Cancellation of charter.

On proof that distribution of assets has been made to members and after receipt of the Certificate of Dissolution and Liquidation, the Regional Director shall cancel the charter of the Federal credit union.

[FR Doc. 83-177 Filed 1-4-83; 8:45 am]
BILLING CODE 7534-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 271

[Docket No. RM79-76-154 (Texas-27)]

High-Cost Gas Produced from Tight Formations; Texas

AGENCY: Federal Energy Regulatory Commission, Energy.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Energy Regulatory Commission is authorized by section 107(c)(5) of the Natural Gas Policy Act of 1978 to designate certain types of natural gas as high-cost gas where the Commission determines that the gas is produced under conditions which present extraordinary risks or costs. Under section 107(c)(5), the Commission issued a final regulation designating natural gas produced from tight formations as high-cost gas which may receive an incentive price (18 CFR 271.703). This rule established procedures for jurisdictional agencies to submit to the Commission recommendations of areas for designation as tight formations. This notice of proposed rulemaking by the Director of the Office of Pipeline and Producer Regulation contains the recommendation of the Railroad Commission of Texas that the Middle Wilcox (11,000'–15,000') Formation be designated at a tight formation under § 271.703(d).

DATES: Comments on the proposed rule are due on February 14, 1983. Public Hearing: No public hearing is scheduled in this docket as yet. Written requests for a public hearing are due on January 14, 1983.

ADDRESS: Comments and requests for hearing must be filed with the Office of the Secretary, 825 North Capitol Street NE., Washington, D.C. 20426.

FOR FURTHER INFORMATION CONTACT: Leslie Lawner, (202) 357–8511, or Walter W. Lawson, (202) 357–8556.

SUPPLEMENTARY INFORMATION:

Issued December 30, 1982

I. Background

On November 5, 1982, the Railroad Commission of Texas (Texas) submitted to the Commission a recommendation, in accordance with § 271.703 of the Commission's regulations (45 FR 56034, August 22, 1980), that the Middle Wilcox (11,000'–15,000') Formation located in Lavaca County, Texas, be designated as a tight formation. Pursuant to § 271.703(c)(4) of the regulations, this notice of proposed rulemaking is hereby issued to determine whether Texas' recommendation that the Middle Wilcox (11,000'–15,000') Formation be designated a tight formation should be adopted. Texas' recommendation and supporting data are on file with the Commission and are available for public inspection.

II. Description of Recommendation

Texas recommends that the Middle Wilcox (11,000'–15,000') Formation in the Vienna Field area of eastern Lavaca County, Texas, Railroad Commission District 2, be designated as a tight formation. The recommended area is located 14 miles east-southeast of Halletsville, Texas, and 8 miles south-southeast of Sublime, Tex., and is comprised of the following 15 surveys:

James Ryan, A–42
Miguel Muldoon, A–34
E. W. Perry, A–359
Lev. T. Bostiok, A–95
E. W. Pery, A–358
P. Ansuldua, A–621
F. Baseldua, A–622
Peter Garza, A–632
J. A. Wynmaker, A–499
John W. Seymour, A–431
H. I. and B.P. R., A–523
A. M. Gillespie, A–633
H. E. and W.T.R.R., A–551
H. E. and W.T.R.R., A–550
North ½ John D. Ragsdale, A–377

The Middle Wilcox Formation within the recommended area is encountered between 11,000 feet and 15,000 feet as measured on the log of the Mitchell Energy Corporation C. F. Aschbacher No. 1 well. The top of the Middle Wilcox pay ranges in depth from approximately −11,200 feet in the north to −13,300 feet in the south.

III. Discussion of Recommendation

Texas claims in its submission that evidence gathered through information and testimony presented at a public hearing in support of this recommendation demonstrates that:

(1) The average *in situ* gas permeability throughout the pay section of the proposed area is not expected to exceed 0.1 millidarcy;

(2) The stabilized production rate, against atmospheric pressure, of wells completed for production from the recommended formation, without stimulation, is not expected to exceed the maximum allowable production rate set out in § 271.703(c)(2)(i)(B); and

(3) No well drilled into the recommended formation is expected to produce more than five (5) barrels of oil per day.

Texas further asserts that existing State and Federal Regulations assure that development of the formation will not adversely affect any fresh water aquifers that are or are expected to be used as a domestic or agricultural water supply.

Accordingly, pursuant to the authority delegated to the Director of the Office of Pipeline and Producer Regulation by Commission Order No. 97, issued in Docket No. RM80–68 (45 FR 53456, August 12, 1980), notice is hereby given of the proposal submitted by Texas that the Middle Wilcox (11,000'–15,000') Formation as described and delineated in Texas' recommendation as filed with the Commission, be designated as a tight formation pursuant to § 271.703.

IV. Public Comment Procedures

Interested persons may comment on this proposed rulemaking by submitting written data, views or arguments to the Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street N.E., Washington, D.C. 20426, on or before February 14, 1983. Each person submitting a comment should indicate that the comment is being submitted in Docket No. RM79–76–154 (Texas–27) and should give reasons including supporting data for any recommendation. Comments should include the name, title, mailing address, and telephone number of one person to whom communications concerning the proposal may be addressed. An original and 14 conformed copies should be filed with the Secretary of the Commission. Written comments will be available for public inspection at the Commission's Office of Public Information, Room 1000, 825 North Capitol Street N.E., Washington, D.C., during business hours.

Any person wishing to present testimony, views, data, or otherwise participate at a public hearing should notify the Commission in writing of a desire to make an oral presentation and therefore request a public hearing. Such request shall specify the amount of time requested at the hearing. Requests should be filed with the Secretary of the Commission no later than January 14, 1983.

List of Subjects in 18 CFR Part 271

Natural gas, Incentive price, Tight formations.

(Natural Gas Policy Act of 1978, 15 U.S.C. 3301–3432)

Accordingly, the Commission proposes to amend the regulations in Part 271, Subchapter H, Chapter I, Title 18, Code of Federal Regulations, as set forth below, in the event Texas' recommendation is adopted.

Kenneth A. Williams,

Director, Office of Pipeline and Producer Regulation.

PART 271—[AMENDED]

Section 271.703(d) is amended by adding subparagraph (153) to read as follows:

§ 271.703 Tight formations.

* * * * *

(d) *Designated tight formations.*

* * * * *

(115) through (152) [Reserved].

* * * * *

(153) *Middle Wilcox (11,00'–15,000') Formation in Texas.* RM79–76–154 (Texas–27).

(i) *Delineation of formation.* The Middle Wilcox Formation is located in Lavaca County, Texas, Railroad Commission District 2. The designated area is located 14 miles east-southeast of the Halletsville, Texas, and 8 miles south-southeast of Sublime, Texas, and is comprised of the following 15 surveys: James Ryan A–42, Miguel Muldoon A–34, E. W. Perry A–359, Lev. T. Rostiok A–95, E. W. Perry A–358, P. Ansuldua A–621, F. Baseldua A–622, Peter Garza A–632, J. A. Wynmaker A–499, John W. Seymour A–431, H. I. and B. P. R. A–523, A. M. Gillespie A–633, H.E. and W.T.R.R. A–551, H.E. and W.T.R.R. A–550, and North 1/3 John D. Ragsdale A–377.

(ii) *Depth.* The Middle Wilcox Formation is defined as that formation which is encountered between 11,000 feet and 15,000 feet as measured on the log of the Mitchell Energy Corporation C. F. Aschbacher No. 1 well. The top of the Middle Wilcox pay ranges in depth from approximately −11,200 feet in the north to −13, 300 feet in the south.

[FR Doc. 83-249 Filed 1-4-83; 8:45 am]
BILLING CODE 6717-01-M

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18 CFR Part 271

[Docket No. RM79-76-158 (Texas—28)]

High-Cost Gas Produced From Tight Formations; Texas

AGENCY: Federal Energy Regulatory Commission, Energy.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Energy Regulatory Commission is authorized by section 107(c)(5) of the Natural Gas Policy Act of 1978 to designate certain types of natural gas as high-cost gas where the Commission determined that the gas is produced under conditions which present extraordinary risks or costs. Under section 107(c)(5), the Commission issued a final regulation designating natural gas produced from tight formations as high-cost gas which may receive an incentive price (18 CFR 271.703). This rule established procedures for jurisdictional agencies to submit to the Commission recommendations of areas for designation as tight formations. This notice of proposed rulemaking by the Director of the Office of Pipeline and Producer Regulation contains the recommendation of the Railroad Commission of Texas that the Vicksburg (12,000' Boyt Sand) Formation be designated as a tight formation under § 271.703(d).

DATES: Comments on the proposed rule are due on February 14, 1983. Public Hearing: No public hearing is scheduled in this docket as yet. Written requests for a public hearing are due on January 14, 1983.

ADDRESS: Comments and requests for hearing must be filed with the Office of the Secretary, 825 North Capitol Street, N.E., Washington, D.C. 20426

FOR FURTHER INFORMATION CONTACT: Leslie Lawner, (202) 357–8511, or Walter W. Lawson, (202) 357–8556.

SUPPLEMENTARY INFORMATION:

Issued: December 30, 1982.

Background

On November 9, 1982, the Railroad Commission of Texas (Texas) submitted to the Commission a recommendation, in accordance with § 271.703 of the Commission's regulations (45 FR 56034, August 22, 1980), that the Vicksburg (12,000' Boyt Sand) Formation, located in Hidalgo County, Texas, be designated as a tight formation. Pursuant to §271.703(c)(4) of the regulations, this notice of proposed rulemaking is hereby issued to determine whether texas' recommendation that the Vicksburg (12,000' Boyt Sand) Formation be designated a tight formation should be adopted. Texas' recommendation and supporting data are on file with the Commission and are available for public inspection.

II. Description of Recommendation

Texas recommends that the Vicksburg (12,000' Boyt Sand) Formation in Hidalgo County, Texas, Railroad Commission District 4, be designated as a tight formation. The recommended area is within a 2.5 mile radius of the CNG Producing Company Boyt No. 1 well and consists of approximately 12,000 acres. This well is located 18,725 feet south and 1,800 feet east of the northwest corner of the Dyonisio Ramirez Porcion 78, Abstract No. 563, Hidalgo County, Texas.

The recommended formation lies in the Vicksburg—Frio trend of Hidalgo County. Vicksburg sediments are present in this area of Texas from depths of approximately 7,500 feet to as deep as 16,000 feet. The Vicksburg (12,000' Boyt Sand) Formation is identified as that formation occurring between the measured depths of 11,802 feet and 12, 186 feet on the induction electrical log of the CNG Producing Company Boyt No. 1 well.

III. Discussion of Recommendation

Texas claims in its submission that evidence gathered through information and testimony presented at a public hearing in support of this recommendation demonstrates that:

(1) The average *in situ* gas permeability throughout the pay section of the proposed area is not expected to exceed 0.1 millidarcy;

(2) The stabilized production rate, against atmospheric pressure, of wells completed for production from the recommended formation, without stimulation, is not expected to exceed the maximum allowable production rate set out in § 271.703(c)(2)(i)(B); and

(3) No well drilled into the recommended formation is expected to produce more than (5) barrels of oil per day.

Texas further asserts that existing State and Federal regulations assure that development of this formation will not adversely affect any fresh water aquifers that are or are expected to be used as a domestic or agricultural water supply.

Accordingly, pursuant to the authority delegated to the Director of the Office of Pipeline and Producer Regulation by Commission Order No. 97, issued in Docket No. RM80–68 (45 FR 53456, August 12, 1980), notice is hereby given of the proposal submitted by Texas that the Vicksburg (12,000' Boyt Sand) Formation as described and delineated in Texas' recommendation as filed with the Commission, be designated as a tight formation pursuant to § 271.703.

IV. Public Comment Procedures

Interested persons may comment on this proposed rulemaking by submitting written data, views or arguments to the Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, on or before February 14, 1983. Each person submitting a comment should indicate that the comment is being submitted in Docket No. RM79–76–158 (Texas—28) and should give reasons including supporting data for any recommendation. Comments should include the name, title, mailing address, and telephone number of one person whom communications concerning the proposal may be addressed. An original and 14 conformed copies should be filed with the Secretary of the Commission. Written comments will be available for public inspection at the Commission's Office of Public Information, Room 1000,

825 North Capitol Street, NE., Washington, D.C., during business hours.

Any person wishing to present testimony, views, data, or otherwise participate at a public hearing should notify the Commission in writing of a desire to make an oral presentation and therefore request a public hearing. Such request shall specify the amount of time requested at the hearing. Requests should be filed with the Secretary of the Commission no later than January 14, 1983.

List of Subjects in 18 CFR Part 271

Natural gas, Incentive price, Tight formations.

(Natural Gas Policy Act of 1978, 15 U.S.C. §§ 3301–3432)

Accordingly, the Commission proposes to amend the regulations in Part 271, Subchapter H, Chapter I, Title 18, Code of Federal Regulations, as set forth below, in the event Texas' recommendation is adopted.

Kenneth A. Williams,

Director, Office of Pipeline and Producer Regulation.

PART 271—[AMENDED]

Section 271.703(d) is amended by adding subparagraph (154) to read as follows:

§ 271.703 Tight formations.

* * * * *

(d) *Designated tight formations.*

* * * * *

(115) through (153) [Reserved]

* * * * *

(154) *Vicksburg (12,000' Boyt Sand) Formation in Texas.* RM79–76–158 (Texas—28).

(i) *Delineation of formation.* The Vicksburg (12,000' Boyt Sand) Formation is located in Hidalgo County, Texas, Railroad Commission District 4. The designated area is within a 2.5 mile radius of the CNG Producing Company Boyt No. 1 well located 18,725 feet south and 1,800 feet east of the northwest corner of Dyonisio Ramirez Porcion 78, Abstract No. 563.

(ii) *Depth.* The Vicksburg (12,000' Boyt Sand) Formation is identified as that formation occurring between the measured depths of 11,802 feet and 12,186 feet on the induction electrical log of the CNG Producing Company Boyt No. 1 well.

[FR Doc. 83–1250 Filed 1–4–83; 8:45 am]

BILLING CODE 6717–01–M

18 CFR Part 271

[Docket No. RM79–76–161 (Texas—7 Addition II)]

High-Cost Gas Produced From Tight Formations; Texas

AGENCY: Federal Energy Regulatory Commission, Energy.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Energy Regulatory Commission is authorized by section 107(c)(5) of the Natural Gas Policy Act of 1978 to designate certain types of natural gas as high-cost gas where the Commission determines that the gas is produced under conditions which present extraordinary risks or costs. Under section 107(c)(5), the Commission issued a final regulation designating natural gas produced from tight formations as high-cost gas which may receive an incentive price (18 CFR 271.703). This rule established procedures for jurisdictional agencies to submit to the Commission recommendations of areas for designation as tight formations. This notice of proposed rulemaking by the Director of the Office of Pipeline and Producer Regulation contains the recommendation of the Railroad Commission of Texas that an additional area of the Lower Wilcox (Midcox) Formation be designated as a tight formation under § 271.703(d).

DATES: Comments on the proposed rule are due on February 14, 1983. Public Hearing: No public hearing is scheduled in this docket as yet. Written requests for a public hearing are due on January 14, 1983.

ADDRESS: Comments and requests for hearing must be filed with the Office of the Secretary, 825 North Capitol Street, N.E., Washington, D.C. 20426.

FOR FURTHER INFORMATION CONTACT: Leslie Lawner, (202) 357–8511, or Walter W. Lawson (202) 357–8556.

SUPPLEMENTARY INFORMATION:

Issued: December 30, 1982.

I. Background

On November 9, 1982, the Railroad Commission of Texas (Texas) submitted to the Commission a recommendation, in accordance with § 271.703 of the Commission's regulations (45 FR 56034, August 22, 1980), that an additional area of the Lower Wilcox (Midcox) Formation, located in Colorado County in the southeastern part of the State of Texas, be designated as a tight formation. The Commission previously adopted recommendations that the Lower Wilcox Formation in parts of Wharton, Austin and Colorado Counties be designated as a tight formation (Order No. 133 issued February 19, 1981, in Docket No. RM79–76 (Texas—7) and Order No. 210 issued February 5, 1981, in Docket No. RM79–76 (Texas 7 Addition)). Pursuant to § 271.703(c)(4) of the regulations, this notice of proposed rulemaking is hereby issued to determine whether Texas' recommendation that the Lower Wilcox (Midcox) Formation be designated a tight formation should be adopted. Texas' recommendation and supporting data are on file with the Commission and are available for public inspection.

II. Description of Recommendation

Texas recommends that the Lower Wilcox (Midcox) Formation encountered in the central portion of Colorado County, Texas, approximately five miles northeast of the town of Rock Island, Railroad Commission District 3, be designated as a tight formation. The recommended area is within a 2.5 mile radius around the Holt Oil and Gas Corporation (formerly Perkins Oil Company) Kleimann Unit No. 1 well located 1,500 feet from the east line and 500 feet from the north line of the J. E. Hester Survey A–740. The area includes all or a part of the following surveys: C. S. Andrews A–71, B. Bassford A–95, Marmaduke Baton A–105, B.P.B. & C. RR. A–122, F. Besch A–128, F. Bezdek A–736, R.W. Byars A–809, John Dalrymple A–179, R. L. Foard A–714, Louis Henry A–339, John E. Hester A–740, C. Hutchins A–348, I & G.N. RR. A–269, A–310, and A–632, Willis Johnson A–357, William Kelly A–372, S. H. Kolb A–746, Jos. Krumpholz A–744, R. Krumpholz A–743, J. Lessing A–397, Geo. E. Looney A–381, P. H. Mayes A–426, and A–427, Geo. Metz A–409, N. Minter A–930, W. Minter A–931, W. A. Minter A–929, N. H. Morris A–415, Jones H. Ryan A–484, S. A. & M. G. RR. A–536, and A–537, B. Scheller A–514, F. Scheller A–515, Socorro Farming Co. A–672, Jno. R. Standish A–522, J. Tinkler A–757, J. W. Tinkler A–777, J. J. Townsend A–575, J. L. Townsend A–750, A–751, and A–752, Waco Mfg. Co. A–611, A–616, A–617, A–618 and A–619, C. J. Ward A–587, and A–588, E. P. Whitfield A–620.

The Lower Wilcox Formation in this area is a thick sequence of interbedded sands and shales of marine nearshore deposition. It is located below the Claiborne Formation and above the Midway Formation. The sands in the Kleimann Unit No. 1 well are very close to the base of the Wilcox Formation and may be a part of the underlying Midway Formation. Because of the uncertainty of the location of the sands in the stratigraphic column, they have been

given a local nomenclature designation of "Midcox." The top of the Lower Wilcox (Midcox) Formation in the Kleimann Unit No. 1 well is located at an approximate log depth of 11,650 feet and has an approximate thickness of 344 feet.

III. Discussion of Recommendation

Texas claims in its submission that evidence gathered through information and testimony presented at a public hearing convened by Texas on this matter demonstrates that:

(1) The average *in situ* gas permeability throughout the pay section of the proposed area is not expected to exceed 0.1 millidarcy;

(2) The stabilized production rate, against atmospheric pressure, of wells completed for production from the recommended formation, without stimulation, is not expected to exceed the maximum allowable production rate set out in § 271.703(c)(2)(i)(B); and

(3) No well drilled into the recommended formation is expected to produce more than five (5) barrels of oil per day.

Texas further asserts that existing State and Federal regulations assure that development of this formation will not adversely affect any fresh water aquifers that are or are expected to be used as a domestic or agricultural water supply.

Accordingly, pursuant to the authority delegated to the Director of the Office of Pipeline and Producer Regulation by Commission Order No. 97, issued in Docket No. RM80-68 (45 FR 53456, August 12, 1980), notice is hereby given of the proposal submitted by Texas that the Lower Wilcox (Midcox) Formation, as described and delineated in Texas' recommendation as filed with the Commission, be designated as a tight formation pursuant to § 271.703.

IV. Public Comment Procedures

Interested persons may comment on this proposed rulemaking by submitting written data, views or arguments to the Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, on or before February 14, 1983. Each person submitting a comment should indicate that the comment is being submitted in Docket No. RM79-76-161 (Texas—7 Addition II), and should give reasons including supporting data for any recommendation. Comments should include the name, title, mailing address, and telephone number of one person to whom communications concerning the proposal may be addressed. An original and 14 conformed copies should be filed with the Secretary of the Commission. Written comments will be available for public inspection at the Commission's Office of Public Information, Room 1000, 825 North Capitol Street, NE., Washington, D.C., during businesss hours.

Any person wishing to present testimony, views, data, or otherwise participate at a public hearing should notify the Commission in writing of a desire to make an oral presentation and therefore request a public hearing. Such request shall specify the amount of time requested at the hearing. Requests should be filed with the Secretary of the Commission no later than January 14, 1983.

List of Subjects in 18 CFR Part 271

Natural gas, Incentive price, Tight formations.

(Natural Gas Policy Act of 1978, 15 U.S.C. §§ 3301.3432)

Accordingly, the Commission proposes to amend the regulations in Part 271, Subchapter H, Chapter I, Title 18, Code of Federal Regulations, as set forth below, in the event Texas' recommendation is adopted.

Kenneth A. Williams,

Director, Office of Pipeline and Producer Regulation.

PART 271—[AMENDED]

Section 271.703(d) is amended by revising subparagraph (18)(iii) to read as follows:

§ 271.703 Tight formations.

* * * * *

(d) *Designated tight formations.*

* * * * *

(18) *Lower Wilcox Formation in Texas. RM-76-161 (Texas—7).*

(i) *Three County Area.* * * *

(ii) *Bonus, S. (Wilcox 13,900') Field.*

* * *

(iii) *Lower Wilcox (Midcox) Formation.*—(A) *Delineation of formation.* The Lower Wilcox (Midcox) Formation is found approximaltely five miles northeast of the town of Rock Island in central Colorado County, Texas, Railroad Commission District 3. The designated area is within a 2.5 mile radius around the Holt Oil & Gas Corporation (formerly Perkins Oil Company) Kleimann Unit No. 1 well located in the J. E. Hester Survey A-740.

(B) *Depth.* The top of the Lower Wilcox (Midcox) Formation is found at an approximate log depth of 11,650 feet in the Kleimann Unit No. 1 well and is 344 feet thick.

[FR Doc. 83-251 Filed 1-4-83; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

23 CFR Part 1209

[Docket No. 82-18; Notice 4]

Incentive Grant Criteria for Alcohol Traffic Safety Programs

AGENCY: National Highway Traffic Safety Administration, (NHTSA), Transportation.

ACTION: Notice of proposed rulemaking and notice of public hearings.

SUMMARY: This notice proposes criteria for determining effective programs to reduce traffic accidents resulting from persons driving while under the influence of alcohol. This effort is undertaken pursuant to Pub. L. 97-364, which provides for two categories of federal incentive grants, basic grants and supplemental grants, to States that implement effective programs to reduce drunk driving. This rulemaking will also set forth the means by which a State may certify to NHTSA facts necessary to establish grant eligibility, and the procedure by which NHTSA will award such grants. This notice also announces a public hearing and invites submission of written comments to the public docket on this subject.

DATES: A public hearing will be held on January 11, 1983. All written comments must be received by January 14, 1983. The agency will isue a final rule on February 1, 1983. The criteria for a basic grant will go into effect upon publication of the final rule. The criteria for a supplemental grant are scheduled by statute to become effective on April 1, 1983.

ADDRESSES: The January 11, 1983, hearing will be held at the Omni International Hotel, Elizafield Room, 1 Omni International, Atlanta, Georgia. The hearing schedule will be from 9 a.m. to 12 p.m. and from 1:30 p.m. to 5 p.m.

Written comments should refer to the docket number and the number of the notice and be submitted to: Docket Section, Room 5109, Nassif Building, 400 Seventh Street, SW., Washington D.C. 20590 (Docket hours are 8 a.m. to 4 p.m.)

FOR FURTHER INFORMATION CONTACT: Mr. George Reagle, Associate Administrator for Traffic Safety Programs, National Highway Traffic

Safety Administration, 400 Seventh Street, SW. Washington, D.C. 20590 (202–426–0837). To schedule a time for appearing at the January hearing contact: Marian Tomassoni or Joe Jeffrey, Office of Associate Administrator for Traffic Safety Programs, NHTSA 400 Seventh Street, SW., Washington, D.C. 20590 (202–426–1634).

SUPPLEMENTARY INFORMATION: On November 4, 1982, (47 FR 51152) the National Highway Traffic Safety Administration (NHTSA) issued an advance notice of proposed rulemaking seeking comments on possible ways to implement the alcohol traffic safety incentive grant program established by Pub. L. 97–364 (23 U.S.C. 408, the Act). NHTSA primarily sought comments on what definitions and criteria the agency should establish for States to be eligible for both basic and supplemental grants, which can total up to 50 percent of the amount apportioned to a State under Section 402 of the Highway Safety Act of 1966.

To provide an increased opportunity for public comment, NHTSA held a public hearing on December 13, 1982, in Washington, D.C. on the proposal. Persons representing numerous States, professional organizations, citizen groups, and others testified. In addition, many interested parties submitted written comments to the docket for this rulemaking.

The proposal being issued today is based on the agency's review of the hearing testimony, comments received on the advance notice of proposed rulemaking and the Interim Report to the Nation prepared by the Presidential Commission on Drunk Driving. The agency will hold a public hearing on this proposal on January 11, 1983 in Atlanta, Georgia to coincide with a meeting of the National Association of Governors' Highway Safety Representatives. Significant comments to the first notice are addressed below.

Basic Grant Criteria

The Act established four criteria that must be met by a State in order to be eligible for a basic grant in the amount of 30 percent of each State's fiscal year 1983 apportionment under section 402 of the Highway Safety Act. The agency notes again that because the four basic criteria are statutorily mandated by Congress, the agency does not have the authority to change, by deletion or addition, the substantive requirements for a basic grant, as was requested by some of the commenters. As was also previously noted, however, several of the terms used in the statutory language setting forth the basic grant criteria were undefined, and the agency sought comments on several possible definitions that the agency believed would be consistent with the legislative purpose of the Act. In addition, NHTSA sought comments on ways by which States might most easily and effectively demonstrate that the basic grant criteria have been met.

Criterion No. 1: Prompt License Suspension

The first criterion established by Congress for basic grant eligibility requires:

> The prompt suspension, for a period not less than ninety days in the case of a first offender and not less than one year in the case of any repeat offender, of the driver's license of any individual who a law enforcement officer has probable cause under State law to believe has committed an alcohol-related traffice offense, and (i) to whom is administered one or more chemical tests to determine whether the individual was intoxicated while operating the motor vehicle and who is determined, as a result of such tests to be intoxicated, or (ii) who refuses to submit to such a test as proposed by the officer.

Terms Used: "Prompt"

The agency proposed to define "prompt" as a mandatory suspension of the privileges of a driver's license which occurs no later than 30 days after a person is arrested for drunk driving. A number of States commented that in order to comply with such a stringent time requirement, they would have to implement entirely new programs to process driver license suspensions administratively. A representative of the State of New Jersey estimated that adopting such a system, with all the necessary due process safeguards, would cost more than the value of any basic grant for which it might therefore become eligible, and noted that under its system of judicially administered suspension, the average license suspension occurs within 46 days. Based on a survey of its membership, the National Association of Governors' Highway Safety Representatives (NAGHSR) recommended the agency define prompt suspension as suspension within 45 days. NAGHSR noted that 19 of the 34 members responding to the survey currently take at least 60 or more days to suspend or revoke a license. NAGHSR said setting a 45-day period, would act as an incentive for States to accelerate their license suspension processes. Rhode Island recommended that the agency consider requiring States to process a certain percentage of all suspensions within the 30 day criterion.

The agency recognizes that currently most States impose a license suspension within 30 to 60 days after a person is convicted of an alcohol-related traffic offense, with the process of trial and conviction taking anywhere from 60 days to one year from the date of arrest. The legislative history of the Act emphasizes that Congress wanted to increase the deterrance effect of license suspension by cutting down on the long delays between arrest and subsequent license sanction.

The Presidential Commission on Drunk Driving (the Commission) in its Interim Report to the Nation also stressed the need to establish license suspension as a swift and certain penalty for drunk driving. The Commission's report cited examples of how such systems can be established either administratively or judicially.

Experience in such States as Minnesota and Iowa has shown that administrative license suspension can be effective. The agency recognizes that setting up the necessary administrative procedures can be costly, but believes that in carrying out its authority under the Act it would not necessarily be inappropriate to consider measures which may not be initially cost-effective, in and of themselves, or in comparison with the size of potential grants.

To accommodate these concerns, the agency proposes to define "prompt" as suspension of a license within 30 days of arrest for at least 60 percent of the suspension cases. In addition, the acency proposes that the overall average time to suspend a license cannot exceed 45 days.

The agency recognizes that if suspensions are judically imposed, there may be an increase in requests for jury trials and thus the average time to suspend a license may increase. The agency believes that permitting the average time to be 45 days will allow a sufficient margin of time to account for instances where trial backlogs prevent suspension within 45 days.

As discussed in the comments, the agency recognizes that all States may not be able to comply with a 30-day requirement, but that some already do. The agency believes that allowing 60 days to process a suspension, as requested by some States, would not require States to increase their efforts as required by the Act. Requiring States to suspend licenses within 30 days of arrest would require many States to significantly improve their judicial or administrative license suspension process. A 30-day period will also allow States that choose to use an administrative process sufficient time to

provide license suspension appeal hearings that will satisfy the due process standard.

The agency cannot adopt the suggestion of the California Highway Patrol that the time period for suspension be measured from date of conviction, rather than the date of arrest. The Act specifically mandates that the time period is to be measured from date of arrest.

In the advance notice, NHTSA said that States which authorize the immediate suspension of driving privileges by physical confiscation of a license upon arrest would meet the prompt suspension criterion. One commentator has correctly noted that the physical taking of a license does not itself suspend a license, and that suspension only results from a subsequent action of the licensing authority in the State.

"Suspension"

Several of the commenters, such as the American Automobile Association (AAA), Florida Bureau of Highway Safety and the California Highway Patrol, requested the agency specifically to include within the definition of "suspension" the use of restricted licenses, i.e., a suspension of some, but not all, driving privileges for a stated period. Such restricted licenses commonly are used to permit driving for limited purposes, such as going to work and attending an alcohol education or treatment program. Several commenters, such an NAGHSR, also noted that the impact of a 90-day suspension can vary widely between rural areas, where public transportation is limited or unavailable, and urban areas, where a loss of driving privilege may not cause transportation difficulties. All commenters addressing the issue agreed that restricted licenses should only be used for first offenders.

Because the issue of restrictive licenses was not addressed by the majority of commenters the agency seeks additional comment on this issue. The principal intent of the draftsmen was as stated in the Act's full 90-day suspension of all driving privileges. Testimony was received by the Commission on both sides of the issue, and tended to show both lax and stringent enforcement of restrictions, depending on the jurisdictions and available enforcement resources involved. The Commission has tentatively recommended that strict uniform standards should be adopted to govern such sanctions, and that they be allowed only in exceptional cases.

The agency believes that the carefully controlled use, in exceptional circumstances specific to the offender, and under statewide published guidelines, of a 30-day full suspension of driving privileges followed by a 60-day period of enforced restricted driving, could fulfill the congressional purposes of using license suspension as a key deterrent to drunk driving. A promptly imposed 30-day period of full suspension impresses the drunken driver that punishment is swift and certain. Allowing the use of restricted license can help ensure that the driver can attend an appropriate education/rehabilitation program within a short time of committing the offense.

The agency believes that the use of restricted licenses would not in any event be warranted for repeat offenders or for those who refuse to take a chemical test under the implied consent statutes.

NHTSA therefore seeks comments on two alternative definitions of the term "suspension." The first would define suspension as including only a full loss of driving privileges for the statutory period of 90 days. The second would allow the use of a 30-day full suspension, followed by a 60-day period of restricted driving privileges, under State-wide published guidelines, in exceptional circumstances specific to each offender, and for the limited purpose of driving between a residence and a place of employment, and/or to and from an alcohol education or treatment program.

Repeat Offender

NHTSA's proposal to define a repeat offender as anyone convicted of DWI or a similar alcohol-related traffic offense more than once in five years was supported by the commenters and therefore the agency is proposing to adopt the definition in the final rule.

Refusal of Second Test

The agency proposed that mandatory license suspension should apply to a refusal by a driver to take more than one chemical test, even if the driver consented to the first test. The California Highway Patrol support the use of a second test in instances where the officer has a reasonable belief that the driver is under the influence of drugs. North Carolina, however, suggested that the requirement for a second test is unnecessary and could be counterproductive by eroding public confidence in the alcohol breath test program.

One commenter who supported the proposed approach nevertheless suggested that the agency either delete the requirement or incorporate it as a criterion for a supplemental grant, on the asserted grounds that such a requirement could necessitate a change in every State law in a very short time for States to be eligible for a basic grant.

The statutory language does not permit such an interpretation. The agency's understanding of the Congressional intent in the language of the criterion is a desire to ensure that where a second test is authorized, and proposed to a driver under State law, a refusal should be grounds for mandatory suspension. The agency concurs and proposes no change.

Demonstrate Compliance

Commenters did not oppose the proposed showings that NHTSA set forth by which States might demonstrate compliance with this criterion. The agency therefore proposes to adopt a requirement in the final rule that States provide NHTSA with a copy of the law, regulation or guideline implementing mandatory license suspension, information on the number of licenses suspended, the average length of suspension for first-time and repeat offenders and for refusals to take chemical test and the average number of days between the offense and the sanctioning action.

Criterion No. 2: Mandatory Sentence

The second criterion established by Congress for basic grant eligibility requires:

> A mandatory sentence, which shall not be subject to suspension or probation, of (i) imprisonment for not less than 48 consecutive hours, or (ii) not less than ten days of community service, of any person convicted of driving while intoxicated more than once in any five-year period.

Commenters uniformly supported the imposition of mandatory sentences. Several commenters, such as New York and Missouri, requested the agency to more specifically define what is meant by "imprisonment". They pointed out that most States have a serious problem with jail overcrowding. To provide States with more flexibility, the agency is proposing that imprisonment be interpreted so as to include confinement (restriction of freedom to leave) not only in the traditional prison/jail environment, but also in such places as minimum security facilities or in-patient rehabilitation/treatment centers. Confinement in such facilities would provide the same deterrence as confinement in jail.

Several California agencies objected to the requirement that the period of minimum imprisonment be 48 *consecutive* hours. They pointed out that in California the sentence time does not

have to consist of full 24-hour days nor does it have to be consecutive. The criteria of "48 consecutive hours" is statutorily mandated in the Act and therefore cannot be changed by NHTSA. Likewise, Massachusetts' suggestion that the penalty be more severe and Missouri's suggestion that requiring participation in a long-term rehabilitation program with supervised probationary conditions be adopted as an alternative to a mandatory sentence cannot be adopted, although more severe minimum penalties would of course establish eligibility.

Demonstrate Compliance

No commenter opposed the proposed requirement for demonstrating compliance with this criterion. Therefore, the agency proposes to adopt, in the final rule, a requirement that States provide NHTSA with copies of the existing legislation or regulations on the subject, and with information on the numbers of people convicted of an alcohol-related traffic offense more than once in any five year period, the places of confinement used and the average sentences imposed for those persons.

Criterion No. 3: Illegal Per Se Laws

The third criterion established by Congress for basic grant eligibility requires State to have a law that:

> Provides that any person with a blood alcohol concentration of 0.10 percent or greater when driving a motor vehicle shall be deemed to be driving while intoxicated.

The agency's proposal to accept a State *per se* law, which makes the act of driving with a blood alcohol concentration (BAC) of 0.10 percent an offense in and of itself as evidence of compliance with this criterion was uniformly supported and the agency therefore proposes to adopt the same interpretation in the final rule.

Criterion No. 4: Increased Enforcement/ Public Information Efforts

The fourth and final criterion established by Congress for the basic grant eligibility requires:

> Increased efforts or resources dedicated to the enforcement of alcohol-related traffic laws and increased efforts to inform the public of such enforcement.

NHTSA proposed that States demonstrate increases in their levels of alcohol-related enforcement and public information efforts by comparing the levels of effort in fiscal year 1982 with fiscal year 1981. The use of 1981 and 1982 was viewed as reasonable by some commenters, such as Mississippi. Others, such as the International Association of Chiefs of Police (IACP), commented that the 1981–1982 time frame might not provide an accurate measure. IACP said that many law enforcement agencies have emphasized efforts to reduce drunk driving as a priority program for the past several years. The agency agrees that it may be more appropriate to use a baseline which takes into account a State's activities over a longer period of time. The agency therefore proposes that the baseline measurement consist of either the comparison of FY 82 (or later years) with the one preceding year, or with the average of the State's enforcement and public information activities over the three years preceding the year in which a State first applies for a grant. However, to qualify for subsequent year grants a State should demonstrate increased efforts over the preceding year program.

Several commenters, such as the California Highway Patrol and Illinois State Police, stressed that in determining whether a State is in compliance with this criterion, NHTSA should not emphasize specific indicators, such as arrest and conviction rates, but should instead look to whether the efforts have produced a reduction in drunk driving accidents, deaths and injuries. Other, such as the IACP and NAGHSR, said that the agency should not concentrate solely upon on-the-road inforcement efforts, but should also examine how a State implements a systems approach to the problem.

The purpose of this criterion is to deter drunk driving by increasing the public's perception of risk of being caught and punished. The agency agrees that the emphasis should be on improvements to the total drunk driver control system that contribute to that purpose, and not only on one or more specific indications of success.

To provide the States with flexibility to demonstrate that they have increased their enforcement and public in information efforts, the agency has tentatively decided not to specify what data a State must provide. States would thus be able to determine which indicators they believe are most appropriate to demonstrate their increased efforts. Those indicators could include development of supportive administrative policy, increases in arrests and convictions, license suspensions/revocations, decrease in repeat offenders, increased training for law enforcement, prosecutors and judges, decreases in alcohol related crashes, increases in rehabilitation referral rates, changes in the public's perception of risk, number of PSA's, media support and citizen involvement in reporting drunk drivers.

Supplemental Grant Criteria

Need for Flexibility

Almost all of the commenters, including NAGHSR and the National Highway Safety Advisory Committee (NHSAC), urged the agency to provide States with maximum flexibility in determining which supplemental grant criteria they might choose to implement. They emphasized that each State should have the ability to tailor its program to fit its own situation. Several States, such as Idaho, Iowa and others, suggested that rather than setting specific minimum criteria a State must meet, the agency should create a list of criteria and specify that States have to meet a certain number or percentage of that list.

Some States, such as Wisconsin and New York, suggested that the agency develop a system that would give a State credit for incremental compliance. Thus, Wisconsin suggested that a State would receive some credit for proposing legislation, even if that legislation did not pass.

The agency recognizes that there is a legitimate need to provide States with flexibility in designing a program that will be effective in their State. At the same time, the agency must act in accordance with the Congressional mandate that the agency establish criteria for effective programs and the section 408 funds be used as an incentive to encourage States to significantly improve their alcohol traffic safety programs. The legislative history of the Act indicates that Congress was concerned that States not only adopt and implement new programs to combat drunk drivers, but that the States fully implement the programs and authority that they already have in place.

Based on the criteria proposed in the advance notice, criteria suggested by individual commenters and criteria contained in the Presidential Commission's Interim Report, the agency is proposing to establish a total of twenty-one eligibility criteria for receiving a supplemental grant. For the purpose of emphasis, NHTSA has ranked the supplemental criteria in what in its view is their general relative order of significance and potential impact on the total alcohol highway safety problem. While this may not mean that Criterion No. 3, for example, is necessarily of less importance than Criterion No. 2, it may be taken to indicate a belief that large scale differences in placement are considered important. Thus, early criteria may be considered to be greater in significance than lowest ranking criteria.

The agency is seeking comments on two alternative ways of establishing requirements on which criteria a State would have to have in place and implement or adopt and implement in order to receive a supplemental grant.

The first alternative on which the agency seeks comments would be to provide that States can receive a grant of less than 20 percent of its fiscal year 1983 section 402 funds if it implements some, but not all, of the twenty-one criteria. The agency requests comments on what proportion of the full 20 percent grant should be given to a State for each criteria that it adopts and implements. As demonstrated by the agency's ranking of the criteria, the agency recognizes that some criteria are of more significant than others. Thus, the agency seeks comments on the possibility of weighting the criteria so that implementation of the more important ones would mean that a State would receive a larger incentive grant. Finally, the agency requests comments on whether it should establish an upper limit on the number of criteria a State has to implement in order to be eligible for a full 20 percent supplemental grant.

The second alternative on which the agency seeks comments would require States to implement all of those criteria that the Governor of the State has the current authority to implement without requiring the concurrence of another branch of the State government. The agency believes that requiring a State to implement those criteria which it is administratively possible for the Governor to implement is consistent with Congress's concern about States fully implementing existing programs or authority. In instances where a Governor already has existing, but unused, authority to take an action such as establishing a State Task Force on alcohol traffic safety, the agency believes that the authority should be exercised before a State can be eligible for a supplemental grant. In instances where the administrative authority already exists to adopt a criterion, States can implement a program in a minimal time.

The agency recognizes that there may be variations between States in the number of criteria that it is administratively possible to implement. Thus, the agency will accept a State's certification of the number of criteria that it is administratively possible to implement solely on the basis of the Governor's authority.

Under this approach, in addition to taking those actions which can be administratively implemented, a State would also be required to implement a certain number of additional criteria to be eligible for additional supplemental grant funding. For each succeeding year additional criteria would be required as well. In meeting this eligibility requirement, States would have the flexibility of determining which specific criteria to implement.

The agency specifically requests comments on how the appropriate number of additional criteria might be established, relatively or absolutely.

The agency recognizes that in several States, either the legislature or the Governor, or both have recently taken action that would under this rule constitute implementation of a criterion, e.g., raising the drinking age or appointing a task force. On the other hand, it appears to have been the primary intent of the Congress to induce future action through the new program. The agency believes that the phenomenon of momentum and the need to capitalize on very recent widespread attention to the issue makes it unreasonable not to recognize very recent such efforts in determining eligibility. The agency thus proposes to recognize such actions as qualifying implementation of the criteria where such has taken place either in the legislative session current at the time of enactment of this Act (Pub. L. 97–364, October 25, 1982) or during the previous legislative session of the State.

To summarize, under each alternative, the agency is proposing that in order for a State to qualify for a supplemental grant in subsequent years, it must adopt and implement additional supplemental criteria, and demonstrate enhanced performance in criteria adopted in prior years. The key to subsequent grants is progress towards achieving program goals and objective as outlined in the State's three year Alcohol Highway Safety Plan. The effectiveness of existing alcohol highway safety programs should rise each year in terms of improved performance, the public's perception of risk, system improvements, etc.

The agency has tentatively decided against creation of a system that would recognize attempted, but not actual, implementation of a criteria. The most frequent example suggested by commenters was introducing, but not passing, legislation to set the drinking age at 21. The Act provides that the agency is to award supplemental grants to States that "adopt and implement" effective programs to reduce drunk driving. Thus, we construe Congress as intending that States are to be rewarded for taking specific actions, not for merely proposing those actions. The agency does note that a systematic, aggressive program of legislative action and support for such enactment at the State level, and as part of a overall program, could qualify as an indicator of increased overall program support and emphasis, which itself could assist in satisfying other criteria.

1. Raising Drinking Age to 21 for All Alcoholic Beverages. As discussed in the advance notice, research has clearly established that raising the drinking age to 21 for all alcoholic beverage results in both a decrease in the number of alcohol-related crashes and a decrease in the number of alcohol-related fatalities. Raising the drinking age to 21 has been strongly endorsed by the Presidential Commission and the National Transportation Safety Board.

Although the commenters uniformly supported increasing the drinking age to 21, they were concerned about how States that have partially raised their drinking age would be treated. Wisconsin, Rhode Island and New York, for example, urged that States be given credit for incrementally raising their drinking age, e.g., from 18 to 19.

The agency believes that there is an important need for uniformity in the drinking age because of the substantial problems caused by teenagers in border communities who drive to neighboring States with a lower drinking age. The agency further concludes that in view of current State laws and the status of research into age related eligibility requirements, the strongly preferred uniform age is 21 years for all alcoholic beverages.

The agency has thus tentatively concluded that States should only be permitted to apply this criterion toward qualification for a supplemental grant if they enacted, whether or not fully implemented, legislation which would immediately or over limited period of time, (e.g. not to exceed three years) raise the drinking age to 21 for all alcoholic beverages. The agency is concerned that rewarding partial compliance would lessen the incentive further to move toward full compliance.

2. Designation of State Alcohol Highway Safety Coordinator. States generally supported the designation of a single individual as responsible for the coordination of a State's alcohol traffic safety program. The California Highway Patrol, however, objected that setting such a position would require "an entirely new bureaucracy." New York's Division of Alcoholism and Alcohol Abuse noted that because planning requires the integration of a number of disciplines and agencies, a group representing each of those disciplines should participate in and be responsible for program coordination.

Current experience in several States shows that designation of a single program coordinator does not require the establishment of an entirely new bureaucracy. NHTSA recognizes that people from many different disciplines must be consulted in order to successfully coordinate a State-wide program and that a panel or task force is an appropriate way to help coordinate the entire program. However, the agency still believes that it is important that a single individual be designated as overall coordinator to ensure all appropriate agencies are fully involved in the drunk driver control system.

3. Rehabilitation and Treatment. A substantial number of the commenters, such as the National Council on Alcoholism and State alcohol treatment agencies, urged the agency to require the use of rehabilitation and treatment as one of the supplemental criteria. They noted, and the agency fully recognizes, that rehabilitation and treatment are a necessary adjunct to an effective drunk driver control system.

In the advance notice, the agency expressed its concern about the need for uniform standards and procedures for creating and operating the program. Based upon an agency-funded demonstration project, the agency proposed that the program be at least one year in length. A number of commenters requested that a minimum time not be set, because of the variability in how different people respond to treatment. To provide States with increased flexibility the agency has decided not to propose a specific minimum time for a treatment program. It is important to note that the only treatment program for problem drinkers that has, in the agency's judgment, been statistically *proven* to be effective in reducing recidivism on a general basis was the comprehensive DWI Offender Treatment Project in Sacramento, California, where long term treatment (1 year) and follow-up (2 years) was required. The agency is concerned about the need for some State oversight of such programs to ensure that they are effectively planned and operated. The agency therefore proposes that each State set minimum standards for rehabilitation and treatment programs.

States can demonstrate compliance with this criterion by providing the agency with the law or regulations requiring or authorizing the treatment referral program along with information on the types and duration of their rehabilitation and treatment programs and a summary of their uniform standards and procedures for creating and operating their programs.

4. State and Local Task Forces. In its interim report, the Presidential Commission noted that:

> The development of State and local Task Forces has proved to be central to the development of more effective local and State responses to drunk driving. These Task Forces provide a mechanism to bring together governmental officials and non-governmental leaders in an effort to increase public awareness of the problem, develop more effective legal responses to it, and to develop governmental and non-governmental programs of drunk driving countermeasures.

Several States, such as California and North Carolina, noted in their comments the valuable role of Task Forces in examining new approaches for reducing drunk driving. NHTSA, therefore, proposes that creation of State and local Task Forces become one of the supplemental grant criteria. The agency has developed guidelines to assist States and local communities to establish Task Forces. Those guidelines are found in the agency's publication "Task Force Implementation Guidelines for the Development of State and Community Alcohol Highway Safety Programs." As a minimum a State should have a Task Force and active plans should be underway to encourage and assist in the establishment of county, city, or Regional Task Forces.

5. Statewide Driver Record System. Commenters, such as AAA and Citizens for Safe Drivers Against Drunk Drivers and Other Chronic Offenders (CSD), supported the need for an up-to-date, readily accessible system of driver records to identify repeat offenders. The advance notice sought comments on a proposed requirement that the system be operated so that conviction information is actually recorded in the system within 30 days of conviction, license sanction or the completion of the appeals process. Mississippi, the only State to directly address the issue of timeliness, said that 90 days is needed to process conviction and license actions. The agency needs additional information from States on the current and potential capabilities of their records system before it can resolve the issue of what, if any, requirements it should set on timeliness. The agency specifically requests States to address this issue in their comments on this notice but proposes at this time to retain the 30-day requirement originally proposed.

The agency also sought comments on public access to the driver records. CSD strongly supported full public disclosure. Illinois recommended that statistical information on DWI charges that have been subsequently reduced should be part of the public record, but that the public should not have access to specific information on individual cases. The New York Division of Alcoholism and Alcohol Abuse stated its concerns about whether information would be disclosed that indicates that an individual is receiving or has received treatment for alcoholism. It said that such disclosures could be a violation of state law and Department of Health and Human Services' confidentiality regulations. The agency requests additional commenters to address the issue of public accessibility and the effect of State privacy laws on accessibility.

The Presidential Commission's Interim Report and CSD raised several important points concerning the operation of record systems, including the use of a uniform traffic ticket and participation in the National Driver Register. The agency is proposing to adopt those recommendations as a part of supplemental criterion No. 14.

One of CSD's recommendations, however, is crucial to the operation of the records system. CSD noted that some States expunge their records within two or three years, which makes it difficult to identify repeat offenders. The agency concurs with this concern, and therefore, proposes that States retain their records for a period of five years in order to meet the driver record supplemental criterion; such a requirement is consistent with the agency's proposed definition of "repeat offender" for the purposes of the basic grant, and with the agency's understanding of the intent of the Congress in enacting the National Driver Register Act, Title II of Pub. L. 97-364, signed by the President on October 26, 1982.

6. Locally Coordinated Programs. As emphasized in the advance notice, the agency believes that drunk driving has become a national problem by virtue of being first a local problem in every locality. The success of any alcohol traffic safety effort is dependent upon local communities recognizing, understanding and accepting the responsibility for solving this problem.

While endorsing the concept of locally-coordinated programs, a number of States, such as North Carolina and Connecticut, said that implementation of the local programs will be costly. A number of States pointed out statutory and administrative problems they have in implementing local programs. California, for example, said that currently it has no statutory provisions to allow fines to be funneled back to local programs.

The agency recognizes that implementation of programs that are

locally coordinated may incur some increased costs and may necessitate enactment of new legislation. However, a number of States, such as New York and Virginia, have found that the costs of a local coordinator are minimal when compared to overall system improvements. These programs can be established by local jurisdictions and need not be restricted to a specific size community or region. The agency would prefer that communities decide the geographic area to be involved in a locally coordinated program. It can be a city, county or any combination of cities, towns or counties forming a regional alcohol traffic safety community. As discussed in more detail later in this notice, the agency believes that these programs can eventually become self-sufficient. Because of the overriding importance in having the primary drunk driver effort at the local level, the agency proposes to adopt the requirement for locally coordinated programs as one of the final supplemental criteria.

7. Prevention and Education. The commenters uniformly supported making a prevention and education program designed to change the societal norm relative to drunk driving a supplemental criterion. Many commenters discussed the need for a long-term program aimed at the pre-driver and young driver population. The agency agrees that the long-term success of any alcohol safety effort is, in large part, dependent upon establishing responsible attitudes toward alcohol use and driving among today's youth and, therefore, proposes to adopt prevention and education as one of the supplemental criteria.

States can demonstrate compliance with such a requirement by providing a brief description of their prevention and education program and discussing how it relates to changing societal attitudes and norms against drunk driving. This should include a comprehensive kindergarten through twelfth grade education program as well as involvement of the private sector groups and parents. In particular, a State should provide information on its youth alcohol traffic safety programs.

8. Screening. The use of pre-sentence screening was strongly supported by several commenters, including Oklahoma and AAA. New York agreed with the agency's proposal that the courts be given the authority to order such screening, but the use of the screening not be mandatory.

Florida suggested that the emphasis be placed on the use of screening and not on the pre-sentence timing of the screening. Florida noted that it currently uses screening as a part of its probation procedures and as a link to its education and treatment programs.

The agency agrees with Florida that the importance of the screening is to identify problem drinkers and to see that they receive appropriate education and rehabilitation. The agency proposes to adopt as a supplemental criterion the requirement that States have a screening procedure. States could demonstrate compliance with this criterion by submitting a copy of the law authorizing screening and providing a brief description of the screening process. The agency requests further comment on whether only pre-sentence screening should be included in this criterion.

9. Evaluation Systems. Individual alcohol countermeasures and the system as a whole require continual review and scrutiny in order to determine which of these measures work and which do not work. In order for States to be able to evaluate the progress and impact of their comprehensive alcohol programs, evaluation systems should be designed and implemented to measure performance of their counter-measures and overall impact of the program. Progress and impact should be made known and available to State and local governments, legislative committees, and citizen groups.

Minimum requirements for qualification of the system would be the demonstration of an adequate State-wide data reporting collection system which could collect pertinent data elements, such as crashes, arrests, convictions, etc. In addition, an evaluation section as part of the Alcohol Safety Plan would be required that would specify the kind of data to be collected, and the appropriate disseminations of the data in terms of reports and analysis.

10. Self-Sufficiency. Although the advance notice discussed the importance of State and local program becoming self-sufficient, self-sufficiency was not proposed as a separate criterion. The agency believes that because of Congress' intent that the section 408 incentive grants be used as "seed money", more emphasis should be placed on State and local programs becoming self-sufficient.

As emphasized in the advance notice, the agency believes that making the drunk drivers who create the problem pay for its solution is sound policy. The agency recognizes, as stated by several commenters, that legislation may be needed in order to redistribute the offenders' fines, court fees and education and treatment program tuition back to State and local agencies to pay for the system. However, enactment of such legislation is one way of assisting those programs to become financially self-sufficient and self-sustaining.

The agency, therefore, proposes to adopt as one of the criteria a requirement that States take the necessary steps to ensure that their alcohol traffic safety programs will become self-sufficient. States can demonstrate compliance by providing a plan how they intend to make their programs self-sufficient. Specific progress toward implementation of the plan must be shown in future years to continue to claim this as a supplemental criterion.

11. Use of Roadside Sobriety Checks. There was a sharp difference of opinion among commenters on the use of roadside checks to detect drunk drivers. Both the California Highway Patrol and AAA opposed their use on constitutional grounds. Mississippi said that it widely uses them as an integral part of its alcohol safety program, and U.S. Representative Barnes, one of the sponsors of the Act, expressed his strong support for the use of roadside sobriety checks.

The agency believes that the selective use of reasonable roadside checks can be supported on constitutional grounds. An important effect of the checks is to increase the public's perception of the risk of being caught for drunk driving.

The agency proposes to adopt the use of roadside checks as one of the supplemental criteria in the final rule. States can demonstrate compliance with this criterion by providing information on the frequency and area where roadside checks are being used, the purpose of those checks and a copy of their regulation, law, or policy authorizing the use of roadside sobriety checks.

12. Citizen Reporting. In its Interim Report, the Presidential Commission recommended that states encourage citizens to report drunken drivers to the police. The Commission said that:

> This program of citizen involvement increases the public's perceived and actual risk of apprehension and adds to general deterrence. In Nebraska from June 1981 to May 1982, for example, 2,836 suspected drunk drivers were reported to the police and, as a result, police intercepted 1,827 potentially drunk drivers and arrested 1,428. Similar results have been achieved in several other States.

The agency believes that citizen reporting programs can contribute to the overall success of an alcohol traffic safety program by enhancing deterrence and therefore proposes to make such a program one of the supplemental criteria. States can demonstrate

compliance by submitting a description of its citizen reporting guidelines or policy and the degree of participation, e.g., number of citizens reporting and number of arrests resulting therefrom.

13. Enactment of a BAC of 0.08 Percent as Presumptive Evidence. In the advance notice, the agency proposed that States enact a law making a .05 percent BAC presumptive evidence of driving under the influence of alcohol. Although Connecticut supported the proposal, several commenters argued that a BAC of 0.05 was too low a level at which to create a presumption that a driver is impaired.

The California Highway patrol said that there is "no general agreement among authorities that a BAC of 0.05 constitutes 'under the influence' or impairment." Wisconsin urged the agency to consider establishing a BAC of 0.08 percent as presumptive evidence of impairment.

The agency believes that the setting of a presumptive level of impairment can assist enforcement officials in making arrests and obtaining convictions where impairment is evident from the driving action in a particular case. Although there is uncertainty surrounding whether a BAC of 0.05 percent would constitute impairment for all drivers, the agency believes that there is sufficient research to show that a BAC 0.08 percent represents a level which can commonly produce driver impairment or physical effects which lead to conduct properly chargeable as driving under the influence. At this time, and for this purpose, the agency therefore proposes to retain the level of 0.05 percent as requisite for satisfaction of this criterion. States can demonstrate compliance by providing a copy of the applicable law.

14. Uniform Licensing Procedures. In its Interim Report, the Presidential Commission recommended that States fully participate in the National Driver Register and the Driver's License Compact and use a one-license/one-record policy. The Commission said that "Cooperation between States in sharing information on driver licensing and violations in order to stop those with revoked or suspended licenses from becoming licensed in another State is a necessity." Similar suggestions were made by CSD.

The Commission and CSD also suggested the need for a uniform traffic ticketing and disposition procedure. Such a system is needed in order to follow each charge from arrest through prosecution and back to the central State file. It also provides excellent system and financial accountability.

The agency recognizes that it is important to have States share driver licensing suspension and revocation information and therefore is proposing to adopt this suggestion as one of the supplemental criteria. States can demonstrate compliance by providing a copy of the executive order, regulation or law setting up a uniform traffic ticketing system. In addition, States would have to show that they have signed the Driver License Compact and are participating in use of the National Driver Register.

15. Preliminary Breath Tests. Use of preliminary breath tests (PBT's) was supported by a number of States, such as Wisconsin, Connecticut and Mississippi. Several States, including California and Florida, were concerned that use of the PBT's may place too much reliance on the use of the test device and not enough on the arresting officer's observation of the suspect's behavior. Florida also commented that the use of PBT's may encourage drunk drivers to refuse to take an evidential breath test, if they fail the preliminary test.

The agency believes that use of PBT's can contribute to the effectiveness of an alcohol enforcement program. The agency agrees that police officers must be trained in how to identify potentially drunk drivers based on the officer's observations, however, we believe the use of PBT's can complement the officer's observation. Research done by the agency and the experience of the States, such as Minnesota, have shown that (1) wider use of preliminary breath tests can increase the effectiveness of any alcohol enforcement effort through increases in arrests and an overall lowering of the average BAC of persons arrested for DWI, (2) the PBT's are accepted by and useful to the police, and (3) the PBT devices function accurately and dependably. Twenty States currently have laws authorizing the use of PBT's. The potential problem of suspects refusing to take an evidential breath test can be combated by strengthing the penalties for refusing the test. Since the potential problems raised by the commenters can be solved and the benefits outweigh the efforts of solving these problems, the agency proposes to adopt the use of PBT's as a supplemental criterion.

16. Plea-bargaining. Many commenters, such as AAA, NHSAC, and IACP, suggested limitations on the use of plea-bargaining in alcohol-related driving cases. They pointed out that the principal problem is that an alcohol-related offense may be bargained down to a lesser non-alcohol-related offense, such as reckless driving. Thus, upon subsequent arrest, the offender's driving record might not contain any information to indicate that he or she has committed prior alcohol-related offenses.

Several States have already placed limits on plea-bargaining in alcohol-related traffic cases. California, for example, requires the reason for accepting the bargain to be placed on the public record. In addition, the lesser offense is entered on the driver's record as alcohol-related.

IACP commented that in some jurisdictions, courts can make a finding of probation without judgment. Once the defendant completes the probationary period, the record is expunged and thus no record of an alcohol-related offense would exist, according to IACP.

In its Interim Report, the Presidential Commission also recommended that prosecutors and courts not reduce driving under the influence charges. The Commission said that a charge should be reduced only if the prosecutor states in writing "why the interest of justice uniquely requires a reduction or why the charge cannot be proven beyond a reasonable doubt."

Based on those comments, the agency has decided to propose as a criterion that no charge be reduced or probation without judgment be entered without a written declaration of why the action is in the interest of justice. In addition, the agency proposes that if the charge is reduced, the defendent's driving record must reflect that the reduced charge is alcohol-related. States can demonstrate compliance by providing a copy of the law implementing these provisions.

17. Victim Assistance, Compensation and Impact Statements. The Presidential Commission's Interim Report refers to those injured by drunk drivers as the "forgotten victims of the legal system." The Commission recommended a number of programs to aid those victims. The Commission said that State and local governments should have victim assistance programs, which would inform the victim or the victim's family about the progress and ultimate disposition of the legal case against the drunk driver and provide information on available community services. The Commission also recommended that victim impact statements be required before sentencing in all cases where death or serious injury occurred. CSD also made the same recommendation to the agency.

Finally, the Commission recommended that any person convicted for driving under the influence should pay restitution. The Commission said that, "where feasible, courts should order offenders to pay for property

damage, medical expenses, and lost wages."

The agency proposes to make the establishment of programs incorporating the elements recommended by the Commission (victim assistance programs, use of victim impact statement and victim restitution) a separate criterion. States can demonstrate compliance by providing a description of their program.

18. Impoundment. The proposal to impound the vehicle of a person whose driver's license has been suspended or revoked drew considerable comments. The Texas Department of Public Safety strongly supported the use of impoundment at the expense of the owner as a "significant sanction." Numerous other commenters, including NHSAC, Connecticut, Florida and Idaho, sharply questioned whether impoundment was cost-effective, given what they termed the large costs of administering the program. Florida suggested using the alternative of confiscating the vehicle's tags.

Given the successful use of impoundment in Texas and other States, the agency believes that it can be an effective deterrent. At the same time, the agency also recognizes that physical impoundment can create due process and administrative problems. Such problems, however, will commonly arise at the State level, and can be resolved there. To ensure that States who do wish to use this enforcement option may receive Federal assistance, the agency is proposing to include impoundment as a criterion and define impoundment as including the taking of the vehicle license plates or tags.

States can demonstrate compliance with this criterion by providing the agency with a copy of the law authorizing appropriate impoundment or license plate confiscation.

19. Choice of Test. Several States, including Mississippi and Connecticut, supported the proposal to allow the arresting officer the choice of chemical tests. The California Highway Patrol noted that California currently allows the suspected drunk driver to specify which test is to be used. It said that any action "which diminishes individual freedom of choice, without compelling reasons, would not receive legislative or public support."

The agency believes that there is a compelling reason for allowing States to authorize an officer to specify the test to be used and, under controlled circumstances, to require a second test. The use of breath tests is an accurate and appropriate way to determine if a person is driving under the influence of alcohol. Unlike urine and blood tests, however, breath tests do not indicate the presence of drugs other than alcohol. In situations where an officer administers a breath test that gives a negative or very low reading, the agency believes that the officer should have the authority to require the suspect to submit to another chemical test if, and only if, the officer has a reasonable belief that the suspect is impaired because of the use of drugs or drugs and alcohol. To ensure that the suspect will submit to the second test, the agency believes that States should have implied consent laws that make refusal to take the second test result in a license suspension for a greater period of time than for conviction of driving while under the influence.

The agency, therefore, proposes to adopt a supplemental criterion that provides that where State law authorizes the officer to specify not only the first but also the second or subsequent chemical tests to be used, refusal to take any such requested test should result in a license suspension. States can demonstrate compliance by providing copy of the applicable laws.

20. Dram Shop Laws. The Presidential Commission, in its interim report, recommended that States enact or implement dram shop laws. Those laws make dispensers of alcohol liable for injuries that occur when they serve alcohol to an obviously impaired driver and the driver is subsequently involved in a crash. The agency believes that such a law can effectively motivate people to stop serving drivers who are visibly impaired and thus proposes to make enactment of dram shop laws one of the supplemental criteria. States can demonstrate compliance by providing a copy of the applicable law or regulation.

21. Use of Innovative Programs. In proposing supplemental criteria, the agency has attempted to draw upon its own research and demonstration projects, the interim recommendations of the Presidential Commission and the suggestions of the commenters. A review of the proposed supplemental criteria demonstrates the agency has attempted to provide States with maximum flexibility in designing their own alcohol traffic safety programs.

The agency recognizes that there are other potential countermeasures that have not been developed that may be effective in reducing drunk driving. In addition, there are some countermeasure programs that overlap several of the proposed criteria but are not specifically covered by any of them. For example, Oklahoma suggested the use of bartender education programs as a way to reduce drunk driving. Such a program contains elements of the proposed education and dram shop criteria, but does not fully fall within either of them.

The agency believes that States should have an incentive to develop new, unique, and innovative programs. Therefore, the agency proposes that States can meet this final criterion by using innovative alcohol safety programs that are as potentially effective as any of the programs mandated in the other criteria. This would reward States for experimenting with new programs. To demonstrate compliance, States would provide a description of the program and an explanation of why the State believes the program is as potentially effective as any of the other specified criteria as shown by an impact or administrative evaluation.

General Requirements

The Act requires that in order to be eligible for a basic grant, a State must maintain its aggregate level of funding from non-section 408 funds for existing alcoholic traffic safety programs "at or above the average level of such expenditures in its two fiscal years preceding the date of enactment . . . " The purpose of this requirement is to ensure that States continue to maintain their prior level of expenditures for alcohol safety programs from section 402 and other monies. The new section 408 money would then serve to increase their prior efforts, rather than replace money previously spent on alcohol safety and now diverted elsewhere.

The agency proposal to permit States to select either Federal or State fiscal year in determining the level of expenditures that must be maintained was not opposed by any of the commenters. The agency therefore proposes to adopt that definition of fiscal year in the final rule.

Florida requested the agency to clarify what monies are to be considered in determining the funding base, e.g., should section 406, 154 and Federal Highway Administration 402 monies be included. In determining their prior levels of funding, States are to include any money expended for alcohol safety purposes, regardless of source.

Certification and Award Procedure

There are very few comments on the agency's proposed certification and awards procedures. Those that did comment supported the use of a section 402-like certification. NAGHSR supported the proposal to allow States to submit their alcohol safety plan as an expanded portion of the alcohol section of a State's section 402 Highway Safety

Plan. NAGHSR and Oklahoma both supported the use of a so-called "soft match" in determining what States Expenditures are reimbursable under section 408.

Because there were only as few comments on this issue, the agency reproposes the certification and awards procedures set forth in the advance notice and requests States to specifically address the procedures.

The agency also requests comments on an alternative procedure. The purpose of the alternative is to save States from having to prepare unnecessary paperwork by determining a States's eligibility for a grant before a detailed alcohol safety plan is submitted. The alternative procedure would have the following three steps:

1. The State provides information to document and verify its eligibility for the basic and supplemental grant criteria.

2. Upon review by NHTSA, the State would be notified that it is or is not eligible for the grant award based upon the documentation submitted. If eligible for grant award, the State would also be advised of the amount of the grant to be awared subject to receipt and NHTSA formal approval of the State's Alcohol Highway Safety Plan. The Plan must be submitted within a specified period of time (90–120 days) to retain award eligibility.

3. Upon receipt and subsequent approval of the Plan, the grant will be awarded by execution of a Federal-Aid Agreement.

Procedures for Commenting on Proposal

Interested persons are invited to attend the public hearings and/or submit written comments on this proposal. It is requested but not required that 10 copies be submitted.

Anyone who wishes to make an oral statement at the January 11, 1983 public hearings should notify Marian Tomassoni or Joe Jeffrey at the address or telephone number listed at the beginning of this notice no later than seven days before the hearing. Oral statements should be limited to 10 minutes or less. Oral or written clarification on issues raised in the oral statements or in the docket submissions may also be requested by agency representatives conducting the hearing. As time permits, the formal statements may be followed by an open discussion. Written comments to the public docket must be received by January 14, 1983.

The comment period established for this notice is necessarily short in order to meet the February 1, 1983 deadline set by Congress for completion of this rulemaking process.

Comments should not exceed 15 pages in length. Necessary attachments may be added 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 manner.

All comments received before the close of business on January 14, 1983, the comment closing date, will be considered and will be available for examination in the docket at the above address before and after that date.

To the extent possible, comments filed after the closing date will also be considered. However, the rulemaking action may proceed at any time after that date. NHTSA will continue to file relevant material in the docket as it becomes available 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 docket should enclose, in the envelope with their comments, a self-addressed stamped postcard. Upon receiving the comments, the docket supervisor will return the postcard by mail.

Copies of all written statements and comments will be placed in Docket 82–18; Notice 4 of the NHTSA Docket Section in Room 5109, Nassif Building, 400 Seventh Street, S.W., Washington, D.C. 20590. A verbatim transcript of the public hearing will be prepared and placed in the NHTSA docket as soon as possible after the hearing.

Pursuant to the Paperwork Reduction Act, the agency will seek Office of Management and Budget Approval for any new reporting or recordkeeping requirements adopted in the final rule.

The agency has determined that this rulemaking should be classified as significant under the Department's regulatory policies and procedures. The agency has prepared a regulatory evaluation and placed it in the public docket for this rulemaking. The agency has determined that since this rule will not have an annual impact of $100 million on the economy, it is not a major rule within the meaning of Executive Order 12291.

To develop the benefit estimates, the agency determined the degree to which proposals in the notice are presently being implemented. Estimates of safety benefits were then based on satisfying the criteria in those States that presently are not doing so. The impact of the criteria in one or more of four areas was determined where applicable: (1) Drunk drivers on the road, (2) alcohol-related crashes, (3) DWI arrests, and (4) DWI convictions. The agency quantified benefits in terms of reduced numbers of fatalities, injuries, or accidents where possible. Lack of data, or the nature of the criteria themselves at times, precluded quantifying benefits in every criteria; however, in such cases where quantification of benefits is not possible, the general magnitude of the impact is assessed to the degree possible. In some instances, benefits are estimated for specified levels of safety measure effectiveness in order to gauge the potential of the measure for improving highway safety.

I hereby certify that the requirements that will be established by this rulemaking action will not have a significant economic impact on a substantial number of small entities because the States will be the recipients of any funds awarded under the regulation and, therefore, preparation of an Initial Flexibility Analysis is not necessary.

List of Subjects in 23 CFR Part 1209

Alcohol, Grant programs—transportation, Highway safety.

In consideration of the foregoing, it is proposed to add a new Part 1209 to Title 23 of the Code of Federal Regulations to read as follows:

PART 1209—INCENTIVE GRANT CRITERIA FOR ALCOHOL TRAFFIC SAFETY PROGRAMS

Sec.

Authority: 23 U.S.C. 408.

§ 1209.1 Scope.

This part establishes criteria, in accordance with 23 U.S.C. 408, for awarding incentive grants to States that implement effective programs to reduce drunk driving.

§ 1209.2 Purpose.

The purpose of this part is to encourage States to adopt and implement alcohol traffic safety programs by legislation or regulations which will significantly reduce crashes resulting from persons driving while under the influence of alcohol. The criteria established are intended to ensure that the State alcohol traffic safety programs for which incentive grants are awarded meet or exceed minimum levels designed to reduce drunk driving.

§ 1209.3 Definitions.

(a) "Imprisonment" means confinement to a jail, minimum security facility or in-patient rehabilitation or treatment center.

(b) "Prompt suspension" means that mandatory driver license suspension takes place, in at least 60 percent of the cases, no later than 30 days after a person is arrested for an alcohol-related driving offense. In addition, the overall average time to suspend a drivers' license can not exceed 45 days.

(c) "Repeat offender" means any person convicted of an alcohol-related traffic offense more than once in five years.

(d) "Suspension" means:

(1) For first offenses—

Alternative A, the temporary debaring of all driving privileges for 90 days.

Alternative B, the temporary debaring of all driving privileges for 30 days and then the use for 60 days of a restricted license permitting a person to drive only for the purposes of going from a residence to or from a place of employment or to and from a mandated alcohol education or treatment program. Such restricted licenses can only be issued in accordance with Statewide published guidelines and in exceptional circumstances specific to the offender.

(2) For Refusal to take a chemical test, first offense, the temporary debaring of all driving privileges for 90 days.

(3) For Second and Subsequent offenses, including the refusal to take a chemical test, the temporary debaring of all driving privileges for one year.

§ 1209.4 General Requirements.

(a) *Certification Requirements.* To qualify for a grant under 23 U.S.C. 408, a State must:

(1) Meet the requirements of § 1209.5 and, if applicable, the requirements of § 1209.6;

(2) Submit a certification to the Director, Office of Alcohol Countermeasures, NHTSA, 400 Seventh Street, S.W., Washington, D.C. 20590 that (i) it has an alcohol traffic safety program that meets those requirements, (ii) it will use the funds awarded under 23 U.S.C. 408 only for the implementation and enforcement of alcohol traffic safety programs, and (iii) it will maintain its aggregate expenditures from all other sources for its existing alcohol traffic safety programs at or above the average level of such expenditures in fiscal years 1981 and 1982; and

(3) Submit to the agency an alcohol safety plan for one, two or three years, as applicable, that describes the programs the State is implementing in order to be eligible for the grants and provides the necessary information, identified in §§ 1209.5 and 1209.6, to demonstrate that the programs comply with the criteria.

(b) *Limitations on Grants.* A State may receive a grant for up to three fiscal years subject to the following limitations:

(1) The amount received as a basic grant shall not exceed 30 percent of a State's 23 U.S.C. 402 apportionment for fiscal year 1983.

(2) The amount received as a supplemental grant shall not exceed 20 percent of a State's 23 U.S.C. 402 apportionment for fiscal year 1983.

(3) In the first fiscal year the State receives a grant, it shall be reimbursed for up to 75 percent of the cost of its alcohol traffic safety program adopted pursuant to 23 U.S.C. 408;

(4) In the second fiscal year the State receives a grant, it shall be reimbursed for up to 50 percent of the cost of its alcohol traffic safety program adopted pursuant to 23 U.S.C. 408; and

(5) In the third fiscal year the State receives a grant, it shall be reimbursed for up to 25 percent of the cost of its alcohol traffic safety program adopted pursuant to 23 U.S.C. 408.

§ 1209.5 Requirements for a basic grant.

To qualify for a basic incentive grant of 30 percent of its 23 U.S.C. 402 apportionment for fiscal year 1983, a State must have in place and implement or adopt and implement the following requirements:

(a)(1) The prompt suspension, for a period not less than 90 days in the case of a first offender and not less than one year in the case of a repeat offender, of the driver's license of any individual who a law enforcement officer has probable cause under State law to believe has committed an alcohol-related offense, and (i) to whom is administered one or more chemical tests to determine whether the individual was intoxicated while operating the motor vehicle and who is determined, as a result of such tests, to be intoxicated, or (ii) who refuses to submit to such a test as proposed by the officer.

(2) To demonstrate compliance, a State shall submit a copy of the law or regulation implementing the mandatory license suspension, information on the number of licenses suspended, the length of the suspension for first-time and repeat offenders and for refusals to take chemical tests and the average number of days it took to suspend the licenses from date of arrest.

(b)(1) A mandatory sentence, which is not subject to suspension or probation, of imprisonment for not less than 48 consecutive hours or community service for not less than 10 days, for any person convicted of driving while intoxicated more than once in a five year period.

(2) To demonstrate compliance a State shall submit a copy of its law adopting this requirement and data on the number of people convicted of DWI more than once in any five years and the sentences for those persons.

(c)(1) Establishment of 0.10 percent blood alcohol concentration (BAC) as sufficient evidence for finding that a person driving a motor vehicle is intoxicated.

(2) To demonstrate compliance, a State shall submit a copy of its law adopting this requirement.

(d)(1) Increased efforts or resources dedicated to the enforcement of alcohol-related traffic laws and increased efforts to inform the public of such enforcement.

(2) To demonstrate compliance, a State shall submit data showing that it has increased its enforcement and public information efforts.

§ 1209.6 Requirements for a supplement grant.

[The two alternative sets of proposed requirements for a supplemental grant are discussed in the preamble of this notice.] The twenty-one criteria proposed by the agency are as follows:

(a) Establishment of 21 years of age as the minimum age for drinking any alcoholic beverages. To demonstrate compliance, a State shall submit a copy of its law adopting this requirement.

(b) Designation of a single State official as the coordinator for the alcohol highway safety program in the State. To demonstrate compliance, a State shall submit information identifying the official who has been designated as the State coordinator and the extent of the coordinator's authority.

(c) Rehabilitation and treatment programs for persons arrested and convicted of alcohol-related traffic offenses. To demonstrate compliance, a State shall submit a copy of its law or regulation adopting this requirement.

(d) Establishment of State and local Task Forces of governmental and non-governmental leaders to increase awareness of the problem, to more effectively apply drunk driving laws and to involve governmental and private sector leaders in programs attacking the drunk driving problem. To demonstrate compliance a State shall submit a copy of the executive order, regulation, or law setting up the task force and a description of planned activities to assist and encourage the establishement of city, county or regional Task Forces.

(e) A Statewide driver record system readily accessible to the courts and the public which can identify drivers repeatedly convicted of drunk driving. To demonstrate compliance, a State shall submit a description of its record system discussing its accessibility to prosecutors, the courts and the public and providing data on the time required to enter DWI convictions into the system.

(f) Establishment in each major political subdivision of a locally coordinated alcohol traffic safety program, which involves enforcement, adjudication, licensing, public information, education, prevention, rehabilitation and treatment and management and program evaluation. To demonstrate compliance, a State shall submit a description of the number, type and percentage of the State population covered by such local programs.

(g) Prevention and long-term education programs on drunk driving. To demonstrate compliance, a State shall submit a description of its prevention and education program, discussing how it is related to changing societal attitudes and norms against drunk driving with particular attention to the implementation of a comprehensive youth alcohol traffic safety program.

(h) Authorization for courts to conduct screenings of convicted drunk dirvers. To demonstrate compliance, a State shall submit a copy of its law adopting this requirement and a brief description of its screening process.

(i) Development and implementation of State-wide evaluation system to assure program quality and effectiveness. To demonstrate compliance, a State shall provide a copy of the executive order, regulation or law setting up the evaluation program and a copy of the evaluation plan.

(j) Establishment of a plan for acheiving self-sufficiency for the State's total alcohol traffic safety program. To demonstrate compliance, a State shall provide a copy of the plan. Specific progress toward achieving this criterion must be shown in subsequent years.

(k) Use of roadside sobriety checks as part of a comprehensive alcohol safety enforcement program. To demonstrate compliance, a State shall submit data on the frequency and area within a State where roadside checks are being used, purpose of the checks and a copy of its regulation or policy authorizing the use of roadside checks.

(l) Establishment of programs to encourage citizen reporting of alcohol-related traffic offenses to the police. To demonstrate compliance, a State shall submit a copy of its citizen reporting guidelines or policy and data on the degree of citizen participation, e.g., number of citizen reports and the number of related arrests.

(m) Establishment of a 0.08 percent BAC as presumptive evidence of driving while under the influence of alcohol. To demonstrate compliance, a State shall submit a copy of its law adopting this requirement.

(n) Adoption of a one-license/one-record policy. In addition, the State shall fully participate in the National Driver Register and the Driver License Compact. To demonstrate compliance, a State shall submit a copy of the order, regulation or law showing the State has signed the Driver License Compact and has adopted a one-license/one-record policy, and is participating in the National Driver Register.

(o) Authorization for the use of a preliminary breath test where there is probable cause to suspect a driver is impaired. To demonstrate compliance, a State shall submit a copy of its law adopting this requirement.

(p) Elimination of plea-bargaining to non-alcohol-related offenses in the prosecution of alcohol-related traffic offenses. To demonstrate compliance, a State shall submit a copy of its law or court guidelines adopting this requirement.

(q) Provide victim assistance and victim restitution programs and require the use of victim impact statement prior to sentencing in all cases where death or serious injury results from an alcohol-related traffic offense. To demonstrate compliance, a State shall submit a copy of its law or court guidelines adopting this requirement.

(r) Mandatory impoundment or confiscation of license plate/tags of any vehicle operated by an individual whose license has been suspended or revoked for an alcohol-related offense. To demonstrate compliance a State shall submit a copy of its law adopting this requirement.

(s) Enactment of legislation or regulations authorizing the arresting officer to determine the type of chemical test to be used to measure intoxication and to authorize the arresting officer to require a second chemical test where the arresting officer has a reasonable belief that the driver is under the influence of drugs. To demonstrate compliance, a State shall submit a copy of its law adopting this requirement.

(t) Enactment of dram shop laws. To demonstrate compliance, a State shall submit a copy of its law or regulation adopting this requirement.

(2u1) Use of innovative programs to demonstrate compliance, a State shall submit a description of its program and an explanation showing that the program will be as effective as any of the programs adopted to comply with the other supplemental criteria.

§ 1209.7 Award procedures.

For each Federal fiscal year, grants under 23 U.S.C. 408 shall be made to eligible States upon submission of the alcohol safety plan and certification required by § 1209.4. Such grants shall be made until all eligible States have received a grant or until there are insufficient funds to award a full grant to a State. Time of submission shall be determined by the postmark for certifications delivered through the mail and by stamped receipt for certifications delivered in person.

(Sec. 101, Pub. L. 97-364; 96 Stat. 1738 (23 U.S.C. 408); delegation of authority at 49 CFR 1.50)

Issued on December 30, 1982.

Raymond A. Peck, Jr.,

Administrator.

[FR Doc. 83-310 Filed 1-3-83; 12:39 pm]

BILLING CODE 4910-59-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[LR-183-76]

Disallowance of Certain Items as Deductions for Estate and Income Tax Purposes; Withdrawal of Notice of Proposed Rulemaking

AGENCY: Internal Revenue Service, Treasury.

ACTION: Withdrawal of notice of proposed rulemaking.

SUMMARY: This document withdraws the notice of proposed rulemaking, relating to the disallowance of certain items as deductions from the gross estate for estate tax purposes and from gross income for income tax purposes, that appeared in the **Federal Register** on Monday, December 13, 1982 (47 FR 55697). The notice is being withdrawn in order to meet all applicable procedural requirements pertaining to its issuance.

FOR FURTHER INFORMATION CONTACT: Neil W. Zyskind of the Legislation and Regulations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224, Attention CC:LR:T, (202-566-3289), not a toll-free call.

SUPPLEMENTARY INFORMATION:

Background

This document withdraws the notice of proposed rulemaking that appeared in the **Federal Register** on Monday, December 13, 1982 (47 FR 55697). That notice contained proposed amendments to the regulations under secton 642(g) of the Internal Revenue Code of 1954 (Code). If adopted, the rules would have provided guidance to the public on the disallowance of certain items as deductions from the gross estate for estate tax purposes and from gross income for income tax purposes. However, the notice is being withdrawn in order to meet all applicable procedural requirements pertaining to its issuance.

Drafting Information

The principal author of this document is Neil. W. Zyskind of the Legislation and Regulations Division, Office of the Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing this document, both in matters of substance and style.

List of Subjects in 26 CFR 1.641–1.692–1

Income taxes, Estates, Trusts and trustees, Beneficiaries.

Withdrawal of Notice of Proposed Rulemaking

The proposed amendments to 26 CFR Part 1 relating to the disallowance of certain items as deductions for estate and income tax purposes published in the **Federal Register** (47 FR 55607, FR Doc. 82–33770) on December 13, 1982, are hereby withdrawn.

Roscoe L. Egger, Jr.,

Commissoner of Internal Revenue.

[FR Doc. 83–252 Filed 1–4–83; 8:45 am]

BILLING CODE 4830–01–M

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26 CFR Part 48

[LR–2117]

Manufacturers Excise Taxes on Petroleum Products

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed amendments which would update and revise the regulations concerning manufacturers excise taxes on petroleum products.

DATE: Written comments and requests for a public hearing must be delivered or mailed by March 7, 1983. Except as otherwise provided in this document, the amendments are proposed to be effective for sales of gasoline and lubricating oil after December 31, 1954.

ADDRESS: Send comments and requests for a public hearing to: Commissioner of Internal Revenue, 1111 Constitution Ave., NW., Washington, D.C. 20224, Attention: CC:LR:T (LR–2117).

FOR FURTHER INFORMATION CONTACT: Cynthia L. Clark of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Ave., NW., Washington, D.C. 20224, Attention: CC:LR::T (202–566–4336), not a toll-free call.

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed amendments to the Manufacturers and Retailers Excise Tax Regulations (26 CFR Part 48) under sections 4081 through 4102 of the Internal Revenue Code of 1954. However, this document does not provide proposed regulations under section 4081(c), relating to non-imposition of tax on gasoline mixed with alcohol, as added by section 221(a) of the Energy Tax Act of 1978. This document also does not provide proposed regulations under the amendments to section 4093, relating to exemption from imposition of tax on lubricating oil, made by section 404 of the Energy Tax Act of 1978. Regulations under section 4081(c) were published in the **Federal Register** Wednesday, December 5, 1979 (44 FR 69924). Regulations relating to the amendments to section 4093 made by the Energy Tax Act of 1978 were provided by another regulation project (LR–173–78). These amendments are to be issued under the authority contained in section 7805 of the Code. [68A Stat. 917, 26 U.S.C. 7805.]

Explanation of Provisions

The proposed regulations would update and revise the existing regulations regarding manufacturers excise taxes on petroleum products.

Comments and Requests for a Public Hearing

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

Executive Order 12291 and Regulatory Flexibility Act

The Commissioner of Internal Revenue has determined that this proposed rule is not a major rule as defined in Executive Order 12291. Accordingly, a Regulatory Impact Analysis in not required. The Internal Revenue Service has concluded that although this document is a notice of proposed rulemaking that solicits public comment, the regulations proposed herein are interpretative and the notice and public procedure requirements of 5 U.S.C. 553 do not apply. Accordingly, no Regulatory Flexibility Analysis is required for this rule.

Drafting Information

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

List of Subjects in 26 CFR Part 48

Agriculture, Arms and munitions, Coal, Excise taxes, Gasohol, Gasoline, Motor vehicles, Petroleum, Sporting goods, Tires.

Proposed Amendments to the Regulations

The proposed amendments to 26 CFR Part 48 are as follows:

PART 48—[AMENDED]

Paragraph 1. Sections 48.4081–1, 48.4082–1, 48.4083–1, 48.4083–2, 48.4084–1, 48.4091, 48.4091–1, 48.4091–2, 48.4091–3, 48.4091–4, 48.4091–5, 48.4091–6, 48.4092–1, 48.4093–1, 48.4101–1, and 48.4102–1 of the Manufacturers and Retailers Excise Tax Regulations are removed.

Par. 2. The following new § 48.4081–1 is added immediately after § 48.4073–4 to the Manufacturers and Retailers Excise Tax Regulations:

Gasoline

§ 48.4081–1 Imposition and rates of tax.

(a) *In general.* Section 4081 imposes a tax on the sale of gasoline by its producer or importer, or by any producer of gasoline, whether or not the gasoline was produced by it. For the requirement that producers and importers of gasoline be registered, see section 4101 and § 48.4101–1. See section 4082(c) and paragraph (c) of § 48.4082–1

for certain uses of gasoline that are considered to be sales of gasoline.

(b) *Rate of tax.* Tax is imposed on the sale of gasoline at the rate applicable on the date on which the gasoline is sold. See section 4081 for the rate of tax.

(c) *Liability for tax.* The tax imposed by section 4081 is payable by the producer or importer making the sale of the gasoline.

Par. 3. The following new §§ 48.4082–1, 48.4083–1, 48.4083–2, 48.4084–1, 48.4091–1, 48.4091–2, 48.4091–3, 48.4091–4, 48.4091–5, 48.4092–1, 48.4093–1, 48.4101–1, and 48.4102–1 are added immediately after § 48.4081–2:

§ 48.4082–1 Definitions.

For purposes of the regulations in this subpart, unless otherwise expressly indicated:

(a) *Producer.* For purposes of the tax imposed by section 4081, the term "producer" includes an actual producer, a refiner, compounder, or blender, and a dealer selling gasoline exclusively to producers of gasoline. The term also includes a person who is a "wholesale distributor" as defined in paragraph (d) of this section. The term also includes a common carrier by pipeline subject to the Interstate Commerce Act that is engaged in transportation for hire of gasoline, but only with respect to gasoline acquired tax free by the carrier for use exclusively in indemnifying in kind (normally the shipper) for tax-free gasoline lost in transit through evaporation, leakage, spillage, theft, or casualty. Any other person to whom gasoline is sold tax free under this subpart is considered to be a "producer", but only with respect to gasoline acquired tax free. The mere blending or mixing by any person of gasoline to adapt it for seasonal use or to meet the requirements of particular vendees, or mere blending which is not a substantial part of the blender's regular year-round business, does not cause the person to be a producer.

(b) *Gasoline.* (1) The term "gasoline" includes all products commonly or commercially known or sold as gasoline that are suitable for use as a motor fuel. The term does not include any product that (i) is sold as a product other than gasoline, and (ii) has an American Society for Testing Materials ("A.S.T.M.") octane number of less than 75 as determined by the "motor method".

(c) *Use defined as sale*—(1) *In general.* When an importer or producer of gasoline uses gasoline purchased by it tax free, or gasoline it imported or produced (otherwise than in the production of gasoline or of special fuels referred to in section 4041), the use constitutes a sale of the gasoline by the producer or importer. The phrase "otherwise than in the production of gasoline or of special fuels referred to in section 4041" includes any use of gasoline by its producer or importer other than as component material in the manufacture or production of gasoline or special fuels. For circumstances under which gasoline may be used tax free as a material in the manufacture of any other article, see section 4218(a) and § 48.4218–1(b)(4).

(2) *Indemnification for gasoline lost in transit.* An indemnification in kind for gasoline lost in transit, made by a pipeline common carrier that is a producer for purposes described in paragraph (a)(1) of this section, is not considered to be a sale or use of gasoline for purposes of the tax imposed by section 4081.

(d) *Wholesale distributor*—(1) *In general.* The term "wholesale distributor" includes any person who—

(i) Holds one's self out to the public as being engaged in the trade or business of selling gasoline to producers of gasoline (including other wholesale distributors), to retailers of gasoline, or to users of gasoline who purchase in bulk quantities for delivery into bulk storage tanks;

(ii) Actually makes more than casual sales of gasoline to the producers, retailers, or users described in subdivision (i) of this subparagraph (1); and

(iii) Has elected to be treated as a producer of gasoline as provided in paragraph (d)(2) of this section.

(2) *Election.* The election provided in paragraph (d)(1)(iii) of this section is made by registering as a producer of gasoline in accordance with the provisions of section 4101 and the regulations thereunder. A wholesale distributor will be considered a producer of gasoline only with respect to gasoline sold by the distributor on and after the date on which the distributor is issued a Certificate of Registry (Form 637) as a producer of gasoline.

(3) *Persons otherwise qualifying as producers.* The term "wholesale distributor" does not include any person who is a producer or importer of gasoline without regard to paragraph (d)(1).

(4) *Gasoline on hand.* Since a wholesale distributor is considered a producer with respect to all gasoline sold by it on and after the date on which it qualifies as a producer of gasoline, the distributor may incur tax liability under section 4081 on the sale of gasoline which it has on hand at the time it so qualifies and on which tax under section 4081 has already been paid. Such a wholesale distributor is assumed to sell the gasoline which it has on hand before selling any gasoline which it purchases after qualifying as a producer of gasoline. However, the distributor may take a credit against the tax imposed under section 4081 on the sale of any such gasoline on hand in an amount equal to any tax which had been previously paid pursuant to section 4081 with respect to the sale of the gasoline.

(e) *Effective date.* In general, the regulations in this section are effective with respect to gasoline sold on or after December 31, 1954. However, the first sentence of paragraph (b)(1) of this section is effective only with respect to gasoline sold on or after July 1, 1965. In addition, the regulations in this section dealing with wholesale distributors are effective with respect to gasoline sold on or after January 1, 1960.

§ 48.4083–1 Exemptions; sales to producers of gasoline.

(a) *In general.* Gasoline may be sold tax free by a producer or importer of gasoline to other producers of gasoline, but only if:

(1) Both the seller and the purchaser are registered in accordance with the provisions of section 4101,

(2) The purchaser has notified the seller in writing which district director the purchaser is registered with and the certificate registry number, and

(3) In the case of sales to a pipeline common carrier—

(i) The carrier also certifies to the seller that the gasoline purchased tax free will be used exclusively to indemnify in kind losses of tax-free gasoline by the common carrier in transit through evaporation, leakage, spillage, theft, or casualty, and

(ii) The carrier maintains for inspection by an Internal Revenue Service officer the records required under paragraph (b) of this section.

A single notification containing the information described in subparagraph (2) or (3) of this paragraph (a) may cover all sales by the seller to the purchaser made during a designated period not to exceed 12 successive calendar quarters.

(b) *Pipeline common carrier records.* Pipeline common carriers who qualify as producers of gasoline under the conditions described in paragraph (a) of § 48.4082–1 must, in addition to any other records required under section 6001 and the regulations thereunder, maintain for inspection the following information:

(1) *Records of purchases.* The records of each purchase shall include:

(i) Name and address of the seller,

(ii) Date of purchase and place of delivery of each lot purchased, and

(iii) Quantity and grade of each lot purchased.

(2) *Records of indemnifications.* The records of indemnifications shall include:

(i) Name and address of the person indemnified,

(ii) Date and place of indemnification with respect to each shipment,

(iii) Quantity and grade of each shipment,

(iv) Quantity and grade of gasoline lost through evaporation, leakage, spillage, theft, or casualty from each shipment that is indemnified in kind upon termination of the shipment,

(v) An explanation of the nature or type of the loss, and

(vi) The percent that the loss from each shipment represents to the total quantity of the shipment.

(c) *Seller not notified prior to filing of excise tax return.* If the written information required under paragraph (a) (2) and (3) of this section is not furnished to the seller before the seller files a return covering taxes due for the period during which the sale was made, the seller must include the tax on the sale in its return for that period. However, if the information is later obtained, a claim for refund of the tax paid on the sale may be filed by the seller, or a credit may be claimed, upon compliance with the provisions of section 6416 (a) and § 48.6416 (a)–1.

(d) *Seller relieved of liability.* See section 4221(c) and § 48.4221–1(b) for provisions under which the seller is relieved of liability for tax in respect of gasoline sold tax free under section 4083 when it accepts in good faith the evidence required of the purchaser in support of the tax-free sale. If, however, the seller has knowledge at the time of its sale that the purchaser is not registered pursuant to section 4101, the seller is not relieved, under the provisions of section 4083, from liability for the tax. For provisions under which the purchaser is considered to be producer of gasoline purchased tax free, see section 4082(a).

§ 48.4083–2 Other tax-free sales.

For provisions relating to other tax-free sales of gasoline, see—

(a) Section 4221, relating to certain tax-free sales;

(b) Section 4222, relating to registration; and

(c) Section 4223, relating to special rules relating to further manufacture; and the regulations thereunder contained in Subpart H of this part.

§ 48.4084–1 Cross references; payments to ultimate purchasers of gasoline.

For provisions relating to payments that may be made to the ultimate purchaser of gasoline—

(a) Used on a farm for farming purposes, see section 6420 and § 48.6420(a)–1; or

(b) Used for certain nonhighway purpose, by local transit systems, or by certain taxicabs, see section 6421 and §§ 48.6421 (a)–1 and 48.6421 (b)–1 and section 6427(e).

Lubricating Oil

§ 48.4091–1 Tax on lubricating oil.

(a) *Imposition of tax.* Section 4091 imposes a tax on lubricating oil (other than cutting oil) sold in the United States by the manufacturer or producer of the oil. For definition of the term "cutting oil", see paragraph (b) of § 48.4092–1.

(b) *Rate of tax.* Tax is imposed upon lubricating oil sold on or after January 1, 1966, at the rate prescribed in section 4091. In the case of nonfluid lubricating oil sold by weight, 8 pounds to the gallon must be used as the basis for computing the tax.

(c) *Scope of regulations.* The regulations in this section and in §§ 48.4091–2 through 48.4093–1 are effective with respect to lubricating oil sold on or after January 1, 1966.

§ 48.4091–2 Definitions.

(a) *Lubricating oil.* The term "lubricating oil" includes all oil, regardless or origin, which:

(1) Is suitable for use as a lubricant, or

(2) Is sold for use as a lubricant. The term does not include synthetic materials which possess lubricating properties and does not ordinarily include products of the type commonly known as grease. Oleaginous substances which are classed as grease and which contain oil are not subject to the tax when of a worked consistency of less than 390 penetration units or an unworked consistency of less than 360 penetration units by the method of test of the American Society for Testing and Materials D–217–68.

(b) *Manufacturer.* (1) For purposes of the tax imposed under section 4091, the term "manufacturer" includes:

(i) Any person who produces lubricating oil by any process of manufacturing, refining, or compounding, or any manipulation involving substantially more than mere mixing of taxable oils, and

(ii) Any person who produces lubricating oil by mixing taxable oils with other substances.

(2) For purposes of the tax imposed under section 4091, the term "manufacturer" does not include:

(i) Any person who merely blends or mixes two or more taxable oils,

(ii) Any person who merely cleans, renovates, or refines used or waste lubricating oil, or

(iii) Any person who merely blends or mixes one or more taxable oils with used of waste lubricating oil that has been cleaned, renovate, or refined.

Neither does the term "manufacturer" include an importer of lubricating oil, since section 4091 does not impose a tax on lubricating oil sold by the importer of the lubricating oil.

§ 48.4091–3 Sales of cutting oil.

(a) *Exemption certificates.* (1) Lubricating oil may be sold tax free by the manufacturer or producer for use, or for resale for use, in cutting and machining operations on metals if the manufacturer obtains a properly executed cutting oil certificate from its purchaser. The following form of certificate is acceptable and must be adhered to in substance:

Cutting Oil Certificate

(For use by purchaser of lubricating oil, otherwise subject to tax under section 4091 of the Internal Revenue Code of 1954, as amended, for use by it in cutting and machining operations on metals or for resale for such use.)

(Date) ———————, 19 ——

The undersigned certifies that he/she or the (Name of purchaser if other than undersigned) ——————— of which he/she is (Title) ———————, is in the business of (State business and, except in case of a purchase for resale, article or articles manufactured) ——————— and that the oil covered by the accompanying order or contract for purchase from (Name and address of vendor) ——————— of oil produced by (Name and address of producer if other than vendor) ——————— is purchased for the following—

Check one:

——— use as a lubricant in cutting and machining operations on metals:

———

——— resale for use as a lubricant in cutting and machining operations on metals.

The purchaser understands that it must be prepared to establish by satisfactory evidence the actual use or disposition made of such oil, and that upon its use of the oil for a lubricating purpose other than in cutting and machining operations on metals, or upon its sale or other disposition of the oil, prior to use in cutting and machining operations on metal, it is required to notify the manufacturer. The purchaser further understands that if any of the oil purchased tax free by use of this certificate is resold by it for use as a lubricant in cutting and machining operations on metals or for resale

for such use, it must obtain a similar certificate from its vendee. In addition, the purchaser also understands that the above-listed oils which are purchased tax free by use of this certificate do not qualify for the tax credit or payment under sections 39(a)(3) and 6424 of the Code.

The undersigned understands that he/she and all other parties who make fraudulent use of this certificate for the purpose of purchasing oil tax free instead of at the tax rate of 6 cents a gallon are subject to a fine of not more than $10,000, or imprisonment for not more than 5 years, or both, together with the costs of prosecution.

(Signature) _____

(Address) _____

(2) A manufacturer making a tax-free sale under a cutting oil certificate must use reasonable diligence to satisfy itself that the use of the certificate is warranted under this paragraph (a). If the manufacturer has knowledge at the time of its sale that the oil is not intended for use as specified in the certificate, the manufacturer is liable for the tax on the sale at the rate of 6 cents per gallon. If the manufacturer receives information establishing that oil sold tax free for us in cutting machining operations on metals has not been and will not be so used by the purchaser, or that oil sold to a purchaser tax free for resale for use in cutting and machining operations on metals has been resold for use otherwise, or has not been and will not be used by the ultimate purchaser in cutting and machining operations on metals, tax at the rate of 6 cents per gallon with respect to the sale by the manufacturer must be included in the manufacturer's return for the return period in which the information is received.

(3) Where only occasional sales of cutting oil are made to a purhaser, a separate cutting oil certificate must be furnished for each order. However, where sales of cutting oil are regularly or frequently made to a purchaser a certificate covering all orders for a specified period not to exceed 12 calendar quarters is acceptable. Such certificates and proper records of invoices, orders, etc., relative to cutting oil sales must be kept for inspection by the district director as provided in section 6001 of the Code.

(4) If the cutting oil certificate in respect of any sale to which this paragraph (2) applies is not obtained before the time the manufacturer files its return for the period during which the sale was made, the manufacturer must include tax on that sale in its return. If a certificate is later obtained, a claim for refund may be filed or a credit claimed under section 6402 for excess tax paid. The manufacturer filing the claim must comply with the requirements of section 6416(a) and § 48.6416(a)–1.

(b) *Containers of 5 gallons or less.* Lubricating oil may be sold tax free by the manufacturer or producer as cutting oil without the necessity of obtaining exemption certificates where—

(1) The manufacturer or producer packages the oil in containers of 5 gallons or less furnished by it and labeled by it to indicate use of the oil only in cutting and machining operations on metals;

(2) Any advertising of the oil so packaged and labeled indicates that the oil is for use only in cutting and machining operations on metals; and

(3) The oil so packaged and labeled is sold by the manufacturer or producer to a purchaser for such use by it or for resale by it for such use.

(c) *Oil unsuitable for lubricating use except in cutting and machining operations on metals.* No exemption certificate is required where the Commissioner has determined certain oil to be suitable for use as a lubricant only in cutting and machining operations on metals. Oils as to which the Commissioner has made such a determination may be sold tax free, whether in bulk or otherwise, unless the manufacturer has knowledge, before or at the time of the sale of such oil, that the oil is not being purchased for use, or for resale for use, in cutting and machining operations on metals. However, the Commissioner may require that the oil be specifically represented to the purchaser, whether by labeling or otherwise, as being suitable for use only in cutting and machining operations on metals.

§ 48.4091–4 Sales after December 31, 1965, of oil seldom used as a lubricant.

(a) *General rule.* The Commissioner may issue determinations that any oil that is suitable for use as a lubricant is seldom used as a lubricant. This determination is based on the specific use of the oil rather than on its physical characteristics. If the Commissioner makes such a determination, the sale by the manufacturer of the oil directly to a purchaser for the specific nonlubricating use under a name identifying it for such use, or for resale by it for the specific nonlubricating use under a name identifying it for such use, may be made tax free. Except as provided in paragraph (c) of this section, the manufacturer, in order to establish the right to sell lubricating oil tax free under this section, must obtain from the purchaser and retain in its possession a properly executed exemption certificate.

(b) *Exemption certificates*—(1) *Form of certificate.* The following form of certificate is acceptable and must be adhered to in substance:

Exemption Certificate

(For use by purchaser of lubricating oil, otherwise subject to tax under section 4091 of the Internal Revenue Code of 1954, as amended, which the Commissioner of Internal Revenue has determined to be seldom used as a lubricant, for use by the purchaser for nonlubricating purposes, or for resale for nonlubricating use.)

(Date) _____, 19—

The undersigned certifies that he/she, or the (Name of purchaser if other than undersigned) _____ of which he/she is (Title) _____, is in the business of (State business and, except in case of a purchase for resale, article or articles manufactured) _____ and that the oil covered by the accompanying order or contract for purchase from (Name and address of vendor) _____ of oil produced by (Name and address of producer if other than vendor) _____ is (Type or types of oil which the Commissioner has determined to be seldom used as a lubricant) _____ and is purchased for—

Check One:

_____ The following nonlubricating purposes: _____

_____ Resale for nonlubricating use (specify use or uses if known): _____

The purchaser understands that if any of the oil purchased tax free by use of this certificate is resold by it for nonlubricating use or for further resale for such use, it must obtain a similar certificate from its vendee. The purchaser further understands that it must be prepared to establish by satisfactory evidence the actual use or disposition made of such oil, and that upon use of the oil for a lubricating purpose, or sale for a lubricating purpose, it is required to notify the vendor named above. The purchaser also understands that if its vendee notifies it that the oil covered by this certificate has been used for a lubricating purpose or sold for a lubricating purpose, it is required to so notify the vendor from whom it purchased the oil covered by this certificate. In addition, the purchaser understands that the above listed oils which are purchased tax free by use of this certificate do not qualify for the tax credit or refund under sections 39(a)(3) and 6424 of the Code.

The undersigned understands that he/she and all other parties who make fraudulent use of this certificate for the purpose of purchasing oil tax free are subject to a fine of not more than 5 years, or both, together with the costs of prosecution.

(Signature) _____

(Address) _____

(2) *Period covered.* Where only occasional sales of an oil which the Commissioner has determined to be seldom used as a lubricant are made to a purchaser for nonlubricating use, a separate exemption certificate must be furnished for each order. However, where sales of such oil for nonlubricating use are regularly or

frequently made to a purchaser, a certificate covering all orders for a specified period, not to exceed 12 calendar quarters, is acceptable. The certificates and proper records of invoices, orders, etc., relative to sales of lubricating oil under this section must be kept for inspection by the district director as provided in section 6001 of the Code.

(3) *Certificate not obtained prior to filing of manufacturer's excise tax return.* Except as provided in paragraph (c) of this section, if an exemption certificate in respect of any sale to which this section applies is not obtained before the manufacturer files a return covering taxes due for the period during which the sale was made, the manufacturer must include the tax on the sale in its return for that period. If a certificate is later obtained the manufacturer will be entitled to file a claim for credit or refund of tax under section 6402. However, the manufacturer must comply with the requirements of section 6416(a) and § 48.6416(a)–1.

(4) *Duty of manufacturer to ascertain validity of certificate.* A manufacturer making a tax-free sale under a certificate for oil seldom used as a lubricant must use reasonable diligence to satisfy itself that the use of the certificate is warranted under paragraph (a) of this section. If the manufacturer has knowledge at the time of its sale that the oil is not intended for nonlubricating use, the manufacturer is liable for the tax on the sale at the rate imposed by section 4091 on each gallon. If the manufacturer receives information establishing that oil sold tax free for nonlubricating use has not been and will not be so used by the purchaser, or that oil sold to a purchaser tax free for resale for nonlubricating use has been resold for use otherwise, or has not been and will not be used by the ultimate purchaser in a nonlubricating use, tax at the rate imposed by section 4091 on each gallon with respect to the sale by the manufacturer must be included in the manufacturer's return for the period in which the information is received.

(c) *Oils determined before July 1, 1966, to be "seldom used as a lubricant".* The requirement of an exemption certificate is waived in respect of sales by the manufacturer of oils which, before July 1, 1966, the Commissioner determined to be seldom used as a lubricant but used almost exclusively for nonlubricating purposes.

(d) *Tax-paid oil used for nontaxable purpose.* If oil, with respect to which the manufacturer has paid tax under section 4091, is subsequently used in a qualified business use or in a qualified bus, the ultimate purchaser of the oil may file a claim for refund under section 6424, or for credit under section 39(a)(3), as applicable.

§ 48.4091–5 Other tax-free sales.

For provisions relating to tax-free sales of lubricating oils (including cutting oil), see:

(a) Section 4093, relating to exemption of sales to producers;

(b) Section 4221, relating to certain tax-free sales;

(c) Section 4222, relating to registration; and

(d) Section 4223, relating to special rules with respect to sales for further manufacture,

and the regulations thereunder.

§ 48.4092–1 Definitions.

(a) *Certain vendees considered as manufacturers.* Any person who purchases lubricating oil free of tax under section 4093(a)(see § 48.4093–1) is considered to be the manufacturer of the lubricating oil so purchased.

(b) *Definition of cutting oil.* The term "cutting oil" includes all lubricating oil which is sold for use in cutting and machining operations on metals. The term does not include any oil which is sold for use in cutting and machining operations on plastics or any other substance which is not a metal. The term "cutting and machining operations" includes, but is not limited to, forging, drawing, rolling, shearing, punching, and stamping.

§ 48.4093–1 Tax-free sales to manufacturers for resale.

(a) *In general.* No tax attaches to the sale of lubricating oil by the manufacturer direct to another manufacturer of lubricating oil for resale by it, if:

(1) Both the purchasing manufacturer and the selling manufacturer are registered as manufacturers of lubricating oil in accordance with the provisions of § 48.4101–1, and

(2) The purchasing manufacturer notifies the selling manufacturer in writing that:

(i) The lubricating oil to be purchased by it in the period beginning ————, and ending ———— (such period not to exceed 12 calendar quarters) is purchased for resale by it, unless otherwise indicated, and it is registered with the District Director at ———— under Certificate of Registry No. ————.

It is immaterial for purposes of this section whether the lubricating oil is to be resold for general lubricating use, for lubricating use in cutting and machining operations on metals, or for nonlubricating use. See § 48.4092–1 for liability of the purchasing manufacturer.

(b) *Selling manufacturer not notified prior to filing of excise tax return.* If the written information required under paragraph (a) (2) of this section is not furnished to the selling manufacturer before the manufacturer files a return covering taxes due for the period during which the sale was made, the manufacturer must include the tax on the sale in its return for that period. However, if the information is later obtained, a claim for refund of the tax paid on the sale may be filed, or a credit may be claimed, under section 6402. The manufacturer filing the claim must comply with the provisions of section 6416(a) and § 48.6416(a)–1.

(c) *Selling manufacturer relieved of liability.* See section 4221(c) and § 48.4221–1(b) for provisions under which the selling manufacturer is relieved of liability for the tax in respect of oil sold tax free under section 4093 where it accepts in good faith the evidence required of the purchasing manufacturer in support of the tax-free sale. If, however, the selling manufacturer has knowledge at the time of its sale that the lubricating oil sold by it is not intended for resale as indicated by the purchaser, or that the purchaser is not a registered manufacturer of lubricating oil, the selling manufacturer is not relieved under the provisions of section 4093 of liability for the tax. For provisions under which the purchasing manufacturer is considered to be the manufacturer of lubricating oil purchased tax free for resale by it, see § 48.4092–1.

Special Provisions Applicable to Petroleum Products

§ 48.4101–1 Registration.

(a) *Requirement*—(1) *In general.* Except to the extent otherwise provided in paragraph (a)(2) of this section, every producer or importer of gasoline (see section 4082 and the regulations thereunder) and every manufacturer of lubricating oil (see § 48.4091–2(b)) must, before incurring any liability for tax with respect to such articles under section 4081 or 4091, as the case may be, make application for registry in accordance with the provisions of paragraph (b) of this section. Upon approval of the application, the applicant will be furnished a Certificate of Registry bearing its registration number. Such certificate may not be transferred from one person to another. For the civil penalty imposed for failure to register, see section 7272. For provisions relating to the criminal

penalties imposed for failure to register as required by section 4101, for false representation as a person so registered, or for willfully making any false statement in an application for registry under such section, see section 7232.

(2) *Exception for prior registration or applications.* In any case in which a producer or importer of gasoline, or a manufacturer of lubricating oil, has made application for registry under corresponding provisions of prior regulations, or holds a Certificate of Registry in effect under the prior regulations, the person is not required to make application for registry under this section, unless the district director furnishes the person with written notification that an application is required. In that event, the application of registry must be made at the time, in the form, and in the manner prescribed in written notification.

(b) *Application for registry.* The application for registry required under paragraph (a) of this section must be prepared on Form 637 in accordance with the instructions and applicable regulations. The application shall include a statement as to whether the applicant is a refiner, compounder, blender, actual producer, or pipeline common carrier of gasoline; whether it is a dealer selling exclusively to producers of gasoline; whether it is a wholesale distributor of gasoline; and whether it is a manufacturer of lubricating oil. In addition, the application shall include a statement setting forth in detail:

(1) A description of the equipment and facilities, if any, maintained for the production of gasoline or lubricating oil, as the case may be,

(2) A description of the equipment and methods actually employed in such production,

(3) The ingredients or materials utilized,

(4) In the case of a refiner, compounder, blender, or actual producer of gasoline, the percentage which its sales, if any, of gasoline produced by it is expected to bear to its total sales of gasoline,

(5) In the case of a wholesale distributor of gasoline, a description of the storage facilities maintained by the distributor and the percentage which its bulk sales of gasoline is expected to bear to its total sales of gasoline,

(6) In the case of a pipeline common carrier of gasoline for the purposes described in § 48.4082–1(a), a description of the pipeline equipment, terminal points, and storage facilities, and

(7) In the case of a manufacturer of lubricating oil, the percentage which its sales of lubricating oil produced by it is expected to bear to its total sales of lubricating oil.

The application for registry on Form 637 required under paragraph (a) of this section must be signed by the individual if the applicant is an individual; the president, vice president, or other principal officer, if the applicant is a corporation; a responsible and duly authorized member or officer having knowledge of its affairs, if the applicant is a partnership or other unincorporated organization; or the fiduciary, if the applicant is a trust or estate. The application on Form 637 shall be filed with the district director for the district in which the applicant has his or her principal office or place of business. Copies of Form 637 may be obtained from any district director.

(c) *Effective date.* The regulations in this section are effective with respect to gasoline and lubricating oil sold on or after July 1, 1965.

§ 48.4102–1 Inspection of records by State or local tax officers.

(a) *Inspection of records maintained by taxpayer.* The records which a producer or importer of gasoline or a manufacturer of lubricating oil is required to keep pursuant to section 6001 and the regulations thereunder must be open to inspection by any officer of any State or political subdivision thereof, or of the District of Columbia, who is charged with the enforcement or collection of any tax on gasoline or lubricating oil.

(b) *Inspection of records maintained by Internal Revenue Service*—(1) *In general.* The records maintained by the Internal Revenue Service with respect to the taxes imposed by sections 4081 and 4091 on the sale or use of gasoline or lubricating oil, respectively, shall, upon the request of an officer (described in paragraph (b)(2) of this section) of a State or political subdivision thereof, or of the District of Columbia, be open to inspection by the officer for purposes of collection or enforcement.

(2) *Requests for inspection.* Requests for inspection under this paragraph shall be made in writing, signed by any officer of a State, political subdivision, or the District of Columbia, who is charged with the enforcement or collection of any tax on gasoline or lubricating oil imposed by the State, political subdivision, or the District of Columbia, and shall be addressed to the director of the Internal Revenue Service Center having custody of the records which it is desired to inspect. Each such request shall state (i) the kind of records (whether pertaining to gasoline or lubricating oil) it is desired to inspect, (ii) the period or periods covered by the records involved, (iii) the name of the officer by whom the inspection is to be made, (iv) the name of the representative of the officer who has been designated to make the inspection, (v) by specific reference, the law of the State, political subdivision, or the District of Columbia imposing the tax which the officer is charged with collecting or enforcing, and the law under which the officer is so charged, and (vi) the purpose for which the inspection is to be made. The service center director will notify the person making the request upon approval or disapproval of the request.

(3) *Time and place for inspection.* In any case where a request for inspection under this paragraph (b) is approved, the inspection shall be made in the office of the service center director having custody of the records which it is desired to inspect, but only in the presence of an internal revenue officer or employee and during the regular hours of business of the office.

Roscoe L. Egger, Jr.,

Commissioner of Internal Revenue.

[FR Doc. 83–256 Filed 1–4–83; 8:45 am]

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26 CFR Part 48

[LR–2115]

Manufacturers Excise Taxes on Sporting Goods and Firearms and Other Administrative Provisions of Special Application to Manufacturers and Retailers Excise Taxes

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed amendments which would revise and update the regulations concerning manufacturers excise taxes on sporting goods and firearms and other administrative provisions especially applicable to manufacturers and retailers excise taxes. These proposed amendments, if adopted, will revise and update Part 48 to achieve greater clarity and conform the regulations to numerous amendments to the Internal Revenue Code of 1954 made after 1964.

DATES: Written comments and requests for a public hearing must be delivered or mailed by May 5, 1983. Except as otherwise provided, the amendments made by this document are proposed to be effective after December 31, 1954.

ADDRESS: Send comments and requests for a public hearing to: Commissioner of

Internal Revenue, 1111 Constitution Ave. NW., Washington, D.C. 20224, Attention CC:LR:T (LR–2115).

FOR FURTHER INFORMATION CONTACT: For further information write to the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Ave. NW., Washington, D.C. 20224, Attention CC:LR:T (LR–2115), or telephone either, Annie R. Alexander at 202–566–3287 in regard to proposed regulation §§ 48.0–1 through 48.6412–3, John R. Harman at 202–566–3238 in regard to proposed regulation §§ 48.6416(a)–1 through 48.6416(b)(2)–2, or Cynthia L. Clark at 202–566–4336 in regard to proposed regulation §§ 48.6420–1 through 48.6675–1. These telephone numbers are not toll-free numbers.

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed amendments to certain Manufacturers and Retailers Excise Tax Regulations [26 CFR Part 48] as follows: (i) the introductory regulatory provisions to Part 48, §§ 48.0–1 through 48.0–5; (ii) the regulations under sections 4161, 4181 and 4182 of the Internal Revenue Code of 1954 (Code) relating to the imposition of manufacturers excise taxes on sporting goods and firearms; (iii) the regulations under sections 6011, 6071, 6081, 6091, 6101, 6109, 6151, 6161, 6206, 6302, 6402, 6404 and 6412 of the Code relating to refunds and other administrative provisions of special application to retailers and manufacturers excise taxes; (iv) the regulations under section 6416 of the Code relating to special refund and credit provisions for certain taxes on sales and services; (v) the regulations under section 6420 of the Code relating to credit or refund of tax on gasoline used on farms; (vi) the regulations under section 6421 of the Code relating to credit or refund of tax on gasoline used in a qualified business use or in intercity, local or school buses; (vii) the regulations under section 6424 of the Code relating to credit or refund of tax on lubricating oil used in a qualified business use or a qualified bus; (viii) the regulations under section 6427 of the Code relating to credit or refund of tax on fuels not used for taxable purposes; and (ix) the regulations under section 6675 of the Code relating to the civil penalty for excessive claims under section 6420, 6421, 6424, or 6427 of the Code. These proposed amendments, if adopted, will revise and update Part 48 to achieve greater clarity and conform the regulations to numerous amendments to the Code made after 1964.

Statutory Amendments Reflected in the Proposed Changes

Many statutory changes enacted after 1964 have not previously been reflected in Part 48 of the regulations. The table set forth below enumerates the statutory changes reflected in these proposed regulations. The section numbers on the left margin list the sections of the Code to which the statutory changes relate.

4161:
1. Section 201 of the Act of October 25, 1972, Pub. L. 92–558, 86 Stat. 1173, relating to the imposition of tax on bows and arrows. The amendments to the regulations made under section 201 shall apply with respect to articles sold by the manufacturer, producer, or importer on or after July 1, 1974.

6206:
1. Section 207(d)(3) of the Airport and Airway Development Act of 1970, Pub. L. 91–258, 84 Stat. 219, relating to rules applicable to excessive claims. The amendments to the regulations made under section 207(d)(3) shall apply with respect to sales made on or after July 1, 1970.
2. Section 202(c)(2)(A) of the Excise Tax Reduction Act of 1965, Pub. L. 89–44, 79 Stat. 136, relating to special rules applicable to excessive claims.

The amendments to the regulations made under section 202(c)(2)(A) shall apply only with respect to lubricating oil placed in use after December 31, 1965.

6412:
1. Section 502(c) of the Federal Aid Highway Act of 1978, Pub. L. 95–599, 92 Stat. 2689, relating to floor stock refunds.
2. Section 303(b) of the Federal Aid Highway Act of 1976, Pub. L. 94–280, 90 Stat. 425, relating to floor stock refunds.

6416:
1. Sections 295(b) (3) and (4) and 207 (d)(4) through (d)(7) of the Airport and Airway Revenue Act of 1970, Pub. L. 91–258, 84 Stat. 219, allowing refund or credit of gasoline taxes when gasoline is used in the production of special fuels. The regulations under sections 205(b) (3) and (4) and 207 (d)(4) through (d)(7) are effective after June 30, 1970.
2. Section 302 of the Excise, Estate and Gift Tax Adjustment Act of 1970, Pub. L. 91–614, 84 Stat. 1836, modifying the refund and credit provisions for the use of new tax-paid component parts in further manufacture. The regulations under section 302 are effective for claims filed after December 31, 1970, but only if the filing of the claim is not barred on January 1, 1971, by any law or rule of law.
3. Sections 401(a)(3)(C) and 401(g)(6) of the Revenue Act of 1971, Pub. L. 92–178, 85 Stat. 497, allowing a refund or credit for certain trash containers. The regulations under section 401(a)(3)(c) and 401(g)(6) are effective with respect to articles sold after December 10, 1971.
4. Sections 1904(b) (1) and (2), 1906(a)(24), 1906(b)(13)(A) and 2108 of the Tax Reform Act of 1967, Pub. L. 94–455, 90 Stat. 1520, eliminating numerous deadwood provisions and allowing refund or credit for certain truck parts and accessories. The regulations under section 1904(b) (1) and (2), 1906(a)(24)(A) and 1906(b)(13)(A) are effective after January 31, 1977. The regulations under section 1906(a)(24)(B)(i) are effective with respect to uses or resales for use of liquids after December 31, 1976. The regulations under section 2108 are effective with respect to parts and accessories sold after October 4, 1976.
5. Section 2(b)(4) of the Black Lung Benefits Revenue Act of 1977, Pub. L. 95–227, 92 Stat. 11, modifying the refund and credit provisions for the excise tax on coal. The regulations under section 2(b)(4) are effective with respect to sales after March 31, 1978.

6420:
1. Section 809(a) of the Excise Tax Reduction Act of 1965, Pub. L. 89–44, 79 Stat. 136, relating to income tax credit in lieu of payment with respect to gasoline used on farms. The regulations under section 809(a) are effective with respect to gasoline used on or after July 1, 1965.
2. Section 207(b) of the Airport and Airway Development Act of 1970, Pub. L. 91–258, 84 Stat. 219, relating to the time for filing claims under section 6420. The regulations under section 207(b) are effective with respect to taxable years ending after June 30, 1970.
3. Section 3(a) of the Act of October 14, 1978, Pub. L. 95–458, 92 Stat. 1257, relating to entitlement of aerial applicators to refund of gasoline tax in certain cases. The regulations under section 3(a) are effective for gasoline used after March 31, 1979.

6421:
1. Section 809(b) of the Excise Tax Reduction Act of 1965, Pub. L. 89–44, 79 Stat. 136, relating to income tax credit in lieu of payment with respect to gasoline used for certain nonhighway purposes or by local transit systems. The regulations under section 809(b) are effective with respect to gasoline used after June 30, 1965.
2. Section 205(b)(1) of the Airport and Airway Development Act of 1970, Pub. L. 91–258, 84 Stat. 219, relating to credit or refund of gasoline used as fuel in an aircraft (other than aircraft in noncommercial aviation). The regulations under section 205(b)(1) are effective after June 30, 1970.
3. Section 207(b) of the Airport and Airway Development Act of 1970, Pub. L. 91–258, 84 Stat. 219, relating to the time for filing claims under section 6421. The regulations under section 207(b) are effective for taxable years ending after June 30, 1970.
4. Section 222(a)(1) of the Energy Tax Act of 1978, Pub. L. 95–618, 92 Stat. 3174, relating to refund or credit of tax on gasoline used in a qualified business use. The regulations under section 222(a)(1) are effective with respect to uses after December 31, 1978.
5. Section 233(a)(1) of the Energy Tax Act of 1978, Pub. L. 95–618, 92 Stat. 3174, relating to repayment of tax on gasoline used in intercity, local or school buses. The regulations under section 233(a)(1) are effective with respect to uses after November 30, 1978.
6. Section 108(c)(1) of the Technical Corrections Act of 1978, Pub. L. 96–222, 94 Stat. 194, relating to repayment of tax on gasoline used in vessels employed in the fisheries or the whaling business. The regulations under section 108(c)(1) are effective with respect to uses after December 31, 1978.

6424:
1. Section 202(b) of the Excise Tax Reduction Act of 1965, Pub. L. 89–44, 79 Stat. 136, relating to refund or credit of tax on lubricating oil not used in highway motor vehicles. The regulations under section 202(b) are effective with respect to lubricating oil placed in use after December 31, 1965.
2. Section 207(b) of the Airport and Airway Development Act of 1970, Pub. L. 91–258, 84 Stat. 219, relating to the time for filing claims under section 6424. The regulations under section 207(b) are effective for taxable years ending after June 30, 1970.
3. Section 233(b)(1) of the Energy Tax Act of 1978, Pub. L. 95–618, 92 Stat. 3174, relating to credit or refund of tax on lubricating oil used in a qualified business use or in a qualified bus.

6427:
1. Section 207(a) of the Airport and Airway Development Act of 1970, Pub. L. 91–258, 84 Stat. 219, relating to credit or refund of tax on gasoline and special fuels used for certain purposes. The regulations under section 207(a) are effective with respect to taxable years ending after June 30, 1970.
2. Section 3(b) of the Act of October 14, 1978, Pub. L. 95–458, 92 Stat. 1257, relating to entitlement of aerial applicators to refunds of special fuels tax in certain cases. The regulations under section 3(b) are effective for gasoline used after March 31, 1979.

6675:
1. Section 202(c)(3)(A) of the Excise Tax Reduction Act of 1965, Pub. L. 89–44, 79 Stat. 136, relating to civil penalty for excessive claims under section 6424 with respect to lubricating oil. The regulations under section 202(c)(3)(A) are effective with respect to oil used after December 31, 1965.

2. Section 207(d)(8) of the Airport and Airway Development Act of 1970, Pub. L. 91-258, 84 Stat. 219, relating to civil penalty for excessive claims under section 6427 with respect to fuels not used for taxable purposes. The regulations under section 207(d)(8) are effective after June 30, 1970.

These proposed regulatory amendments, if adopted, will be issued under the authority contained in section 7805 of the Code (68A Stat. 917, 26 U.S.C. 7805).

Statutory Amendments Not Reflected in the Proposed Changes

The table set forth below enumerates the post-1964 statutory changes relating to manufacturers and retailers excise taxes which are not reflected in these proposed regulations.

6416:
1. Sections 201(c)(3), 232(b) and 233(c)(3) of the Energy Tax Act of 1978 relating to the refund and credit provisions for tread rubber, tires, inner tubes, and certain parts and accessories of automobile buses and light-duty trucks. These amendments are the subject of another regulation project.
2. Sections 108(c)(2)(A)–(2)(B) and (c)(3)–(c)(4) of the Technical Corrections Act of 1979 relating to the refund and credit provisions for lubricating oil, tires, and inner tubes. This amendment is the subject of another regulation project.
3. Sections 1(a)–(b)(2)(D) and 4(c) of the Act of December 24, 1980, P.L. 96-598, 94 Stat. 3485, relating to the refund and credit provisions for tax paid on tread rubber used in recapping or retreading a tire. These amendments are the subject of another regulation project.

6427:
1. Section (1)(b) of the Act of October 17, 1978, P.L. 94-530, 90 Stat. 2487, relating to credit or refund of tax on gasoline and special fuels used by certain aircraft museums. This Act expired on October 1, 1982. The tax was reinstituted by the Tax Equity and Fiscal Responsibility Act of 1982. This amendment is the subject of another regulation project.
2. Section 505(a) of the Highway Revenue Act of 1978, relating to credit or refund for certain taxicabs of excise taxes on gasoline and other motor fuels. [The provisions of section 505(a) are not expected to be the subject of another regulation project because they expired on January 1, 1983.]
3. Section 232(d)(1) of the Crude Oil Windfall Profit Tax Act of 1980, relating to refund of tax on gasoline used to produce certain alcohol fuels. This statutory change is expected to be the subject of another regulation project.

Explanation of the Proposed Provisions

The proposed amendments would revise and update the existing regulations regarding manufacturers and retailers excise taxes on sporting goods and firearms, and refunds and other administrative provisions of special application to retailers and manufacturers excise taxes. If adopted, these amendments would revise the introductory provisions to Part 48 by deleting §§ 48.0–3 through 48.0–4 and redesignating § 48.0–5 as § 48.0–3. Proposed regulations under section 4161 of the Code would make only minor modifications to existing regulations, such as by expanding the definition of essential equipment sold in connection with the sale of taxable articles. See § 48.4161(a)–3(b). Proposed § 48.4182–2(b) describes exemptions from the excise tax on firearms imposed by section 4181.

Proposed new §§ 48.6011(a)–2 and 48.6071(a)–1 add new selected administrative provisions pertaining to filing of returns or other documents. Proposed new §§ 48.6091–1 and 48.6151–1 relate to periods covered by returns or other documents and extensions of time for paying tax shown on the return.

Proposed § 48.6302(c)–1 would expand the existing regulation provisions pertaining to the use of government depositaries. Proposed §§ 48.6402(a)–1 and 48.6404(a)–1 would provide rules pertaining to abatements, credits and refunds. Certain other minor revisions would also be made by these proposed regulations under the foregoing sections of the Internal Revenue Code.

Changes in the Regulations Under Section 6416 of the Code.

Generally, for taxes imposed by section 4041 (special fuels tax) or Chapter 32 (manufacturers excise taxes), the full tax must be paid when due regardless of whether an event may occur which, if it had occurred concurrently with the original taxable event, would have reduced or eliminated the tax. That subsequent event may require the original payment of tax to be treated as an overpayment, thus giving rise to a right to a credit or refund. Examples of subsequent events which give rise to a credit or refund include: (1) for taxes based on sales price, a renegotiation of a consummated sale and refund of a portion of the sales price; and (2) for taxes on manufactured articles, the manufacture of an article using certain component parts for which a manufacturers excise tax has previously been paid.

Section 6416 lists events which give rise to overpayments of taxes imposed by chapters 31 and 32, provides methods of calculating the amount of each overpayment, provides who is entitled to credit or refund of the overpayment, and lists requirements for claiming credit or refund. Numerous amendments are proposed to the existing regulations under section 6416. These amendments, contained in §§ 48.6416(a)–1 through 48.6416(h)–1, are proposed to restructure the existing regulations for easier reference, to provide clarity, and to conform the regulations to certain amendments to section 6416 of the Code made by the Airport and Airway Revenue Act of 1970, the Excise and Gift Tax Adjustment Act of 1970, the Revenue Act of 1971, the Tax Reform Act of 1976, and the Black Lung Benefits Revenue Act of 1977.

The Airport and Airway Revenue Act of 1970 amended section 6416 to allow credit or refund of taxes paid on gasoline when the gasoline is used, or sold for use, in the production of special fuels.

The Excise, Estate, and Gift Tax Adjustment Act of 1970 amended section 6416 to clarify the computation of the manufacturers excise tax in cases where a taxable article is produced with tax-paid component parts. In addition, the amendment permits the credit for taxes paid on new component parts used in further manufacture to be passed through to a subsequent manufacturer in several situations where the pass-through was previously not allowed—namely, where there is a series of subsequent manufacturers or where there are distributors intervening between the subsequent manufacturer and those who paid the original manufacturers tax on the component parts.

The Revenue Act of 1971 amended section 6416 to provide, in pertinent part, that the tax paid under section 4061(a) on trash containers shall under some circumstances be treated as an overpayment and thus be allowed as a credit or refund.

The Tax Reform Act of 1976 eliminated many deadwood provisions in section 6416 and amended section 6416 to provide that the tax paid under section 4061(b) on truck parts and accessories sold on or in connection with the first retail sale of a light-duty truck shall be allowed as a credit or refund, so that those parts will be effectively treated the same as parts which are actually a part of a tax-exempt truck.

The Black Lung Benefits Revenue Act of 1977 amended section 6416 to conform the refund and credit provisions to the excise tax provisions on coal set forth in section 4121. The conforming amendments were necessary because certain exemptions common to other excise taxes, which give rise to overpayments, were not available to taxpayers paying the excise tax on coal. These exemptions included the exemption for further manufacture, the exemption for export, the exemption for use as supplies for vessels and aircraft, the exemption for use by a State or local government, and the exemption for use by a nonprofit-educational organization.

The proposed amendments of the regulations under section 6416 include one significant change not necessitated by legislative enactments. Paragraph (a)(1) of § 48.6416(b)(1)–(2) would

expand the meaning of the term "price readjustment." If the price of an article subject to a manufacturers excise tax is readjusted, under certain circumstances, part of the tax paid is treated as an overpayment resulting in a credit or refund. Under the existing regulations, no payments by manufacturers to third parties, such as commissions to the vendee's salesmen, can be treated as price readjustments.

Under the proposed amendments, a payment to a third party will be considered a price readjustment if (1) the payment is contractually or economically related to the sale which the payment purports to adjust and (2) the payment ultimately benefits the vendee of the manufacturer.

Gasoline Used on Farms

If gasoline on which tax was imposed by section 4081 is used on a farm in the United States for farming purposes, the ultimate purchaser of that gasoline will be entitled under section 6420 to a refund or credit of the tax. Only the United States, State and local governments, and tax-exempt organizations (other than those required to make a return of the tax imposed under Subtitle A of the Code for the taxable year) may file a claim for payment with respect to the excise tax paid on gasoline used on a farm for farming purposes. All other persons entitled to a refund in respect of the excise tax paid on gasoline used on a farm for farming purposes may obtain that refund only by claiming a credit (under section 39(a)(1) of the Code) on their annual income tax returns. Generally, only the owner, tenant, or operator of a farm will be treated as an ultimate purchaser. However, an aerial applicator that uses gasoline on a farm for certain farming purposes will be treated as the ultimate purchaser if the owner, tenant or operator waives, in accordance with § 48.6420–4(1), the right to be considered as the ultimate purchaser.

Gasoline Used for Certain Nonhighway Purposes or by Local Transit Systems

If gasoline on which tax was imposed by section 4081 is used in a qualified business use, as a fuel in an aircraft (other than aircraft in noncommerical aviation), or in an intercity, local, or school bus, the ultimate purchaser of that gasoline will be entitled under section 6421 to a refund or credit of the tax. A claim for payment under section 6421 may be made only by (1) those persons entitled to payment under section 6421 of $1,000 or more for any one of the first three calendar quarters of the taxable year, (2) the United States (or any of its agencies or instrumentalities), (3) State and local governments, or (4) tax-exempt organizations (other than those required to file an income tax return). All other persons must file their payment as a credit (under section 39(a)(2) of the Code) on their annual income tax returns.

Lubricating Oil Used for Certain Nontaxable Purposes

Section 6424 provides that the ultimate purchaser of lubricating oil (other than cutting oil defined in section 4092(b), and other than oil that has previously been used) will be entitled to claim a credit or refund of 6 cents for each gallon of lubricating oil used in a qualified business use or in qualified bus. A claim for payment under section 6424 may be made only by (1) those persons entitled to payment under section 6424 of $1,000 or more for any one of the first three calendar quarters of the taxable year, (2) the United States (or any of its agencies or instrumentalities), (3) State and local governments, or (4) tax-exempt organizations (other than those required to file an income tax return). All other persons must claim their payment as a credit (under section 39(a)(3) of the Code) on their annual income tax returns.

Fuels Not Used for Taxable Purposes

In general, section 6427 provides a credit or refund of tax imposed by section 4041 on diesel and special fuels. The credit or refund is allowed if the purchaser of the tax-paid fuels uses them other than for the use for which sold; or in an intercity, local, or school bus; or the farming purposes. A claim for payment may be made by (1) those persons entitled to payment under section 6427 (a) or (b) of $1,000 or more for any of the first three calendar quarters of the taxable year, (2) the United States (or any of its agencies or instrumentalities), (3) State and local governments, or (4) tax-exempt organizations (other than those required to file a income tax return). In general, all other persons must claim their payment as a credit (under section 39 (a)(4) of the Code) on their annual income tax return.

Excessive Claims with Respect to the Use of Certain Fuels or Lubricating Oil

Section 6675 provides for a civil penalty in the case of excessive claims under section 6420 6421, 6424, or 6427. The amount of the penalty is the greater of (1) $10 or (2) twice the excess of the amount claimed under section 6420 6421, 6424, or 6427, as the case may be, for any period, over the amount allowable for the period under such section. The penalty will not be imposed if the excessive claim is due to reasonable cause.

Executive Order 12291 and Regulatory Flexibility Act

The Commissioner of Internal Revenue has determined that this proposed rule is not a major rule as defined in Executive Order 12291. Accordingly, a Regulatory Impact Analysis is not required. The Internal Revenue Service has concluded that although this document is a notice of proposed rulemaking that solicits public comment, the regulations proposed herein are interpretative and the notice and public procedure requirements of 5 U.S.C. 553 do not apply. Accordingly, no Regulatory Flexibility Analysis is required for this rule.

Comments and Requests for Public Hearing

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

Drafting Information

The principal authors of these proposed regulations are Annie R. Alexander in regard to §§ 48.0–1 through 48.6412–3, John R. Harman in regard to §§ 48.6416 (a)–1 through 48.6416(b)(2)–2, and Cynthia L. Clark in regard to §§ 48.6420–1 through 48.6675–1. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations, both on matters of substance and style.

List of Subjects in 26 CFR Part 48

Agriculture, Arms and munitions, Coal, Excise taxes, Gasohol, Gasoline, Motor vehicles, Petroleum, Sporting goods, Tires.

Proposed Amendments to the Regulations

The proposed amendments to 26 CFR Part 48 are as follows:

Paragraph 1. Section 48.0–1 is revised to read as follows. Sections 48.0–3 and 48.0–4 are removed. Section 48.0–5 is redesignated as § 48.0–3.

§ 48.0-1 Introduction.

The regulations in this part (Part 48, Subchapter D, Chapter I, Title 26, Code of Federal Regulations) are designated "Manufacturers and Retailers Excise Tax Regulations." The regulations relate to the taxes imposed by sections 4041 and 4042 or by chapter 32 of the Internal Revenue Code of 1954, as amended, and to certain related administrative provisions of subtitle F of the Code. Section 4041 imposes taxes on certain sales or uses of the special fuels described in that section, and on certain sales or uses of gasoline as a fuel in aircraft engaged in noncommercial aviation. Section 4042 imposes taxes on liquids used as fuel in certain vessels in commercial waterway transportation. Chapter 32 of the Code imposes taxes on the sale or use by the manufacturer, producer, or importer of articles specified in that chapter. References in the regulations in this part to the "Internal Revenue Code" or the "Code" are references to the Internal Revenue Code of 1954, as amended, unless otherwise indicated. References to a section or other provision of law are references to a section or other provision of the Internal Revenue Code, as amended, unless otherwise indicated.

Par. 2. Section 48.4161(a)-1 is amended by revising paragraph (c) to read as follows.

§ 48.4161(a)-1 Imposition and rate of tax; fishing equipment.

* * * * *

(c) *Liability for tax.* The tax imposed by section 4161(a) is payable by the manufacturer, producer, or importer making the sale. For determining who is the manufacturer, producer, or importer, see § 48.0-2(a)(4).

Par. 3. Section 48.4161(a)-2 is amended by revising paragraph (d) to read as follows.

§ 48.4161(a)-2 Meaning of terms.

* * * * *

(d) *Artificial lures, baits, and flies.* The term "artificial lures, baits, and flies" includes all artifacts, of whatever materials made, that simulate an article considered edible by fish and are designed to be attached to a line or hook to attract fish so that they may be captured. Thus, the term includes such artifacts as imitation flies, blades, spoons, and spinners, and edible materials that have been processed so as to resemble a different edible article considered more attractive to fish, such as bread crumbs treated so as to simulate salmon eggs, and pork rind cut and dyed to resemble frogs, eels, or tadpoles.

Par. 4. Section 48.4161(a)-3 is amended by revising paragraph (b) to read as follows.

§ 48.4161(a)-3 Parts and accessories.

* * * * *

(b) *Essential equipment.* If taxable articles are sold by the manufacturer, producer, or importer thereof, without parts or accessories that are essential for their operation, or are designed directly to improve the performance or appearance of the articles, the separate sale of the parts or accessories to the same vendee will be considered, in the absence of evidence to the contrary, to have been made in connection with the sale of the basic article, even though the parts or accessories are shipped separately at the same time or on a different date.

Par. 5. Section 48.4161(b)-1 is amended by revising paragraph (c) to read as follows:

§ 48.4161(b)-1 Imposition and rates of tax; bows and arrows.

* * * * *

(c) *Liability for tax.* The tax imposed by section 4161(b) is payable by the manufacturer, producer, or importer making the sale. For determining who is the manufacturer, producer, or importer, see § 48.0-2(a)(4).

Par 6. Section 48.4181-2 is amended by revising paragraph (d) to read as follows.

§ 48.4181-2 Meaning of terms.

* * * * *

(d) *Shells and cartridges.* (1) The terms "shells" and "cartridges" include any article consisting of a projectile, explosive, and container that is designed, assembled, and ready for use without further manufacture in firearms, pistols or revolvers.

(2) A person who reloads used shells or cartridges is a manufacturer of shells or cartridges within the meaning of section 4181 if such reloaded shells or cartridges are sold by the reloader. However, the reloader is not a manufacturer of shells or cartridges if, in return for a fee and expenses, he reloads shells or cartridges submitted by a customer and returns the identical shells or cartridges to that customer. Under such circumstances, the customer would be the manufacturer of the shells or cartridges and liable for tax on the sale of the articles.

Par. 7. Section 48.4182-1 is amended by revising paragraph (b) to read as follows.

§ 48.4182-1 Exempt sales.

* * * * *

(b) *Sales to Defense Department or to U.S. Coast Guard*—(1) *Military department.* Section 4182(b) provides that the tax imposed by section 4181 shall not attach to the sale of firearms, pistols, revolvers, shells, or cartridges that are purchased with funds appropriated for a military department of the United States. For this purpose, the term "military department" means the Department of the Army, the Department of the Navy, and the Department of the Air Force. Included in the Department of the Navy are naval aviation and the Marine Corps and the Coast Guard when operating as a service in the Navy pursuant to the provisions of 14 U.S.C. 3.

(2) *Coast Guard.* (i) 14 U.S.C. 655, as added by sec. 5 of the Act of July 10, 1962, (Pub. L. 87-526, 76 Stat. 142), provides as follows:

Sec. 655. *Arms and ammunition: immunity from taxation.* No tax on the sale or transfer of firearms, pistols, revolvers, shells, or cartridges may be imposed on such articles when bought with funds appropriated for the United States Coast Guard.

(ii) In view of the provisions of 14 U.S.C. 655, the tax imposed by section 4181 shall not attach to the sale of firearms, pistols, revolvers, shells, or cartridges that are purchased with funds appropriated for the U.S. Coast Guard whether or not the Coast Guard is operating as a service in the Navy pursuant to 14 U.S.C. 3.

(3) *Supporting evidence.* (i) Any manufacturer, producer, or importer claiming an exemption from the tax imposed by section 4181 by reason of section 4182(b) must maintain such records and be prepared to produce such evidence as will establish the right to the exemption. Generally, clearly identified orders or contracts of a military department or the Coast Guard signed by an authorized officer of the military department or the Coast Guard will be sufficient to establish the right to the exemption. In the absence of such orders or contracts, a statement, signed by an authorized officer of a military department or the Coast Guard, that the prescribed articles were purchased with funds apropriated for that military department or the Coast Guard will constitute satisfactory evidence of the right to the exemption.

(ii)(A) In *General.* Under 18 U.S.C. 922 (b) (5) a manufacturer, dealer, or importer licensed under 18 U.S.C. 923 is required to record the name, age, and place of residence of an individual person, or the identity and principal and local places of business of a corporation or other business entity, to whom the licensee sells or delivers any firearm or

ammunition. 18 U.S.C. 923(g) requires the licensee to maintain such records and to make them available for inspection.

(B) *Exception.* However, under section 4182(c) of the Internal Revenue Code no person holding a license under 18 U.S.C. 933 shall be required to record the name, address, or other information about the purchaser of shotgun ammunition, ammunition suitable for use only in rifles generally available in commerce, or component parts for such ammunition.

Par. 8. Sections 48.6011(a)–1 and 48.6011(a)–2 are revised to read as follows.

§ 48.6011(a)–1 Returns.

(a) *In general.* (1) Liability for tax imposed under section 4041 or 4042 or chapter 32 of the Code shall be reported on Form 720. Except as provided in paragraph (b) of this section, a return on Form 720 shall be filed for a period of one calendar quarter.

(2) Every person required to make a return on Form 720 for the return period ended June 30, 1965, shall make a return for each subsequent calendar quarter, month, or semimonthly period (whether or not liability was incurred for any tax reportable on the return for the return period) until the person has filed a final return in accordance with § 48.6011(a)–2.

(3) Every person not required to make a return on Form 720 for the return period ended June 30, 1965, shall make a return for the first calendar quarter thereafter in which he incurs liability for tax imposed under section 4041 or 4042 or chapter 32, and shall make a return for each subsequent calendar quarter, month, or semimonthly period until the person has filed a final return in accordance with § 48.6011(a)–2.

(4) Each return required under the regulations in this part, together with any prescribed copies, records, or supporting data, shall be completed in accordance with the applicable forms, instructions, and regulations.

(b) *Monthly and semimonthly returns*—(1) *Requirement.* If the district director determines that any taxpayer who is required to deposit taxes under the provisions of § 48.6302(c)–1 has failed to make deposits of those taxes, the taxpayer shall be required, if so notified in writing by the district director, to file a monthly or semimonthly return on Form 720. Every person so notified by the district director shall file a return for the calendar month or semimonthly period (as defined in § 48.6302 (c)–1 (d)) in which the notice is received and for each calendar month or semimonthly period thereafter until the person has filed a final return in accordance with § 48.6011(a)–2 or is required to file returns on the basis of a different return period pursuant to notification as provided in paragraph (b)(2) of this section.

(2) *Change of requirement.* The district director may require the taxpayer, by notice in writing, to file a quarterly or monthly return, if the taxpayer has been filing returns for a semimonthly period, or may require the taxpayer to file a quarterly or semimonthly return, if the taxpayer has been filing monthly returns.

(3) *Return for period change takes effect.* (i) If a taxpayer who has been filing quarterly returns receives notice to file a monthly or semimonthly return, or a taxpayer who has been filing monthly returns receives notice to file a semimonthly return, the first return required pursuant to the notice shall be filed for the month or semimonthly period in which the notice is received and all months or semimonthly periods which are not includible in an earlier period for which the taxpayer is required to file a return.

(ii) If a taxpayer who has been filing monthly or semimonthly returns receives notice to file a quarterly return, the last month or semimonthly period for which a return shall be filed is the last month or semimonthly period of the calendar quarter in which the notice is received.

(iii) If a taxpayer who has been filing semimonthly returns receives notice to file a monthly return, the last semimonthly period for which a return shall be made is the last semimonthly period of the month in which the notice is received.

§ 48.6011(a)–2 Final returns.

a. *In general.* Any person who is required to make a return on Form 720 pursuant to § 48.6011(a)–1, and who in any return period ceases operations in respect of which the person is required to make a return on the form, shall make the return for that period as a final return. Each return made as a final return shall be marked "Final Return" by the person filing the return. A person who has only temporarily ceased to incur liability for tax required to be reported on Form 720 because of temporary or seasonal suspension of business or for other reasons, shall not make a final return but shall continue to file returns.

(b) *Statement to accompany final return.* Each final return shall have attached a statement showing the address at which the records required by the regulations in this part will be kept, the name of the person keeping the records, and, if the business of the taxpayer has been sold or otherwise transferred to another person, the name and address of that person and the date on which the sale or transfer took place. If no sale or transfer occurred or if the taxpayer does not know the name of the person to whom the business was sold or transferred, that fact should be included in the statement.

(c) An individual's signature on a return, statement, or other document made by or for a corporation or a partnership shall be prima facie evidence that the individual is authorized to sign the return, statement, or other document.

Par. 9. Section 48.6071(a)–1 is revised to read as follows:

§ 48.6071(a)–1 Time for filing returns.

(a) *Quarterly returns.* Each return required to be made under § 48.6011(a)–1(a) for a return period of not less than one calendar quarter shall be filed on or before the last day of the first calendar month following the close of the period for which it is made. However, a return may be filed on or before the 10th day of the second calendar month following the close of the period if timely deposits under section 6302(c) of the Code and the regulations thereunder have been made in full payment of the taxes due for the period. For the purposes of the preceding sentence, a deposit which is not required by regulations in respect of the return period may be made on or before the last day of the first calendar month following the close of the period, and the timeliness of any deposit made otherwise than by mail will be determined by the earliest date stamped on the applicable deposit form by an authorized commercial bank or by a Federal Reserve bank. For determining the timeliness of a deposit made by mail, see section 7502(e) and § 301.7502–1 of this chapter (Regulations on Procedure and Administration).

(b) *Monthly and semimonthly returns*—(1) *Monthly returns.* Each return required to be made under § 48.6011(a)–1(b) for a monthly period shall be filed not later than the 15th day of the month following the close of the period for which it is made.

(2) *Semimonthly returns.* Each return required to be made under § 48.6011(a)–1(b) for a semimonthly period shall be filed not later than the 10th day of the semimonthly period following the close of the period for which it is made.

(c) *Last day for filing.* For provisions relating to the time for filing a return when the prescribed due date falls on Saturday, Sunday, or a legal holiday, see

§ 301.7503-1 of this chapter (Regulations on Procedure and Administration).

(d) *Late filing.* For additions to the tax in case of failure to file a return within the prescribed time, see § 301.6651-1 of this chapter (Regulations on Procedure and Administration).

Par. 10. The following new § 48.6081(a)-1 is added immediately after § 48.6071(a)-1.

§ 48.6081(a)-1 Extension of time for filing returns.

(a) *In general.* Ordinarily, no extension of time will be granted for filing any return statement or other document required with respect to the taxes imposed by section 4041 or 4042 or chapter 32, because the information required for the filing of those documents is under normal circumstances readily available. However, if because of temporary conditions beyond the taxpayer's control, a taxpayer believes an extension of time for filing is justified, the taxpayer may apply to the district director, or to the director of the service center, for an extension. An extension of time for filing a return does not operate to extend the time for payment of the tax or any part of the tax unless so specified in the extension. For extensions of time for payment of the tax, see § 48.6161(a)-1.

(b) *Application for extension of time.* The application for an extension of time for filing the return shall be addressed to the district director, or director of the service center, with whom the return is to be filed and must contain a full recital of the causes for the delay. It should be made on or before the due date of the return, and failure to do so may indicate negligence and constitute sufficient cause for denial. It should, where possible, be made sufficiently early to permit consideration of the matter and reply before what otherwise would be the due date of the return.

(c) *Filing the return.* If an extension of time for filing the return is granted, a return shall be filed before the expiration of the period of extension.

Par. 11. Section 48.6091-1 is revised to read as follows.

§ 48.6091-1 Place for filing returns.

(a) *Persons other than corporations.* The return of a person other than a corporation shall be filed with the district director for the internal revenue district in which is located the principal place of business or legal residence of the person. If the person has no principal place of business or legal residence in any internal revenue district, the return shall be filed with the District Director, Internal Revenue Service, Baltimore, MD 21202, except as provided in paragraph (c) of this section.

(b) *Corporations.* The return of a corporation shall be filed with the district director for the district in which is located the principal place of business or principal office or agency of the corporation, except as provided in paragraph (c) of this section.

(c) *Returns of taxpayers outside the United States.* The return of a person (other than a corporation) outside the United States having no legal residence or principal place of business in any internal revenue district, or the return of a corporation having no principal place of business or principal office or agency in any internal revenue district, shall be filed with the Director of International Operations, Internal Revenue Service, Washington, D.C. 20225. If, however, the principal place of business or legal residence of the person, or the principal place of business or principal office or agency of the corporation, is located in the Virgin Islands or Puerto Rico, the return shall be filed with the Director of International Operations, U.S. Internal Revenue Service, Hato Rey, Puerto Rico 00917.

(d) *Returns filed with service centers.* Notwithstanding paragraphs (a), (b), and (c) of this section, whenever instructions applicable to any returns provide that the returns shall be filed with a service center, the returns shall be so filed in accordance with the instructions.

(e) *Hand-carried returns.* Except as provided in paragraph (e)(3) of this section, and notwithstanding paragraphs (1) and (2) of section 6091(b) and paragraph (d) of this section, the following rules apply.

(1) *Persons other than corporations.* Returns of persons other than corporations which are filed by hand carrying shall be filed with the district director as provided in paragraph (a) of this section.

(2) *Corporations.* Returns of corporations which are filed by hand carrying shall be filed with the district director as provided in paragraph (b) of this section.

(3) *Exceptions.* This paragraph (e) shall not apply to returns of—

(i) Persons who have no legal residence, no principal place of business, or no principal office or agency in any internal revenue district.

(ii) Citizens of the United States whose principal place of abode for the period with respect to which the return is filed is outside the United States,

(iii) Persons who claim the benefits of section 911 (relating to income earned by individuals in certain camps) section 913 (relating to deduction for certain expenses of living abroad), section 931 (relating to income from sources within possessions of the United States), section 933 (relating to income from sources within Puerto Rico), or section 936 (relating to Puerto Rico and possession tax credit), and

(iv) Nonresident alien persons and foreign corporations.

(f) *Permission to file in district other than required district.* The Commissioner may permit the filing of any return required to be made under the regulations in this part in any internal revenue district, notwithstanding the provisions of paragraphs (1), (2), and (4) of section 6091(b) and paragraphs (a), (b), (c), (d), and (e) of this section.

(g) *Cross reference.* For definition of the term "hand carried", see § 301.6091-1(c) of this chapter (Regulations on Procedure and Administration).

Par. 12. The following new § 48.6101-1 is added immediately after § 48.6091-1.

§ 48.6101-1 Period covered by returns or other documents.

The normal period for which returns are ordinarily required under this subpart is a calendar quarter. Under certain circumstances, however, the district director may require returns to be filed for monthly or semimonthly periods. For provisions relating to quarterly returns, see § 48.6011(a)-1(a). For provisions relating to monthly and semimonthly returns, see § 48.6011(a)-1(b).

Par. 13. Section 48.6109-1 is revised to read as follows:

§ 48.6109-1 Employer identification numbers.

(a) *Requirement of application*—(1) *In general.* An application on Form SS-4 for an employer identification number shall be made by every person who makes a sale or use of an article with respect to which a tax is imposed by section 4041 or 4042 or chapter 32 of the Code, but who has not earlier been assigned an employer identification number or has not applied for one. The application and any supplementary statement accompanying it shall be prepared in accordance with the applicable form, instructions, and regulations and shall set forth fully and clearly the date therein called for. Form SS-4 may be obtained from any district director or director of a service center. The application shall be filed with the internal revenue officer designated in the instructions applicable to Form SS-4. The application shall be signed by (i) the individual if the person is an individual; (ii) the president, vice-president, or other principal officer, if

the person is a corporation; (iii) a responsible and duly authorized member or officer having knowledge of its affairs, if the person is a partnership or other unincorporated organization; or (iv) the fiduciary, if the person is a trust or estate. An employer identification number will be assigned to the person in due course upon the basis of information reported on the application required under this section.

(2) *Time for filing Form SS–4.* The application for an employer identification number shall be filed on or before the seventh day after the date of the first sale or use of an article with respect to which a tax is imposed by section 4041 or 4042 or chapter 32 of the Code.

(b) *Use of employer identification number.* The employer identification number assigned to a person liable for a tax imposed by section 4041 or 4042 or chapter 32 of the Code shall be shown in any return, statement, or other document submitted to the Internal Revenue Service by the person.

(c) *Cross references.* For the definition of the term "employer identification number", see § 301.7701–12 of this chapter (Regulations on Procedure and Administration). For provisions relating to the penalty for failure to include the employer identification number in a return, statement, or other document, see § 301.6676–1 of this chapter (Regulations on Procedure and Administration).

Par. 14. Section 48.6151–1 is revised to read as follows:

§ 48.6151–1 Time and place for paying tax shown on return.

The tax required to be reported on each tax return under this subpart is due and payable to the internal revenue officer with whom the return is filed at the time prescribed in § 48.6071(a)–1 for filing such return. See section 6601, and chapter 68 of subtitle F of the Code, and the regulations thereunder in Part 301 of this chapter (Regulations on Procedure and Administration) for provisions relating to interest on underpayments, additions to tax, and penalties. For provisions relating to the use of government depositaries in depositing the taxes, see § 48.6302(c)–1.

Par. 15. The following new § 48.6161(a)–1 is added immediately after § 48.6151–1.

§ 48.6161(a)–1 Extension of time for paying tax shown on return.

(a) *In General.* (1) Ordinarily, no extensions of time will be granted for payment of any tax imposed by section 4041 or 4042 or chapter 32 of the Code, and shown or required to be shown on any return. However, if because of temporary conditions beyond the taxpayer's control a taxpayer believes an extension of time for payment is justified, the taxpayer may apply to the district director, or to the director of the service center, for an extension. The period of any extension shall not be in excess of 6 months from the date fixed for payment of the tax, except that if the taxpayer is abroad the period of the extension may be in excess of 6 months.

(2) The granting of an extension of time for filing a return does not operate to extend the time for the payment of the tax or any part of the tax unless so specified in the extension. See § 48.6081(a)–1.

(b) *Undue hardship required for extension.* An extension of the time for payment shall be granted only upon a satisfactory showing that payment on the due date of the amount with respect to which the extension is desired will result in an undue hardship. The extension will not be granted upon a general statement of hardship. The term "undue hardship" means more than an inconvenience to the taxpayer. It must appear that substantial financial loss, for example, loss due to the sale of property at a sacrifice price, will result to the taxpayer from making payment on the due date of the amount with respect to which the extension is desired. If a market exists, the sale of property at the current market price is not ordinarily considered as resulting in an undue hardship.

(c) *Application for extension.* An application for an extension of time for payment of the tax shown or required to be shown on any return shall be made on Form 1127 and shall be accompanied by evidence showing the undue hardship that would result to the taxpayer if the extension were refused. The application shall also be accompanied by a statement of the assets and liabilities of the taxpayer and an itemized statement showing all receipts and disbursements for each of the 3 months immediately preceding the due date of the amount to which the application relates. The application, with supporting documents, must be filed, on or before the date prescribed for payment of the amount with respect to which the extension is desired, with the internal revenue officer to whom the tax is to be paid. The application will be examined, and within 30 days, if possible, will be denied, granted, or tentatively granted subject to certain conditions of which the taxpayer will be notified. If an additional extension is desired, the request for it must be made on or before the expiration of the period for which the prior extension is granted.

(d) *Payment pursuant to extension.* If an extension of time for payment is granted, the payment shall be made on or before the expiration of the period of the extension without the necessity of notice and demand. The granting of an extension of time for payment of the tax does not relieve the taxpayer from liability for the payment of interest on the tax during the period of the extension. See section 6601 and § 301.6601–1 of this chapter (Regulations on Procedure and Administration).

Par. 16. Section 48.6206–1 is revised to read as follows.

§ 48.6206–1 Assessment and collection of excesdive payment and penalty.

(a) *Treatment of excessive amount as tax.* If any portion of a payment made under section 6420 (relating to gasoline used on farms), section 6421 (relating to gasoline used for certain nonhighway purposes or by local transit systems), section 6424 (relating to lubricating oil not used in highway motor vehicles), or section 6427 (relating to special fuels not used for taxable purposes) constitutes an excessive amount as defined in section 6675(b) and § 48.6675–1(b), the excessive amount and any civil penalty provided by section 6675 may be assessed and collected by the district director—

(1) As if the excessive amount and civil penalty were a tax imposed by section 4081 (relating to tax on the sale of gasoline), section 4091 (relating to tax on sale of lubricating oil), or section 4041 (relating to tax on sale of special fuels), as the case may be, and

(2) As if the person who made the claim for payment were liable for tax imposed by section 4081, 4091, or 4041, in that amount.

(b) *Assessment period.* The period within which the portion of a payment constituting an excessive amount and any civil panalty may be assessed shall be 3 years from the last date prescribed by section 6420, 6421, 6424, or 6427, as the case may be, for the filing of the claim in respect of which the excessive amount is attributable.

Par. 17. Section 48.6302(c)–1 is revised to read as follows:

§ 48.6302(c)–1 Use of Government depositaries.

(a) *Monthly deposits.* Except as provided in paragraph (b) of this section, if for any calendar month (other than the last month of a calendar quarter) any person required to file a quarterly excise tax return on Form 720 has a total liability under this part of more than $100 for all excise taxes reportable on that form, the amount of liability for

taxes shall be deposited by the person with a Federal Reserve bank or authorized financial institution on or before the last day of the month following the calendar month.

(b) *Semimonthly deposits.* (1) If any person required to file an excise tax return on Form 720 for any calendar quarter has a total liability under this part of more than $2,000 for all excise taxes reportable on the form for any calendar month in the preceding calendar quarter, the amount of that liability for taxes under this part for any semimonthly period (as defined in paragraph (d)(1) of this section) in the succeeding calendar quarter shall be deposited by him with a Federal Reserve bank or authorized financial institution on or before the depositary date (as defined in paragraph (d)(2) of this section) applicable to the semimonthly period.

(2) A person will be considered to have complied with the requirements of paragraph (b)(1) of this section for a semimonthly period if—

(i)(A) The person's deposit for the semimonthly period is not less than 90 percent of the total amount of the excise taxes reportable by the person on Form 720 for the period, and

(B) If the semimonthly period occurs in a calendar month other than the last month in a calendar quarter, the person deposits any underpayment for the month by the 9th day of the second month following the calendar month; or

(ii)(A) The person's deposit for each semimonthly period in the calendar month is not less than 45 percent of the total amount of the excise taxes reportable by the person on Form 720 for the month, and

(B) If such month is other than the last month in a calendar quarter, the person deposits any underpayment for such month by the 9th day of the second month following the calendar month; or

(iii)(A) The person's deposit for each semimonthly period in the calendar month is not less than 50 percent of the total amount of the excise taxes reportable by the person on Form 720 for the second preceding calendar month, and

(B) If such month is other than the last month in a calendar quarter, the person deposits any underpayment for such month by the 9th day of the second month following the calendar month; or

(iv)(A) The requirements of paragraph (b)(2) (i)(A), (ii)(A), or (iii)(A) of this section are satisfied for the first semimonthly period of a calendar month after January 1971,

(B) If the person's deposit for the second semimonthly period of the calendar month is, when added to the deposit for the first semimonthly period, not less than 90 percent of the total amount of the excise taxes reportable by the person on Form 720 for the calendar month, and

(C) If the semimonthly periods occur in a calendar month other than the last month in a calendar quarter, the person deposits any underpayment for the month by the 9th day of the second month following the calendar month.

(3)(i) Paragraph (b)(2) (ii) and (iii) of this section shall not apply to any person who normally incurs in the first semimonthly period in each calendar month more than 75 percent of the person's total excise tax liability under this part for the month.

(ii) Persons who make their deposits in accordance with paragraph (b)(2) (ii), (iii), or (iv) of this section will find it unnecessary to keep their books and records on a semimonthly basis.

(c) *Deposit of certain excess undeposited amounts.* Notwithstanding paragraphs (a) and (b) of this section, if any person required to file an excise tax return on Form 720 for any calendar quarter beginning after March 31, 1968, has a total liability under this part for all excise taxes reportable on the form for the calendar quarter which exceeds by more than $100 the total amount of taxes deposited by the person pursuant to paragraph (a) or (b) of this section for the calendar quarter, the person shall, on or before the last day of the calendar month following the calendar quarter for which the return is required to be filed, deposit with a Federal Reserve bank or authorized financial institution the full amount by which the person's liability for all excise taxes reportable on the form for that calendar quarter exceeds the amount of excise taxes previously deposited by the person for that calendar quarter.

(d) *Definitions.* For purposes of this part—

(1) *Semimonthly period.* The term "semimonthly period" means the first 15 days of a calendar month or the portion of a calendar month following the 15th day of that month.

(2) *Depositary date.* (i) The term "depositary date" means, in the case of deposits for semimonthly periods beginning after January 31, 1971, the 9th day of the semimonthly period following the semimonthly period for which the taxes are reportable.

(ii) The term "depositary date" means, in the case of deposits for semimonthly periods ending before February 1, 1971, the last day of the semimonthly period following the semimonthly period for which the taxes are reportable.

(e) *Depositary forms and procedures*—(1) *In general.* A person required by this section to make deposits may make one or more remittances with respect to the amount required to be deposited. An amount of tax which is not otherwise required by this section to be deposited may, nevertheless, be deposited if the person liable for the tax so desires.

(2) *Deposits for 1968 and subsequent years.* Each remittance of amounts required to be deposited for periods subsequent to 1967 shall be accompanied by Form FTD 504 (Federal Tax Deposit, Excise Taxes); which shall be prepared in accordance with the applicable instructions. The remittance, together with Form FTD 504, shall be forwarded to a financial institution authorized as a depositary for Federal taxes in accordance with 31 CFR Part 214 or, at the election of the corporation, to a Federal Reserve Bank. For procedures governing the deposit of Federal taxes at a Federal Reserve Bank, see 31 CFR Part 214.7. The timeliness of the deposit will be determined by the date it is received (or is deemed received under section 7502(e) and § 301.7502–1 of this chapter (Regulations on Procedure and Administration)) by the Federal Reserve Bank or by the authorized financial institution. Amounts deposited pursuant to this paragraph (e)(2) shall be considered to be paid on the last day prescribed for filing the return in respect of the tax (determined without regard to any extension of time for filing the returns), or at the time deposited, whichever is later.

(3) *Information required.* Each person making deposits pursuant to this section shall report on the return for the period with respect to which the deposits are made information regarding the deposits in accordance with the instructions applicable to the return and pay (or deposit by the due date of the return) the balance, if any, of the taxes due for the period.

(4) *Procurement of prescribed forms.* Copies of the applicable deposit form will be furnished, so far as possible, to persons required to make deposits under this section. Such a person will not be excused from making a deposit, however, by the fact that no form has been furnished. A person not supplied with the proper form is required to apply for it in ample time to make the required deposits within the time prescribed, supplying with the application the person's name, identification number, address, and the taxable period to which the deposits will relate. Copies of Form FTD 504 may be obtained by applying for them with the distinct

director to the director of the service center.

(f) *Nonapplication to certain taxes.* This section does not apply to taxes for (1) any month or semimonthly period in which the taxpayer receives notice from the district director pursuant to § 48.6011(a)–1(b) to file Form 720 or (2) any subsequent month or semiannually period for which a return on Form 720 is required.

Par. 18. The following new § 48.6302(c)–2 is added immediately after § 48.6302(c)(1)

§ 48.6302(c)–2 Cross reference.

(a) *Failure to deposit.* For provisions relating to failure to make a deposit within the time prescribed, see § 301.6656–1 of this chapter (Regulations on Procedures and Administration).

(b) *Saturday, Sunday, or legal holiday.* For regulations relating to the time for performance of acts when the last day for the performance falls on a Saturday, Sunday, or a legal holiday, see § 301.7503–1 of this chapter (Regulations on Procedure and Administration).

Par. 19. The following new §§ 48.6402(a)–1, 48.6404(a)–1, 48.6412–1, 48.6412–2, and 48.6412–3 are added immediately after § 48.6302(c)–2.

§ 48.6402(a)–1 Authority to make credits or refunds.

For provisions relating to credits and refunds of certain taxes on sales and services see section 6416 and the regulations thereunder. For regulations under section 6402 of general application in respect of credits or refunds, see §§ 301.6402–1, 301.6402–2, and 301.6402–4 of this chapter (Regulations on Procedure and Administration).

§ 48.6404(a)–(1) Abatements.

For regulations under section 6404 of general application in respect of abatements of assessments ot tax, see § 301.6404–1 of this chapter (Regulations on Procedure and Administration).

§ 48.6412–1 Floor stocks credit or refund.

(a) *In general.* This section sets forth the procedures to be followed in claiming the credit or refund authorized by section 6412 for manufacturers excise taxes paid in respect of certain articles held by dealers as floor stocks on October 1, 1984. See § 48.6412–2 for definitions of the following terms when used in this section: "floor stocks", "inventory date", "dealer", "held by a dealer", "old rate", "new rate", "dealer request limitation date", "claim limitation date", and "tax paid". See § 48.6412–3 for determining the amount of tax paid on articles that are held as floor stocks. The manufacturers excise taxes for which credit or refund may be claimed under this section are those imposed by section 4061(a)(1), relating to trucks, buses, tractors, etc.; section 4071(a)(1), relating to tires of the type used on highway vehicles; section 4071(a)(3), relating to inner tubes for tires; section 4071(a)(4), relating to tread rubber; and section 4081, relating to gasoline. For definition of the term "highway vehicle", see § 48.4061(a)–1(d).

(b) *Computation of the amount of floor stocks credit or refund.* The amount of floor stocks credit or refund which may be claimed by the manufacturer under section 6412(a)(1) may not exceed an amount equal to the difference between the tax paid by the manufacturer on the sale of the article and the amount of tax made applicable to the article on the inventory date. For example, *M*, a dealer has on hand on October 1, 1984, as floor stocks inventory, an automobile truck chassis which had a manufacturer's taxable sale price of $20,000 on which tax was paid under section 4061(a)(1) at a rate of 10 percent, or $2,000. Since this automobile truck chassis is subject to a tax of 5 percent, or $1,000, under section 4061(a)(1) as of October 1, 1984, the amount of floor stocks credit or refund that may be claimed by the manufacturer with respect to such truck chassis is the difference between the $2,000 tax paid on the manufacturer's sale of the truck chassis and the $1,000 tax made applicable to the article on October 1, 1984. No interest is allowable with respect to any amount of tax credited or refunded under section 6412 and this section. In applying the floor stocks credit or refund provisions, the date on which the manufacturer paid the tax with respect to the article held as floor stocks is not relevant. Thus, the period of limitations provided in section 6511 with respect to claims for credit or refund does not apply; however, see paragraph (f) of this section. For definition of the term "manufacturer", see § 48.0–2(a)(4).

(c) *Limitation.* Except as provided in § 48.6412–3, no credit or refund is allowable under this section for an amount paid as tax which may be credited or refunded under any provisions of law other than section 6412(a)(1), or which was allowable as a credit or refund under section 6412 with respect to an earlier inventory date.

(d) *Relationship between credits or refunds for floor stocks and credits or refunds for price readjustments.* The amount which may be credited or refunded for floor stocks and for price readjustments on an article may not in the aggregate exceed the tax paid in respect of the article. A credit or refund computed on the basis of the old tax rate will be allowed with respect to a price readjustment of an article on which a floor stock credit or refund was allowed, but only if the amount of the floor stock credit or refund otherwise allowable was reduced by taking into account such price readjustment, as determined under § 48.6412–3(e). The manufacturer must keep readily available for inspection sufficient records to enable examining officers of the Internal Revenue Service to ascertain the correctness of any claim for credit or refund for a price readjustment of an article on which a floor stock refund was claimed.

(e) *Participation of dealers*—(1) *Request by dealer.* On or before the dealer request limitation date, a dealer may submit to a manufacturer a request with respect to a credit or refund allowable under this section for tax paid by the manufacturer with respect to articles held by the dealer as floor stocks. This request may be submitted directly to the manufacturer, or it may be submitted to him indirectly through another dealer in the distribution chain if the request is received by the manufacturer or an authorized agent of the manufacturer on or before the dealer request limitation date.

(2) *Requirements for claim by manufacturer.* No amount of credit or refund under this section may be claimed by a manufacturer with respect to articles held by a dealer as floor stocks unless—

(i) The claim for the amount is based upon a request submitted by the dealer to the claimant on or before the dealer request limitation date;

(ii) The amount is paid by the claimant to the dealer, or the dealer's written consent to allowance of the credit or refund has been received by the claimant, on or before the claim limitation date; and

(iii) The request by the dealer is supported by an inventory statement, made under the penalties of perjury and signed by the dealer or by the dealer's authorized representative, setting forth the following information:

(A) The name and address of the dealer and of the applicable manufacturer, (if the name and address of the applicable manufacturer is unknown to the dealer, these items may be added by any person in the chain of distribution);

(B) The identification number, if any, of the article, such as a serial, stock, model, type, or class number, or some other suitable means of identification;

(C) A brief description of the article, such as its common name or designation; and

(D) The quantity of articles held by the dealer as floor stocks on the inventory date.

(3) *Actual manufacturer unknown.* If a dealer addresses a request to the person, who from markings on the article the dealer presumes to be the manufacturer, the request may be treated as made to the actual manufacturer if the actual manufacturer accepts the dealer's request.

(4) *Payment to dealer by claimant.* Payment may be made directly to the dealer or to the dealer's authorized agent or representative by the claimant or by the claimant's authorized agent or representative. If a claimant pays a dealer through the claimant's agent or representative, the evidence must show that the dealer actually received the payment. If a dealer authorizes the claimant to pay the dealer through the dealer's agent or representative, evidence showing receipt of the payment by the agent or representative will be accepted as proof of actual payment to the dealer. Payment shall be made, at the manufacturer's option, in cash, by check, or by credit to the dealer's account as maintained by the claimant. The amount of the payment which may be made by crediting the dealer's account may not exceed the undisputed debit balance due at the time the credit is made. However, payment may be made in merchandise at the dealer's option with the concurrence of the manufacturer.

(5) *Date of performance.* The date on which any act described in this paragraph (e) is performed by an agent or representative on behalf of a claimant or dealer is deemed to be the date on which the act is performed by the principal.

(6) *Record of inventories.* For provisions relating to the record of a dealer's inventories to be kept by the claimant, see paragraph (g) of this section.

(7) *Sample written consent.* No particular form is prescribed or required for the written consent of the dealer described in paragraph (e)(2)(ii) of this section. However, the following is an example of an acceptable consent statement by a dealer:

Consent Statement of Dealer

(For use by dealer in requesting manufacturer, producer, or importer to obtain credit under section 6412 of the Internal Revenue Code of 1954 with respect to floor stocks.)

I hereby consent to the allowance to the manufacturer, producer, or importer of the floor stocks credit or refund of the excise tax imposed by the Internal Revenue Code of 1954 with respect to the articles in my inventory on _____

_____
(Name)
By _____
(Signature of Officer)
_____
(Title)
_____
(Date)

(f) *Procedure for claiming credit or refund*—(1) *In general.* Each claim for credit or refund under this section shall be filed on or before the applicable claim limitation date, in the manner and subject to the conditions stated in this section and in § 301.6402–2 of this chapter (Regulations on Procedure and Administration). Either credit or refund, or a combination thereof, may be claimed, but the amount which may be claimed as a credit on a return shall not exceed the total tax liability shown on the return, reduced by the amount of any deposits made under § 48.6302(c)–1 with respect to the return and by any amount of credit claimed on the return pursuant to any provision of law other than section 6412. If the total amount which may be claimed exceeds the amount that may be claimed as credit on a return, the excess amount may be claimed on or before the applicable claim limitation date either as a refund or as a credit on a subsequent return. If credit is claimed the amount of the credit shall be entered as a credit on a timely-filed return of tax. The statement described in paragraph (f)(2) of this section must show the amount and date of each previous and concurrent claim for credit or refund under this section and indicate whether any future claims are expected to be filed.

(2) *Supporting evidence to be submitted by the manufacturer.* No credit or refund shall be allowed under this section unless there is submitted, in support of the claim for credit or refund, a statement signed by the person making the claim, that describes in general terms the articles covered by the claim, sets forth the method of computing the amount claimed (including a description of any procedures used pursuant to § 48.6412–3), and states that—

(i) The claimant paid to the district director or the director of the internal revenue service center the tax for which credit or refund is claimed;

(ii) The total amount claimed represents payments requested by dealers before the dealer request limitation date;

(iii) The total amount claimed either was paid by the claimant to the dealers, or the claimant received the written consent of the dealers to the allowance of the amount claimed:

(iv) The claimant has in his possession, and available for inspection by internal revenue officers, the evidence with respect to inventories required by paragraph (g)(2) of this section, and any written consents referred to in paragraph (f)(2)(iii) of this section; and

(v) No other claim for credit or refund under this section has been or will be made by the claimant with respect to any amount covered by the claim.

(g) *Evidence to be retained in the manufacturer's records.* Every person filing a claim for credit or refund pursuant to this section shall support the claim by keeping as part of the claimant's records—

(1) The dealer's inventory statements required by paragraph (e)(2)(iii) of this section, to the extent that the articles are covered by the claim;

(2) Records, in respect of the articles held by each dealer, showing—

(i) The name and address of the dealer,

(ii) The quantities of each article held by the dealer as floor stocks by taxable category, for example, by model or type number,

(iii) The amount of tax considered to be paid by the manufacturer with respect to each article held by the dealer, as determined under § 48.6412–3,

(iv) The amount of tax, if any, which the claimant would pay on the sale or each article held by the dealer if the tax were computed at the new rate,

(v) The total amount of reimbursement due the dealer,

(vi) The date on which the claimant received from the dealer the request described in paragraph (e)(1) of this section, but only if payment was not made to the dealer before the dealer request limitation date, and

(vii) The date and amount of each payment to a dealer, or the date of receipt by the claimant from the dealer of a written consent, as set forth in paragraph (e)(2)(ii) of this section; and

(3) Any such written consent received from a dealer.

(h) *Special rules where the presumed manufacturer is the agent of the actual manufacturer.* For purposes of this section, if a manufacturer sells articles tax-paid to a second manufacturer for resale by the second manufacturer under its own brand name, the second manufacturer may perform any acts and keep any records which are a prerequisite to the first manufacturer's filing a claim for floor stocks credit or refund with respect to the articles. If such a procedure is followed, the claim

filed by the first manufacturer shall include a statement indicating the name and address of the second manufacturer and the amount of its claim which relates to articles sold to the second manufacturer.

(i) *Effect on other claims for credit or refund.* If a claim for credit or refund is made pursuant to section 6416 and the regulations thereunder, relating in part to returned sales, sales for export or for exempt use, sales to States, etc., with respect to a tax imposed by section 4061(a)(1), section 4071(a) (1), (3), or (4), or section 4081, and if the claim is made with respect to articles sold by the claimant before the date on which the tax is reduced in rate or terminated, the claim shall be based on the new rate of tax unless the claimant can establish that the tax was imposed at the old rate and that no refund or credit under this section was allowed with respect to the articles. See, however, paragraph (d) of this section.

(j) *Other applicable provisions.* All provisions of law, including penalties, applicable in respect of the taxes imposed by sections 4061, 4071, and 4081 shall, insofar as applicable and not inconsistent with section 6412, apply in respect to the credits and refunds provided for in section 6412 to the same extent as if the credits or refunds constituted overpayments of the taxes. For provisions under which timely mailing is treated as timely filing, and for provisions applicable to the time for performance of acts when the last day falls on Saturday, Sunday, or a legal holiday, see §§ 301.7502–1 and 301.7503–1, respectively, of this chapter (Regulations on Procedure and Administration).

§ 48.6412–2 Definitions for purposes of floor stocks credit or refund.

For purposes of section 6412 and the regulations thereunder—

(a) *Floor stocks.* The term "floor stocks" means any article subject to the tax imposed by section 4061(a)(1), section 4071(a) (1), (3), or (4) or section 4081 which—

(1) Is sold by the manufacturer (otherwise than in a tax-free sale) before October 1, 1984,

(2) Is held by a dealer at the first moment on October 1, 1984, and has not been used, and

(3) Is intended for sale or, in the case of tread rubber, is intended for sale or is held for use.

However, the term "floor stocks" does not include gasoline in retail stocks held at the place where intended to be sold at retail, nor with respect to gasoline held for sale by a producer or importer of gasoline, or inner tubes for bicycle tires (as defined in section 4221(e)(4)(B)).

(b) *Inventory date.* The term "inventory date" means the first moment on the date on which an article is treated as floor stocks within the meaning of paragraph (a) of this section.

(c) *Dealer.* The term "dealer" includes a wholesaler, jobber, distributor, or retailer, or in the case of tread rubber subject to tax under section 4071(a)(4), includes any person (other than the manufacturer of the tread rubber) who holds the tread rubber for sale or use.

(d) *Held by a dealer*—(1) *In general.* (i) An article is considered as "held by a dealer" if title to the article has passed to the dealer whether or not delivery to the dealer has been made), and if, for purposes of consumption, title to or possession of the article has not at any time been transferred to any person other than a dealer.

(ii) Floor samples, demonstrators, and articles undergoing repair (whether or not on the dealer's premises) that are carried in stock to be sold as new articles, and articles purchased tax-paid by a manufacturer or a sales subsidiary and held by the person on the inventory date for resale as such, will be considered as unused and held by a dealer, if title to or possession of the article has not at any time been transferred to any person for purposes of consumption.

(iii) Articles sold by a dealer to a consumer before the inventory date and thereafter repossessed by the dealer, and articles purchased tax-paid by a manufacturer for use in further manufacture within the meaning of section 4221(d)(6), will not be considered as held by a dealer.

(iv) The determination as to the time title or possession passes for purposes of consumption shall be made under applicable local law.

(2) *Examples.* The application of this paragraph (d) may be illustrated by the following examples:

Example (1). If, under local law, title to an article sold by a dealer under a conditional sales contract is in the dealer on the inventory date, but the consumer has physical possession of the article on that date, the article is not considered as held by the dealer.

Example (2). If, under local law, title to an article is in the consumer on the inventory date because the article is specifically identified with a contract, but on that date the dealer still has physical possession of the article, for example, in his will-call department, the article is not considered as held by the dealer on that date because title to the article has passed to the consumer for purposes of consumption.

Example (3). If, under local law, title to an article is in the consumer on the inventory date because the dealer transferred the article to a common carrier for delivery to the consumer, the article in transit is not considered as held by the dealer on that date because title has passed to the consumer for purposes of consumption, even though neither the dealer nor the consumer has physical possession of the article.

Example (4). If, under local law, title to an article is in the dealer on the inventory date and does not pass to the consumer until delivery by a common carrier, the article in transit shall be considered as held by the dealer on that date because neither the title nor possession has passed to the consumer for purposes of consumption.

Example (5). If an article has been mortgaged or otherwise hypothecated by a dealer as security for a loan and, under local law, title to the article is in the creditor on the inventory date, and physical possession is in the dealer, the article shall be considered as held by the dealer on that date because neither title nor possession has passed to the consumer for purposes of consumption.

(e) *Old rate.* The term "old rate" means the rate of tax in effect with respect to the sale of an article before the date designated in paragraph (a) or (b) of this section on which the tax is reduced in rate or is terminated.

(f) *New rate.* The term "new rate" means the rate of tax, if any, in effect with respect to the sale of an article on the date designated in paragraph (a) or (b) of this section on which the tax is reduced in rate or is terminated.

(g) *Dealer request limitation date.* The term "dealer request limitation date" is the date prescribed by section 6412(a)(1) before which the request on which the manufacturer's claim is based must be submitted to the manufacturer by the dealer who held the floor stocks on the inventory date. In the case of an article held by a dealer on October 1, 1984, the dealer request limitation date is January 1, 1985.

(h) *Claim limitation date.* The term "claim limitation date" means the last date prescribed by section 6412(a)(1) on which refund or credit with respect to floor stocks may be claimed by a manufacturer. In the case of an article held by a dealer on October 1, 1984, the claim limitation date is March 31, 1985.

(i) *Tax paid.* A tax is considered paid if it was paid or was offset by an allowable credit on the return on which it was reported.

§ 48.6412–3 Amount of tax paid on each article.

(a) *General rule.* For purposes of making the claim for credit or refund under § 48.6412–1 in respect of floor stocks held by a dealer, the tax paid on each article must be separately computed. If desired, the procedures set forth in paragraphs (b) through (g) of this

section may be used in making the computation. The procedure used in determining the tax paid on an article must also be used in determining the amount of tax, if any, made applicable to the article on the effective date of reduction or repeal of the tax involved. Prior approval of the Internal Revenue Service for the method of computation need not be obtained and should not be requested.

(b) *Selling price.* In determining the price of an article on which the tax paid is to be computed, the average of the gross selling prices of identical articles sold during a representative period may be used. For example, truck chassis of the same model that are sold by the manufacturer with the same equipment and accessories are identical articles whose selling prices may be computed on the basis of an average.

(c) *Transportation charges.* In determining the price of an article on which the tax paid is to be computed, the average of the exclusions authorized by section 4216(a) for transportation, delivery, insurance, installation, etc., for a reasonable category of articles during a representative period may be used.

(d) *Credits for tax paid on inner tubes.* The average of the credits authorized by section 6416(c) for tax paid on tires or inner tubes may be averaged for a reasonable category of articles during a representative period. The credits shall be subtracted from the gross excise tax to arrive at the net excise tax paid.

(e) *Price readjustments.* (1) In determining the price on which the tax paid is to be computed, there must be taken into account any price readjustments with respect to which the manufacturer has filed a claim for credit or refund under section 6416(b). Other price readjustments which have been, or are reasonably expected to be, made with respect to the article may, at the option of the manufacturer, be taken into account in computing the price of the article.

(2) Price readjustments which cannot be attributed to specific articles as of the inventory date (as, for example, a price readjustment of a flat dollar amount which is made to dealers who meet a sales quota) may be taken into account on the basis of an average of the adjustments which is computed for a reasonable category of articles over a representative period.

(3) Price readjustments related to specific items (as, for example, an automatic rebate of a specific percentage of the price of each unit sold to a dealer) may not be averaged, and in such a case only the actual price readjustment attributable to a particular article may be taken into account in computing the tax on that article.

(4) If, because of the facts in a case, a price readjustment can be attributed to specific articles for purposes of consumer refunds but cannot be attributed to specific articles for purposes of floor stocks credits or refunds (as, for example, in the case of a price readjustment made with respect to trucks sold by a dealer to a fleet operator), the price adjustment may be averaged for purposes of both consumer refunds and floor stocks credits and refunds.

(f) *Representative period.* A period will be considered a representative period if—

(1) It covers (i) at least four consecutive calendar quarters, the last of which ends with a period of six calendar months immediately preceding the effective date of the tax reduction or repeal involved or (ii) any other period of time which the taxpayer can demonstrate constitutes a representative period for the particular category, and

(2) The number of articles in the category involved sold by the manufacturer during the period either (i) equals or exceeds the number of articles in the category to which the average amount is to be applied or (ii) can be demonstrated by the taxpayer to be a representative quantity.

(g) *Reasonable category.* Examples of a reasonable category of articles are articles that are identified by a common stock or class number or which are of the same model, class, or line. For the purpose of averaging exclusions, another example of a reasonable category of articles is a grouping of articles that are shipped in the same container. If a manufacturer sells articles bearing his own trademark and also sells articles as private brands, separate computations of the two brands must be made under this section.

Par. 20. Section 48.6416(a)–1 is revised to read as follows:

§ 48.6416(a)–1 Claims for credit or refund of overpayments of taxes on special fuels and manufacturers taxes.

Any claims for credit or refund of an overpayment of a tax imposed by chapter 31 or chapter 32 shall be made in accordance with the applicable provisions of this subpart and the applicable provisions of § 301.6402–2 of this chapter (Regulations on Procedure and Administration). A claim on Form 843 is not required in the case of a claim for credit, but the amount of the credit shall be claimed by entering that amount as a credit on a return of tax under this subpart filed by the person making the claim. In this regard, see § 48.6416(f)–1.

Par. 21. The following new §§ 48.6416(a)–2 and 48.6416(a)–3 are added immediately after § 48.6416(a)–1 to read as follows.

§ 48.6416(a)–2 Credit or refund of tax on special fuels.

(a) *Overpayments not described in section 4616(b)(2)*—(1) *Claims included.* This paragraph applies only to claims for credit or refund of an overpayment of tax imposed by section 4041(a)(1) (relating to tax on the sale of diesel fuel), section 4041(b)(1) (relating to tax on the sale of special motor fuels), section 4041(c)(1)(A) (relating to tax on the sale of fuel for use in noncommercial aviation), or section 4041(c)(2)(A) (relating to the tax on sale of gasoline for use in noncommercial aviation). It does not apply, however, to a claim for credit or refund of any overpayment described in paragraph (b) of this section which arises by reason of the application of section 6416(b)(2).

(2) *Supporting evidence required.* No credit or refund of any overpayment to which this paragraph (a) applies shall be allowed unless the person who paid the tax submits with the claim a written consent of the ultimate purchaser to the allowance of the credit or refund, or submits with the claim a statement, supported by sufficient available evidence, asserting that—

(i) The person has neither included the tax in the price of the fuel with respect to which it was imposed nor collected the amount of the tax from a vendee, and identifying the nature of the evidence available to establish these facts, or

(ii) The person has repaid the amount of the tax to the ultimate purchaser of the fuel.

(3) *Ultimate purchaser.* The term "ultimate purchaser", as used in paragraph (a)(2) of this section, means the vendee to whom the fuel was sold tax-paid by the person claiming credit or refund.

(b) *Overpayments determined under section 6416(b)(2)*—(1) *Claims included.* This paragraph applies only to claims for credit or refund of amounts paid as tax under section 4041(a)(1) (relating to tax on the sale of diesel fuel) or section 4041(b)(1) (relating to tax on the sale of special motor fuels) that are determined to be overpayments by reason of section 6416(b)(2) (relating to tax payments in respect of certain uses, sales, or resales of a taxable article).

(2) *Supporting evidence required.* No credit or refund of an overpayment to which this paragraph (b) applies shall be

allowed unless the person who paid the tax submits with the claim a statement, supported by sufficient available evidence, asserting that—

(i) The person has neither included the tax in the price of the fuel with respect to which it was imposed nor collected the amount of the tax from a vendee, and identifying the nature of the evidence available to establish these facts, or

(ii) The person has repaid, or agreed to repay, the amount of the tax to the ultimate vendor of the fuel, or

(iii) The person has secured, and will submit upon request of the Service, the written consent of the ultimate vendor to the allowance of the credit or refund.

(3) *Ultimate vendor.* The term "ultimate vendor", as used in paragraph (b)(2) of this section, means the seller making the sale which gives rise to the overpayment or which last precedes the exportation or use which gives rise to the overpayment.

(c) *Nonapplication to tax on use of special fuels.* Neither this section nor paragraph (d)(1) of section 6416 shall have any effect on overpayments of tax under section 4041(a)(2) (relating to tax on the use of diesel fuel), section 4041(b)(2) (relating to tax on the use of special motor fuels), section 4041(c)(1)(B) (relating to tax on the use of fuel other than gasoline in noncommercial aviation), section 4041(c)(2)(B) (relating to tax on the use of gasoline in noncommercial aviation), or section 4042 (relating to tax on fuel used in commercial transportation on inland waterways).

§ 48.6416(a)-3 Credit or refund of manufacturers tax under chapter 32.

(a) *Overpayment not described in section 6416(b)(2), (3)(C) or (4)*—(1) *Claims included.* This paragraph applies only to claims for credit or refund of an overpayment of manufacturers tax imposed by chapter 32. It does not apply, however, to a claim for credit or refund on any overpayment described in paragraph (b) of this section which arises by reason of the application of section 6416(b)(2), (3)(C), or (4).

(2) *Supporting evidence required.* No credit or refund of any overpayment to which this paragraph (a) applies shall be allowed unless the person who paid the tax submits with the claim a written consent of the ultimate purchaser to the allowance of the credit or refund, or submits with the claim a statement, supported by sufficient available evidence, asserting that—

(i) The person has neither included the tax in the price of the article with respect to which it was imposed nor collected the amount of the tax from a vendee, and identifying the nature of the evidence available to establish these facts, or

(ii) The person has repaid the amount of the tax to the ultimate purchaser of the article.

(3) *Ultimate purchaser*—(i) *General rule.* The term "ultimate purchaser", as used in paragraph (a)(2) of this section, means the person who purchased the article for consumption, or for use in the manufacture of other articles and not for resale in the form in which purchased.

(ii) *Special rule under section 6416(a)(3)(A).*—(A) *Conditions to be met.*—If tax under chapter 32 is paid in respect of an article and the Commissioner determines that the article is not subject to tax under chapter 32, the term "ultimate purchaser", as used in paragraph (a)(2) of this section, includes any wholesaler, jobber, distributor, or retailer who, on the 15th day after the date of the determination, holds for sale any such article with respect to which tax has been paid, if the claim for credit or refund of the overpayment in respect of the articles held for sale by the wholesaler, jobber, distributor, or retailer is filed on or before the date on which the person who paid the tax is required to file a return for the period ending with the first calendar quarter which begins more than 60 days after the date of the determination by the Commissioner.

(B) *Supporting statement.*—A claim for credit or refund of an overpayment of tax in respect of an article as to which a wholesaler, jobber, distributor, or retailer is the ultimate purchaser, as provided in this paragraph (a)(3)(ii), must be supported by a statement that the person filing the claim has a statement, by each wholesaler, jobber, distributor, or retailer whose articles are covered by the claim, showing total inventory, by model number and quantity, of all such articles purchased tax-paid and held for sale as of 12:01 a.m. of the 15th day after the date of the determination by the Commissioner that the article is not subject to tax under chapter 32.

(C) *Inventory requirement.*—The inventory shall not include any such article title to which, or possession of which, has previously been transferred to any person for purposes of consumption unless the entire purchase price was repaid to the person or credited to the person's account and the sale was rescinded or any such article purchased by the wholesaler, jobber, distributor, or retailer as a component part of, or on or in connection with, another article. An article in transit at the first moment of the 15th day after the date of the determination is regarded as being held by the person to whom it was shipped, except that if title to the article does not pass until delivered to the person the article is deemed to be held by the shipper.

(b) *Overpayments determined under section 6416(b) (2), (3)(C), or (4).*—(1) *Claims included.*—This paragraph applies only to claims for credit or refund of amounts paid as tax under chapter 32 that are determined to the overpayments by reason of section 6416(b)(2) (relating to tax payments in respect of certain uses, sales, or resales of a taxable article), section 6416(b)(3)(C) (relating to tax-paid tires or inner tubes used for further manufacture), or section 6416(b)(4) (relating to tires or inner tubes used by the manufacturer on another manufactured article).

(2) *Supporting evidence required.*—No credit or refund of an overpayment to which this paragraph (b) applies shall be allowed unless the person who paid the tax submits with the claim a statement, supported by sufficient available evidence, asserting that—

(i) The person neither included the tax in the price of the article with respect to which it was imposed nor collected the amount of the tax from a vendee, and identifying the nature of the evidence available to establish these facts, or

(ii) The person repaid, or agreed to repay, the amount of the tax to the ultimate vendor of the article, or

(iii) The person has secured, and will submit upon request of the Service, the written consent of the ultimate vendor to the allowance of the credit or refund.

(3) *Ultimate vendor.*—(i) *General rule.*—The term "ultimate vendor", as used in paragraph (b)(2) of this section, means the seller making the sale which gives rise to the overpayment or which last precedes the exportation or use which has given rise to the overpayment.

(ii) *Special rule under section 6416(a)(3)(B).*—In the case of an overpayment determined under section 6416(b) (2)(E), (3)(C), or (4) in respect of tires or inner tubes, where the taxable article is used as a component part of, or sold on or in connection with or with the sale of, a second article which is exported, sold to a nonprofit educational organization for its exclusive use, sold to a State or local government for the exclusive use of a State or local government or used or sold for use as supplies for vessels or aircraft, the term "ultimate vendor", as used in paragraph (b)(2) of this section, means the ultimate vendor of the second article. See

§§ 48.6416(b)(2)–2(g), 48.6416(b)(3)–2(d), and 48.6416(b)(4)–1(b), respectively.

(c) *Overpayments not included.* This section does not apply to any overpayment determined under section 6416(b)(1) (relating to price readjustments), section 6416(b)(3) (A) or (B) (relating to certain cases in which refund or credit is allowable to the manufacturer who uses, in the further manufacture of a second article, a taxable article purchased by the manufacturer tax-paid), or section 6416(b)(5) (relating to the return to the seller of certain installment accounts which the seller had previously sold). In this regard, see §§ 48.6416(b)(1)–1, 48.6416(b)(3)–1, and 48.6416(b)(5)–1.

Par. 22. Section 48.6416(b)–1 is removed, and the following new §§ 48.6416(b)(1)–1, 48.6416(b)(1)–2, 48.6416(b)(1)–3, and 48.6416(b)(1)–4 are added immediately after § 48.6416(a)–3.

§ 48.6416(b)(1)–1 Price readjustments causing overpayments of manufacturers tax.

In the case of any payment of tax under chapter 32 that is determined to be an overpayment by reason of a price readjustment within the meaning of section 6416(b)(1) and § 48.6416(b)(1)–2 or § 48.6416(b)(1)–3, the person who paid the tax may file a claim for refund of the overpayment or may claim credit for the overpayment on any return of tax under this subpart which the person subsequently files. Price readjustments may not be anticipated. However, if the readjustment has actually been made before the return is filed for the period in which the sale was made, the tax to be reported in respect of the sale may, at the election of the taxpayer, be based either (a) on the price as so readjusted or (b) on the original sale price and a credit or refund claimed in respect of the price readjustment. A price readjustment will be deemed to have been made at the time when the amount of the readjustment has been refunded to the vendor or the vendor has been informed that the vendor's account has been credited with the amount. No interest shall be paid on any credit or refund allowed under this section. For provisions relating to the evidence required in support of a claim for credit or refund, see § 301.6402–2 of this chapter (Regulations on Procedure and Administration), § 48.6416(a)–3(a)(2), and § 48.6416(b)(1)–4. For provisions authorizing the taking of a credit in lieu of filing a claim for refund, see section 6416(f) and § 48.6416(f)–1.

§ 48.6416(b)(1)–2 Determination of price readjustments.

(a) *In general.*—(1) *Rules of usual application.*—(i) *Amount treated as overpayment.*—If the tax imposed by chapter 32 has been paid and thereafter the price of the article on which the tax was based is readjusted, that part of the tax which is proportionate to the part of the price which is repaid or credited to the purchaser is considered to be an overpayment. A readjustment of price to the purchaser may occur by reason of—

(A) The return of the article,

(B) The repossession of the article,

(C) The return or repossession of the covering or container of the article, or

(D) A bona fide discount, rebate, or allowance against the price at which the article was sold.

(ii) *Requirements of price readjustment.* A price readjustment will not be deemed to have been made unless the person who paid the tax either—

(A) Repays part or all of the purchase price in cash to the vendee,

(B) Credits the vendee's account for part or all of the purchase price, or

(C) directly or indirectly reimburses a third party for part or all of the purchase price for the direct benefit of the vendee.

In addition, to be deemed a price readjustment, the payment or credit must be contractually or economically related to the taxable sale that the payment or credit purports to adjust. Thus, commissions or bonuses paid to a manufacturer's own agents or salesman for selling the manufacturer's taxable products are not price readjustments for purposes of this section, since those commissions or bonuses are not paid or credited either to the manufacturer's vendee or to a third party for the vendee's benefit. On the other hand, a bonus paid by the manufacturer to a dealer's salesman for negotiating the sale of a taxable article previously sold to the dealer by the manufacturer is considered to be a readjustment of the price on the original sale of the taxable article, regardless of whether the payment to the salesman is made directly by the manufacturer or to the salesman through the dealer. In such a case, the payment is related to the sale of a taxable article and is made for the benefit of the dealer because it is made to the dealer's salesman to encourage the sale of a product owned by the dealer. Similarly, payments or credits made by a manufacturer to a vendee as reimbursement of interest expense incurred by the vendee in connection with a so-called "free flooring" arrangement for the purchase of taxable articles is a price readjustment, regardless of whether the payment or credit is made directly to the vendee or to the vendee's creditor on behalf of the vendee.

(iii) *Limitation on credit or refund.* The credit or refund allowable by reason of a price readjustment in respect of the sale of a taxable article may not exceed an amount which bears the same ratio to the total tax originally due and payable on the article as the amount of the tax-included readjustment bears to the original tax-included sale price of the article.

Example. A manufacturer sells a taxable article for $100 plus $10 excise tax, and reports and pays tax liability accordingly. Thereafter, the manufacturer credits the customer's account for $11 (tax included) in readjustment of the original sale price. The overpayment of tax is $1, determined as follows:

$$\frac{\text{Tax-included readjustment}}{\text{Tax-included sale price}} \times \text{Original tax due} = \text{Tax overpayment}$$

$$\frac{\$11}{\$100} \times \$10 = \$1 \text{ tax overpaid.}$$

(2) *Rules of special application.*—(i) *Constructive sale price.*—If, in the case of a taxable sale, the tax imposed by chapter 32 is based on a constructive sale price determined under any paragraph of section 4216(b) and the regulations thereunder, as determined without reference to section 4218, then any price readjustment made with respect to the sale may be taken into account under this section only to the extent that the price readjustment reduces the actual sale price of the article below the constructive sale price.

Example. (A) A manufacturer sells a taxable article at retail for $110 tax included. Under section 4216(b)(1) the constructive sale price (tax included) of the article is determined to be $93. Thereafter, the manufacturer grants an allowance of $10 to the purchaser, which reduces the actual selling price (tax included) to $100. Since the readjusment price still exceeds the amounts of the constructive sale price, this readjustment is not recognized as a price readjustment under this section.

(B) Subsequently, the manufacturer extends to the purchaser an additional price allowance of $10, thereby reducing the actual sale price to $90. Since the actual sale price is now $3 less than the constructive sale price of $93, the manufacturer has overpaid by the amount of tax attributable to the $3. Assuming the tax rate involved is 10 percent, and the prices involved are tax-included, the overpayment of tax would be $0.27, that is, 10/110ths of $3.

(ii) *Price determined under section 4223(b)(2).*—If a manufacturer (within the meaning of section 4223(a)) to whom an article is sold or resold free of tax in

accordance with the provisions of section 4221(a)(1) for use in further manufacture diverts the article to a taxable use or sells it in a taxable sale, and pursuant to the provisions of section 4223(b)(2) computes the tax liability in respect of the use or sale on the price for which the article was sold to the manufacturer or on the price at which the article was sold by the actual manufacturer, a reduction of the price on which the tax was based does not result in an overpayment within the meaning of section 6416(b)(1) or this section. Moreover, if a manufacturer purchases an article tax free and computes the tax in respect of a subsequent sale of the article pursuant to the provisions of section 4223(b)(2), an overpayment does not arise by reason of readjustment of the price for which the article was sold by the manufacturer except where the readjustment results from the return or repossession of the article by the manufacturer, and all of the purchase price is refunded by the manufacturer. See, however, paragraph (b)(4) of this section as to repurchased articles.

(b) *Return of an article.*—(1) *Price readjustment.*—If a taxable article is returned to the manufacturer who paid the tax imposed by chapter 32 on the sale of the article, a price readjustment giving rise to an overpayment results—

(i) If the article is returned before use, and all of the purchase price is repaid to the vendee or credited to the vendee's account, or

(ii) If the article is returned under an express or implied warranty as to quality or service, and all or a part of the purchase price is repaid to the vendee or credited to the vendee's account, or

(iii) If title is still in the seller, as, for example, in the case of certain installment sales contracts, and all or a part of the purchase price is repaid to the vendee or credited to the vendee's account.

(2) *Return of purchase price.*—For purposes of paragraph (b)(1) of this section, if all of the purchase price of an article has been returned to the vendee, except for an amount retained by the manufacturer pursuant to contract as reimbursement of expense incurred in connection with the sale (such as a handling or restocking charge), all of the purchase price is considered to have been returned to the vendee.

(3) *Taxability of subsequent sale or use.*—If, under any of the conditions described in pargraph (b)(1) of this section, an article is returned to the manufacturer who paid the tax and all of the purchase price is returned to the vendee, the sale is considered to have been rescinded. Any subsequent sale or use of the article by the manufacturer will be considered to be an original sale or use of the article by the manufacturer which is subject to tax under chapter 32 unless otherwise exempt. If under any such condition an article is returned to the manufacturer who paid the tax and only part of the purchase price is returned to the vendee, a subsequent sale of the article by the manufacturer will be subject to tax to the extent that the sale price exceeds the adjusted sale price of the first taxable sale.

(4) *Treatment of other transactions as repurchases.*—Except as provided in paragraph (b)(1) of this section, a price readjustment will not result when a taxable article is returned to the manufacturer who paid the tax on the sale of the article, even though all or a part of the purchase price is repaid to the vendee or credited to the vendee's account, since such a transaction will be considered to be a repurchase of the article by the manufacturer.

(c) *Repossession of an article.* If a taxable article is repossessed by the manufacturer who paid the tax imposed by chapter 32 on the sale of the article, and all or a part of the purchase price is repaid to the vendee or credited to the vendee's account, a price readjustment giving rise to an overpayment will result. However, if the manufacturer later resells the repossessed article for a price in excess of the original adjusted sale price, the manufacturer will be liable for tax under chapter 32 to the extent that the resale price exceeds the original adjusted sale price.

(d) *Return or repossession of covering or container.* If the covering or container of a taxable article is returned to, or repossessed by the manufacturer who paid the tax imposed by chapter 32 on the sale of the article, and all or a portion of the purchase price is repaid to the vendee or credited to the vendee's account by reason of the return or repossession of the covering or container, a price adjustment giving rise to an overpayment will result. If a taxable article is considered to have been repurchased, as provided in paragraph (b)(4) of this section, and the covering or container accompanies the taxable article as part of the transaction, the covering or container will also be considered to have been repurchased.

(e) *Bona fide discounts, rebates, or allowances*—(1) *In general.* Except as provided in § 48.6416(b)(1)–3 (relating to readjustments in respect of local advertising), the basic consideration in determining, for purposes of this section, whether a bona fide discount, rebate, or allowance has been made is whether the price actually paid by, or charged against, the purchaser has in fact been reduced by subsequent transactions between the parties. Generally, the price will be considered to have been readjusted by reason of a bona fide discount, rebate, or allowance, only if the manufacturer who made the taxable sale repays a part of the purchase price in cash to the vendee, or credits the vendee's account, or directly or indirectly reimburses a third party for part or all of the purchase price for the direct benefit of the vendee, in consideration of factors which, if taken into account at the time of the original transaction, would have resulted at that time in a lower sale price. For example, a price readjustment will be considered to have been made when a bona fide discount, rebate, or allowance is given in consideration of such factors as prompt payment, quantity buying over a specified period, the vendee's inventory of an article when new models are introduced, or a general price reduction affecting articles held in stock by the vendee as of a certain date. On the other hand, repayments made to the vendee do not effectuate price readjustments if given in consideration of circumstances under which the vendee has incurred, or is required to incur, an expense which, if treated as a separate item in the original transaction, would have been includible in the price of the article for purposes of computing the tax.

(2) *Inability to collect price.* A charge-off of an amount outstanding in an open account, due to inability to collect, is not a bona fide discount, rebate, or allowance and does not, in and of itself, give rise to a price readjustment within the meaning of this section.

(3) *Loss or damage in transit.* If title to an article has passed to the vendee, the subsequent loss, damage, or destruction of the article while in the possession of a carrier for delivery to the vendee does not, in and of itself, affect the price at which the article was sold. However, if the article was sold under a contract providing that, the article was lost, damaged, or destroyed in transit, title would revert to the vendor and the vendor would reimburse the vendee in full for the sale price, then the original sale is considered to have been rescinded. The vendor is entitled to credit or refund of the tax paid upon reimbursement of the full tax-included sale price to the vendee.

§ 48.6416(b)(1)–3 Readjustment for local advertising charges.

(a) *In general.* If a manufacturer has paid the tax imposed by chapter 32 on the price of any article sold by the manufacturer and thereafter has repaid

a portion of the price to the purchaser or any subsequent vendee in reimbursement of expenses for local advertising of the article or any other article sold by the manufacturer which is taxable at the same rate under the same section of chapter 32, the reimbursement will be considered a price readjustment constituting an overpayment which the manufacturer may claim as a credit or refund. The amount of the reimbursement may not, however, exceed the limitation provided by section 4216(f)(2) and § 48.4216(f)–2, determined as of the close of the calendar quarter in which the reimbursement is made or as of the close of any subsequent calendar quarter of the same calendar year in which it is made. The term "local advertising", as used in this section, has the same meaning as prescribed by section 4216(f)(4) and includes, generally, advertising which is broadcast over a radio station or television station, or appears in a newspaper or magazine, or is displayed by means of an outdoor advertising sign or poster.

(b) *Local advertising charges excluded from taxable price in one year but repaid in following year*—(1) *Determination of price readjustments for year in which charge is repaid.* If the tax imposed by chapter 32 was paid with respect to local advertising charges that were excluded in computing the taxable price of an article sold in any calendar year but are not repaid to the manufacturer's purchaser or any subsequent vendee before May 1 of the following calendar year, the subsequent repayment of those charges by the manufacturer in reimbursement of expenses for local advertising will be considered a price readjustment constituting an overpayment which the manufacturer may claim as a credit or refund. The amount of the reimbursement may not, however, exceed the limitation provided by section 4216(f)(2) and § 48.4216(f)–(2), determined as of the close of the calendar quarter in which the reimbursement is made or as of the close of any subsequent calendar quarter of the same calendar year in which it is made.

(2) *Redetermination of price readjustments for year in which charge was made.* If the tax imposed by chapter 32 was paid with respect to local advertising charges that were excluded in computing the taxable price of an article sold in any calendar year but are not repaid to the manufacturer's purchaser or any subsequent vendor before May 1 of the following calendar year, the manufacturer may make a redetermination, in respect of the calendar year in which the charge was made, of the price readjustments constituting an overpayment which the manufacturer may claim as a credit or refund. This redetermination may be made by excluding the local advertising charges made in the calendar year that became taxable as of May 1 of the following calendar year.

§ 48.6416(b)(1)–4 Supporting evidence required in case of price readjustments.

No credit or refund of an overpayment arising by reason of a price readjustment described in § 48.6416(b)(1)–2 or § 48.6416(b)(1)–3 shall be allowed unless the manufacturer who paid the tax submits with the claim the evidence required by paragraph (a)(2) of § 48.6416(a)–3 and a statement, supported by sufficient available evidence—

(a) Describing the circumstances which gave rise to the price readjustment,

(b) Identifying the article in respect of which the price readjustment was allowed,

(c) Showing the price at which the article was sold, the amount of tax paid in respect of the article, and the date on which the tax was paid,

(d) Giving the name and address of the purchaser to whom the article was sold, and

(e) Showing the amount repaid to the purchaser or credited to the purchaser's account.

Par 23. Section 48.6416(b)–2 is removed and the following new §§ 48.6416(b)(2)–1, 48.6416(b)(2)–2, 48.6416(b)(2)–3 and 48.6416(b)(2)–4 are added immediately after § 48.6416(b)(1)–4.

§ 48.6416(b)(2)–1 Certain exportations, uses, sales, or resales causing overpayments of tax.

In the case of any payment of tax under section 4041 (a)(1) or (b)(1) (special fuels tax) or under chapter 32 (manufacturers tax) that is determined to be an overpayment by reason of certain exportations, uses, sales, or resales described in section 6416(b)(2) and § 48.6416(b)(2)–2, the person who paid the tax may file a claim for refund of the overpayment or, in the case of overpayments under chapter 32, may claim credit for the overpayment on any return of tax under this subpart which the person subsequently files. However, under the circumstances described in section 6416(e) and § 48.6416(e)–1, the overpayments under chapter 32 may be refunded to an exporter or shipper. In the case of overpayments of tax under section 4041 resulting from certain nontaxable uses of tax-paid fuel after June 30, 1970, see also section 6427 and the regulations thereunder. No interest shall be paid on any credit or refund allowed under this section. For provisions relating to the evidence required in support of a claim for credit or refund under this section, see § 301.6402–2 of this chapter (Regulations on Procedure and Administration) and §§ 48.6416(b)(2)–3 and 48.6416(b)(2)–4. For provisions authorizing the taking of a credit in lieu of filing a claim for refund, see section 6416(f) and § 48.6416(f)–1.

§ 48.6416(b)(2)–2 Exportations, uses, sales, and resales included.

(a) *In general.* The payment of tax imposed by section 4041 (a)(1) or (b)(1), or by chapter 32, as the case may be, on the sale of any article, other than coal taxable under section 4121, will be considered to be an overpayment by reason of any exportation, use, sale, or resale described in any one of paragraphs (b) to (o), inclusive, of this section. This section applies only in those cases where the exportation, use, sale, or resale (or any combination thereof) referred to in any one or more of these paragraphs occurs before any other use. If any article is sold or resold for a use described in any one of these paragraphs and is not in fact so used, the paragraph is treated in all respects as inapplicable.

(b) *Exportation of tax-paid articles.* Subject to the limitation in section 6416(g) and § 48.6416(g)–1, a payment of tax under chapter 32 on the sale of any article, or under section 4041 (a)(1) or (b)(1) on the sale of diesel fuel or special motor fuel, will be considered to be an overpayment under section 6416(b)(2)(A) if the article or fuel is by any person exported to a foreign country or shipped to a possession of the United States. Except in the case of articles subject to the tax imposed by section 4061(a), it is immaterial for purposes of this paragraph (b), whether the person who made the taxable sale had knowledge at the time of the sale that the article or fuel was being purchased for export to a foreign country or shipment to a possession of the United States. See § 48.6416(e)–1 for the circumstances under which a claim for refund by reason of the exportation of an article may be claimed by the exporter or shipper, rather than by the person who paid the tax. For definition of the term "possession of the United States", see § 48.0–2(a)(11).

(c) *Supplies for vessels or aircraft.* A payment of tax under chapter 32 on the

sale of any article, or under section 4041 (a)(1) or (b)(1) on the sale of diesel fuel or special motor fuel, will be considered to be an overpayment under section 6416(b)(2)(B) if the article or fuel is used by any person, or is sold by any person for use by the purchaser, as supplies for vessels or aircraft.

The term "supplies for vessels or aircraft", as used in this paragraph, has the same meaning as when used in sections 4041(g), 4221(a)(3), 4221(d)(3), and 4221(e)(1), and the regulations thereunder.

(d) *Use by State or local government.* A payment of tax under chapter 32 on the sale of any article, or under section 4041 (a)(1) or (b)(1) on the sale of diesel fuel or special motor fuel, will be considered to be an overpayment under section 6416(b)(2)(C) if the article of fuel is sold by any person to a State, any political subdivision thereof, or the District of Columbia for the exclusive use of a State, any political subdivision thereof, or the District of Columbia. For provisions relating to tax-free sales to a State, any political subdivision thereof, or the District of Columbia, see section 4221(a)(4) and the regulations thereunder.

(e) *Use by nonprofit educational organization.* A payment of tax under chapter 32 on the sale of any article, or under section 4041 (a)(1) or (b)(1) on the sale of diesel fuel or special motor fuel, will be considered to be an overpayment under section 6416(b)(2)(D) if the article or fuel is sold by any person to a nonprofit educational organization for its exclusive use. The term "nonprofit educational organization", as used in this paragraph (e), has the same meaning as when used in section 4221 (a)(5) or (d)(5), whichever applies, and the regulations thereunder.

(f) *Tax-paid tires or inner tubes resold for use in further manufacture.* A payment of tax under section 4071 on the sale of a tire or inner tube will be considered to be an overpayment under section 6416(b)(2)(E) if—

(1) The tire or inner tube is, after the original sale of the article by the manufacturer, resold by any person to another manufacturer;

(2) The other manufacturer sells the tire or inner tube on or in connection with, or with the sale of, any other article manufactured or produced by the other manufacturer; and

(3) That other article is by any person either—

(i) Exported to a foreign country or to a possession of the United States,

(ii) Sold to a State, any political subdivision thereof, or the District of Columbia for the exclusive use of a State, any political subdivision thereof, or the District of Columbia,

(iii) Sold to a nonprofit educational organization for its exclusive use, or

(iv) Used or sold for use as supplies for vessels or aircraft.

The overpayment described in this paragraph (f) is to be distinguished from the overpayment described in section 6416(b)(3)(C) and § 48.6416(b)(3)–2 (d) in that the overpayment here described arises from a "resale" for the use described in this paragraph, while the section 6416(b)(3)(C) overpayment arises from the "use" of tires or inner tubes in the manufacture of other articles by a subsequent manufacturer who purchases tax-paid tires or tubes and disposes of finished articles on the basis of one of the exemptions set forth in section 6416(B)(3)(C). A manufacturer claiming a credit or refund under this paragraph (f) must have substantially the same information available in support of the claim as is required under § 48.4221–7(c)(2) in support of exempt sales of tires or inner tubes under the provisions of section 4221(e)(2), except that none of the parties involved need be registered under section 4222.

(g) *Parts or accessories used on farm equipment.* A payment of tax under section 4061(b) on the sale of parts or accessories (other than spark plugs and storage batteries) will be considered to be an overpayment under section 6416(b)(2)(F) if the parts or accessories are used by any person, or are sold by any person for use by the purchaser, as repair parts, replacement parts or accessories for farm equipment. The term "farm equipment," as used in this paragraph (g), does not include any article taxable under section 4061(a)(1) (relating to trucks, buses, tractors, etc.). The term "parts or accessories," as used in this paragraph (g), has the same meaning as in section 4061(b) and the regulations thereunder. This paragraph (g) does not apply to an overpayment of tax arising by reason of section 6416(b)(3) and § 48.6416(b)(3)–1, relating to articles purchased tax paid from a manufacturer by a subsequent manufacturer and used by the subsequent manufacturer in further manufacture of a taxable or nontaxable article.

(h) *Tread rubber used for certain purposes.* A payment of tax under section 4071(a)(4) on the sale of tread rubber which is used by any person, or which is sold by any person for use by the purchaser, otherwise than in the recapping or retreading or tires of the type used on highway vehicles, will be considered to be an overpayment under section 6416(b)(2)(G). If the tread rubber is used in the recapping or retreading of tires, the type of vehicle on which the recapped or retreaded tire is be used and the actual or intended use of the recapped or retreaded tire are immaterial in determining whether an overpayment arises under this paragraph (h). The controlling factor is whether the tire resulting from the recapping or retreading is of a type which is not used on a highway vehicle. The term "tread rubber," "tires of the type used on highway vehicles", and "tires", as used in this paragraph (h) have the same meaning as in section 4072 and the regulations thereunder. This paragraph (h) does not apply to an overpayment arising by reason of section 6416(b)(3) and § 48.6416(b)(3)–1, relating to articles purchased tax paid from a manufacturer by a subsequent manufacturer and used by the subsequent manufacturer in further manufacture of another article taxable under chapter 32.

(i) *Gasoline used in production of special fuels.* A payment of tax under section 4081 on the sale of gasoline will be considered to be an overpayment under section 6416(b)(2)(H) if the gasoline is used by any person, or sold by any person for use by the purchaser, in the production of a special fuel. The term "special fuel", as used in this paragraph (i), has the same meaning as in section 4041 and the regulations thereunder.

(j) *Articles sold for use as trash containers.* A payment of tax under section 4061 (a) on a sale of any box, container, receptacle, bin, or other similar article will be considered to be an overpayment under section 6416(b)(2)(J) if the article is—

(1) Sold by any person to any purchaser for use by the purchaser as a trash container,

(2) Not designed for the transportation of freight other than trash, and

(3) Not designed to be permanently mounted on, or permanently affixed to, a chassis or body of an automobile truck, truck trailer, or truck semitrailer.

In addition, a payment of tax under section 4061(b) on parts or accessories for any such box, container, receptacle, etc., will be considered to be an overpayment under section 6416(b)(2)(J) if the part or accessory is designed primarily for use on, in connection with, or as a component part of, the box, container, receptacle, etc., and is installed on the box, container, receptacle, etc. at the time of sale or is sold with the article as an integral part of the container system. This paragraph (j) does not apply to parts or accessories sold for use as replacement parts or

accessories, even if those parts or accessories are sold in connection with the sale of a box, container, receptacle, etc. Any term used in this paragraph (j) that is also used in section 4063(a)(7) or the regulations thereunder has the same meaning as in that section and the regulations thereunder.

(k) *Parts or accessories sold in connection with light-duty trucks.* A payment of tax under section 4061(b) on the sale of parts or accessories will be considered to be an overpayment under section 6416(b)(2)(K) if—

(1) The parts or accessories are sold on or in connection with the first retail sale of a light-duty truck as described in section 4061(a)(2) and the regulations thereunder, and

(2) The credit or refund of tax is not available under any other provisions of law.

The term "parts or accessories," as used in this paragraph (k), has the same meaning as in section 4061(b) and the regulations thereunder. This paragraph (k) does not apply to an overpayment of tax arising by reason of section 6416(b)(2) and § 48.6416(b)(3)–1, relating to articles purchased tax-paid from a manufacturer by a subsequent manufacturer and used by the subsequent manufacturer in further manufacture of a taxable or nontaxable article.

§ 48.6416(b)(2)–3 Supporting evidence required in case of manufacturers tax involving exportations, uses, sales, or resales.

(a) *Evidence to be submitted by claimant.* No claim for credit or refund of an overpayment, within the meaning of section 6416(b)(2) and § 48.6416(b)(2)–2, of tax under chapter 32 shall be allowed unless the person who paid the tax submits with the claim the evidence required by paragraph (b)(2) of § 48.6416(a)–3 and a statement, supported by sufficient available evidence—

(1) Showing the amount claimed in respect of each category of exportations, uses, sales, or resales on which the claim is based and which give rise to a right of credit or refund under section 6416(b)(2) and § 48.6416(b)(2)–1,

(2) Identifying the article, both as to nature and quantity, in respect of which credit or refund is claimed,

(3) Showing the amount of tax paid in respect of the article or articles and the dates of payment, and

(4) In the case of an overpayment determined under section 6416(b)(2)(A) and paragraph (b) of § 48.6416(b)(2)–2 in respect of an article taxable under section 4061(a), indicating that, pursuant to section 6416(g), the person claiming a credit or refund, possessed at the time that person shipped the article or at the time title to the article passed to the vendee, whichever is earlier, evidence that the article was to be exported to a foreign country or shipped to a possession of the United States, or

(5) In the case of any overpayment other than an overpayment determined under section 6416(b)(2)(E) and paragraph (f) of § 48.6416(b)(2)–2, indicating that the person claiming a credit or refund (as set forth in paragraph (b)(1) of this section) that the article has been exported, or has been used, sold, or resold in a manner or for a purpose which gives rise to an overpayment within the meaning of section 6416(b)(2) and § 48.6416(b)(2)–2, or

(6) In the case of an overpayment determined under section 6416(b)(2)(E) and paragraph (f) of § 48.6416(b)(2)–2, relating to a tax-paid tire or inner tube sold on or in connection with, or with the sale of, a second article that has been manufactured, indicating that the person claimaing a credit or refund possesses (i) evidence (as set forth in paragraph (b)(2) of this section) that the second article has been exported, or has been used or sold as provided in § 48.6416(b)(2)–2(f), and (ii) a statement, executed and signed by the ultimate purchaser of the tire or inner tube, that the ultimate purchaser purchased the tire or inner tube from a person other than the person who paid the tax on the sale of the tire or inner tube.

(b) *Evidence required to be in possession of claimant*—(1) *Evidence required under paragraph (a)(5)*—(i) *In general.* The evidence required to be retained by the person who paid the tax, as provided in paragraph (a)(5) of this section, must, in the case of an article exported, consist of proof of exportation in the form prescribed in the regulations under section 4221 or must, in the case of other articles sold tax-paid by that person, consist of a certificate, executed and signed by the ultimate purchaser of the article, in the form prescribed in paragraph (b)(1)(ii) of this section. However, if the article to which the claim relates has passed through a chain of sales from the person who paid the tax to the ultimate purchaser, the evidence required to be retained by the person who paid the tax may consist of a certificate, executed and signed by the ultimate vendor of the article, in the form provided in paragraph (b)(1)(iii) of this section, rather than the proof of exportation itself or the certificate of the ultimate purchaser.

(ii) *Certificate of ultimate purchaser.*

(A) The certificate executed and signed by the utlimate purchaser of the article to which the claim relates must identify the article, both as to nature and quantity; show the address of the ultimate purchaser of the article, and the name and address of the ultimate vendor of the article; and describe the use actually made of the article in sufficient detail to establish that credit or refund is due, except that the use to be made of the article must be described in lieu of actual use if the claim is made by reason of the sale or resale of an article for a specified use which gives rise to the overpayment.

(B) If the certificate sets forth the use to be made of any article, rather than its actual use, it must show that the ultimate purchaser has agreed to notify the claimant if the article is not in fact used as specified in the certificate.

(C) The certificate must also contain a statement that the ultimate purchaser understands that the ultimate purchaser and any other party may, for fraudulent use of the certificate, be subject under section 7201 to a fine of not more than $10,000, or imprisonment for not more than 5 years, or both, together with the costs of prosecution.

(D) A purchase order will be acceptable in lieu of a separate certificate of the ultimate purchaser if it contains all the information required by this paragraph (b)(1)(ii).

(iii) *Certificate of ultimate vendor.* Any certificate executed and signed by an ultimate vendor as evidence to be retained by the person who paid the tax, as provided in paragraph (a)(5) of this section, may be executed with respect to any one or more overpayments by the person which arose under section 6416(b)(2) and §§ 48.6416(b)(2)–2 by reason of exportations, use, sale or resales, occurring within any period of not more than 12 consecutive calendar quarters, the beginning and ending dates of which are specified in the certificate.

The certificate must be in substantially the following form:

Statement of Ultimate Vendor

(For use in claiming credit or refund of overpayment determined under section 6416(b)(2) (other than section 6416(b)(2)(E)) of the Internal Revenue Code.)

The undersigned or the

(Name of ultimate vendor if other than undersigned) of which the undersigned is (Title), is the ultimate vendor of the article specified below or on the reverse side hereof.

The article was purchased by the ultimate vendor tax-paid and was thereafter exported, used, sold, or resold (as indicated below or on the reverse side hereof).

The ultimate vendor possesses

(Proof of exportation in respect of the article, or a certificate as to use executed by the ultimate purchaser of the article)
The

(Proof of exportation or certificate)
(1) is retained by the ultimate vendor, (2) will, upon request, be forwarded to

(Name or person who paid the tax)
at any time within 3 years from the date of this statement for use by that person to establish that credit or refund is due in respect of the article, and (3) will otherwise be held by the ultimate vendor for the required 3-year period.

According to the best knowledge and belief of the undersigned, no statement in respect of the

(Proof of exportation or certificate)
has previously been executed, and the undersigned understands that the fraudulent use of this statement may, under section 7201, subject the undersigned or any other party making such fraudulent use to a fine of not more than $10,000, or imprisonment for not more than 5 years, or both, together with the costs of prosecution.

(Signature)

(Address)

(Date)

Vendor's invoice	Articles	Date of resale	Quantity	Exported or use made or to be made (specify)

(2) *Evidence required under paragraph (a)(6).*—(i) *In general.*—The evidence required to be retained by the person who paid the tax, as provided in paragraph (a)(6) of this section, must, in the case of an exportation of the second article, consist of proof of exportation of the second article in the form prescribed in the regulations under section 4221 or must, in other cases, consist of a certificate, executed and signed by the ultimate purchaser of the second article, in the form prescribed in paragraph (b)(2)(ii) of this section. However, the evidence required to be retained by the person who paid the tax may consist of a certificate, executed and signed by the ultimate vendor of the second article, in the form provided in paragraph (b)(2)(iii) of this section, rather than the proof of exportation itself or the certificate of the ultimate purchaser.

(ii) *Certificate of ultimate purchaser.*—The certificate of the ultimate purchaser of the second article must contain the same information as that required in paragraph (b)(1)(ii) of this section, except that the information must be furnished in respect of the second article, rather than the article to which the claims relates.

(iii) *Certificate of ultimate vendor.*—Any certificate executed and signed by an ultimate vendor as evidence to be retained by the person who paid the tax, as provided in paragraph (a)(6) of this section, may be executed with respect to any one of more overpayments by that person which arose under section 6416(b)(2)(E) and § 48.6416(b)(2)–2 (f) by reason of exporatations, uses, sales, or resales of a second article occurring within any period of not more than 12 consecutive calendar quarters, the beginning and ending dates of which are specified in the certificate. The certificate must be in substantially the following form:

STATEMENT Of ULTIMATE VENDOR

(For use in claiming credit or refund of overpayment determined under section 6416 (b)(2)(E), Internal Revenue Code, involving tires or inner tubes sold on or with another article.)

The undersigned or the

(Name of ultimate vendor of second article if other than undersigned)
of which the undersigned is (Title), is the ultimate vendor of an article, specified below or on the reverse side hereof, on which or with which a tax-paid tire or inner tube was sold.

The ultimate vendor possesses

(Proof of exportation in respect of the article on which or with which the tire or inner tube was sold, or a certificate as to use of the article executed by the ultimate purchaser of the article)
The

(Proof of exportation or certificate) (1) is retained by the ultimate vendor , (2) will, upon request, be forwarded to

(Name of person who paid the tax on the tire or inner tube)
at any time within 3 years from the date of this statement for use in establishing that credit or refund is due in respect of the tire or inner tube, and (3) will otherwise be held by the ultimate vendor for the required 3-year period.

According to the best knowledge and belief of the the undersigned, no statement in respect of the

(Proof of exportation or certificate)
has previously been executed, and the undersigned understands that the fraudulent use of this statement may, under section 7201, subject the undersigned or any other party making such fraudulent use to a fine of not more than $10,000, or imprisonment for not more than 5 years, or both, together with the costs of prosecution.

(Signature)

(Address)

(Date)

Tires or inner tubes (specify and state quantity)	Vendor's invoice on second article	Second article (specify and state quantity)	Date of sale of second article	Exported or use made of or to be made (specify in respect of second article)

(3) *Repayment or consent of ultimate vendor.* If the person claiming credit or refund of an overpayment to which this section applies has repaid, or agreed to repay, the amount of the overpayment to the ultimate vendor or if the ultimate vendor consents to the allowance of the credit or refund, a statement to that effect, signed by the ultimate vendor, must be shown on, or made a part of, the evidence required under this section to be retained by the person claiming the credit or refund. In this regard, see § 48.6416(a)–3(b)(2).

§ 48.6416(b)(2)–4 Supporting evidence required in case of special fuels tax involving exportations, uses, sales, or resales of special fuels.

(a) *Evidence to be submitted by claimant.* No claim for credit or refund of an overpayment, within the meaning of section 6416(b)(2) and § 48.6416(b)(2)–2 of tax under section 4041(a)(1) or (b)(1) shall be allowed unless the person who paid the tax submits with the claim the evidence required by paragraph (b)(2) of § 48.6416(a)–2 and a statement, supported by sufficient available evidence—

(1) Showing the amount claimed in respect of each category of exportations, uses, sales, or resales on which the claim is based and which give rise to right of credit or refund under section 6416(b)(2) and § 48.6416(b)(2)–1,

(2) Identifying the fuel, both as to nature and quantity, in respect of which credit or refund is claimed,

(3) Showing the amount of tax paid in respect of the fuel and the dates of payment, and

(4) Indicating that the fuel has been exported, or has been used, sold, or resold in a manner or for a purpose

which gives rise to an overpayment within the meaning of section 6416(b)(2) and § 48.6416(b)(2)–2.

(b) *Evidence required to be in possession of claimant.* (1) The evidence required to be retained by the person who paid the tax, as provided in paragraph (a)(4) of this section, must, in the case of fuel exported, consist of proof of exportation or must, in the case of other fuel sold tax-paid by that person, consist of a certificate, executed and signed by the person who purchased the fuel in a resale or for the use which gave rise to the overpayment.

(2) The certificate must identify the fuel, both as to nature and quantity, in respect of which credit or refund is claimed; show the address of the purchaser; show the name and address of the person from whom the fuel was purchased and the date or dates on which the fuel was purchased; and show that the fule was resold and the date of the resale.

(3) If the claim is not based on resale of the fuel, the certificate must describe the use actually made of the fuel in sufficient detail to establish that credit or refund is due. However, the use to be made of the fuel must be described in lieu of actual use if the claim is made by reason of the sale of the fuel for a specified use which gives rise to an overpayment under § 48.6416(b)(2)–2.

(4) If the certificate sets forth the use to be made of the fuel, rather than its actual use, it must show that the purchaser has agreed to notify the claimant if the fuel is not in fact used as specified in the certificate.

(5) The certificate must also contain a statement that the purchaser has not previously executed a certificate in respect of the fuel and understands that any party may, for fraudulent use to the certificate, be subject under section 7201 to a fine of not more than $10,000, or imprisonment for not more than 5 years, or both, together with the costs of prosecution.

Par. 24. Section 48.6416(b)–3 is removed and the following new §§ 48.6416(b)(3)–1 ,48.6416(b)(3)–2, and 48.6416(b)(3)–3 are added immediately after 48.6416(b)(2)–4.

§ 48.6416(b)(3)–1 Tax-paid articles used for further manufacture and causing overpayments of tax.

In the case of any payment of tax under chapter 32 that is determined to be overpayments under section 6416(b)(3) and § 48.6416(b)(3)–2 by reason of the sale of an article (other than coal taxable under section 4121), directly or indirectly, by the manufacturer of the article to a subsequent manufacturer who uses the article in further manufacture of a second article or who sells the article with, or as a part of, the second article manufactured or produced by the subsequent manufacturer, the subsequent manufacturer may file claim for refund of the overpayment or may claim credit for the overpayment on any return of tax under this subpart subsequently filed. No interest shall be paid on any credit or refund allowed under this section. For provisions relating to the evidence required in support of a claim for credit or refund, see § 301.6402–2 of this chapter (Regulations on Procedure and Administration) and §§ 48.6416(a)–3 and 48.6416(b)(3)–3. For provisions authorizing the taking of a credit in lieu of filing a claim for refund, see section 6416(f) and § 48.6416(f)–1.

§ 48.4616(b)(3)–2 Further manufacture included.

(a) *In general.* The payment of tax imposed by chapter 32 on the sale of any article (other than coal taxable under section 4121) by a manufacturer of the article will be considered to be an overpayment by reason of any use in further manufacture, or sale as part of a second manufactured article, described in any one of paragraphs (b) through (f) of this section. This section applies in those cases where the exportation, use, sale (or any combination of those activities) referred to in any one or more of those paragraphs occurs before any other use. For provisions relating to overpayments arising by reason of resales of tax-paid articles for use in further manufacture as provided in this section, see section 6416(b)(2)(E) and paragraph (f) of § 48.6416(b)(2)–2.

(b) *Use of tax-paid articles in further manufacture described in section 6416(b)(3)(A).* A payment of tax under chapter 32 on the sale of any article (other than coal taxable under section 4121), directly or indirectly, by the manufacturer of the article to a subsequent manufacturer will be considered to be an overpayment under section 6416(b)(3)(A) if the article is used by the subsequent manufacturer as material in the manufacture or production of, or as a component part of, a second article manufactured or produced by the subsequent manufacturer which is—

(1) Taxable under chapter 32, or

(2) An automobile bus chassis or an automobile bus body.

For this purpose it is immaterial whether the second article is sold or otherwise disposed of, or if sold, whether the sale is a taxable sale. Any article to which this paragraph (b) applies which would have been used in the manufacture or production of a second article, except for the fact that it was broken or rendered useless in the process of manufacturing or producing the second article, will be considered to have been used as a component part of the second article. This paragraph (b) does not apply to articles sold and used as provided in any of paragraphs (c) through (f) of this section.

(c) *Use of truck, bus, etc., parts or accessories.* A payment of tax under section 4061 (b) on the sale of any truck, bus, etc., part or accessory, directly or indirectly, by the manufacturer of the article to a subsequent manufacturer will be considered to be an overpayment under section 6416(b)(3)(B) if the part or accessory is used by the subsequent manufacturer as material in the manufacture or production of, or as a component part of, a second article manufactured or produced by the subsequent manufacturer. For this purpose it is immaterial whether the second article is or is not taxable under chapter 32. Any article to which this paragraph (c) applies which would have been used in the manufacture or production of a second article, except for the fact that it was broken or rendered useless in the process of manufacturing or producing the second article, will be considered to have been used as a component part of the second article.

(d) *Tax-paid tires or inner tubes used in further manufacture.* (1) A payment of tax under section 4071 on the sale of a tire or inner tube, directly or indirectly, by the manufacturer of the article to a subsequent manufacturer will be considered to be an overpayment under section 6416(b)(3)(C) if the subsequent manufacturer sells the tire or inner tube on or in connection with, or with the sale of, any other article manufactured or produced by the subsequent manufacturer and if the other article is—

(i) An automobile bus chassis or automobile bus body, or

(ii) By any person (A) exported to a foreign country or to a possession of the United States, (B) sold to a State, any political subdivision thereof, or the District of Columbia for the exclusive use of a State, any political subdivision thereof, or the District of Columbia, (C) sold to a nonprofit educational organization for its exclusive use, or (D) used or sold for use as supplies to vessels or aircraft.

(2) The overpayment in this paragraph (d) is to be distinguished from that overpayment described in section 6416(b)(2)(E) and § 48.6416(b)(2)–2(f) in that this overpayment arises from the "use" described in this paragraph.

whereas the overpayment under section 6416(b)(2)(E) arises from the "resale" of tax-paid tires or inner tubes by any person to a subsequent manufacturer who disposes of the articles on or in connection with, or with the sale of, a second article manufactured or produced by the subsequent manufacturer which is disposed of on the basis of one of the exemptions set forth in section 6416(b)(3)(C).

(3) If the second article is exported or shipped as provided in this paragraph (d), it is immaterial whether the subsequent manufacturer sold the article with the knowledge that it would be exported or shipped.

(4) An overpayment arises under paragraph (d)(1) of this section only if the tire or inner tube constitutes a part of, or is associated with, the second article at the time the second article is exported, shipped, sold, used, or sold for use, as prescribed in this paragraph.

(5) For definition of certain terms used in this paragraph, see section 4221 and the regulations thereunder.

(6) For provisions relating to overpayments arising by reason of tires or inner tubes sold tax-paid by the manufacturer of the same, on or in connection with, or with the sale of, any article manufactured or produced by that manufacturer and exported, sold, or used or sold for use, as provided in this paragraph (d), see section 6416(b)(4) and § 48.6416(b)(4)–1.

(7) For provisions relating to credit allowable in respect of tires and inner tubes sold on or in connection with, or with the sale of, another article taxable under chapter 32, see section 6416(c) and § 48.6416(c)–1.

(8) If a second article referred to in paragraph (d)(1) of this section is sold for a use described in that paragraph and is not so used, this paragraph (d) is in all respect inapplicable.

(e) *Use of bicycle tires or tubes in further manufacture.* A payment of tax under section 4071 on the sale of a bicycle or tricycle tire or inner tube, directly or indirectly, by the manufacturer of the same to a subsequent manufacturer will be considered to be an overpayment under section 6416(b)(3)(E) if the tire or tube is used by the subsequent manufacturer as material in the manufacture or production of, or as a component part of, a bicycle or tricycle manufactured or produced by the subsequent manufacturer which is not a rebuilt or reconditioned bicycle or tricycle. For definition of the term "bicycle tire", see section 4221(e)(4)(B) and the regulations thereunder.

(f) *Use of gasoline in further manufacture.* A payment of tax under section 4081 on the sale of gasoline, directly or indirectly, by the manufacturer of the same to a subsequent manufacturer will be considered an overpayment under section 6416(b)(3)(F) if the gasoline is used for nonfuel purposes by the subsequent manufacturer as a material in the manufacture or production of any other article manufactured or produced by the subsequent manufacturer. For this purpose it is immaterial whether the other article is or is not taxable under chapter 32. For provisions relating to the use of gasoline for nonfuel purposes, see section 4221 and the regulations thereunder.

§ 48.6316(b)(3)–3 Supporting evidence required in case of tax-paid articles used for further manufacture.

(a) *Evidence to be submitted by claimant.* No claim for credit or refund of an overpayment, within the meaning of section 6416(b)(3) and § 48.6416(b)(3)–2 shall be allowed unless the subsequent manufacturer submits with the claim the evidence required by § 48.6416(a)–3 and a statement, supported by sufficient available evidence—

(1) Showing the amount claimed in respect of each category of exportations, uses, or sales on which the claim is based and which give rise to a right of credit or refund under section 6416(b)(3) and § 48.6416(b)(3)–1,

(2) Showing the name and address of the manufacturer, producer, or importer of the article in respect of which credit or refined is claimed,

(3) Identifying the article, both as to nature and quantity, in respect of which credit or refund is claimed,

(4) Showing the amount of tax paid in respect of the article by the manufacturer or producer of the article and the date of payment,

(5) Indicating that the article was used by the claimant as material in the manufacture or production of, or as a component part of, a second article manufactured or produced by the manufacturer or was sold on or in connection with, or with the sale of, a second article manufactured or produced by the manufacturer,

(6) Identifying the second article, both as to nature and quantity, and

(7) In the case of an overpayment determined under section 6416(b)(3)(C) and paragraph (d)(1) of § 48.6416(b)(3)–2 in respect of a tire or inner tube taxable under section 4071, indicating that the manufacturer has evidence available (as set forth in paragraph (b) of this section) that the second article is an automobile bus chassis or automobile bus body, or has been exported, used, or sold as provided in section 6416(b)(3)(C)(ii) and § 48.6416(b)(3)–2(d)(1)(ii).

(b) *Evidence required to be in possession of claimant.*—(1) *In general.*—The evidence required to be retained by the person claiming credit or refund, as provided in paragraph (a)(7) of this section, must, in the case of an exportation of the second article, consist of proof of exportatin of the second article in the form prescribed in the regulations under section 4221, or must, in other cases (except when the second article is an automobile bus chassis or automobile bus body), consist of a certificate, executed and signed by the ultimate purchaser of the second article, in the form prescribed in paragraph (b)(2) of this section. However, if the second article has passed through a chain of sales from the manufacturer of the second article to the ultimate purchaser of the second article, the evidence may consist of a certificate, executed and signed by the ultimate vendor of the second article, in the form provided in paragraph (b)(3) of this section, rather than the proof of exportation itself of the second article or the certificate of the ultimate purchaser of the second article.

(2) *Certificate of ultimate purchaser of second article.* The certificate executed and signed by the ultimate purchaser of the second article must contain the same information as that required in paragraph (b)(1)(ii) of § 48.6416(b)(2)–3, except that the information must be furnished in respect of the second article, rather than the article to which the claim relates.

(3) *Certificate of ultimate vendor of second article.* Any certificate executed and signed by an ultimate vendor as evidence to be retained by the person claiming credit or refund must be executed in the same form and manner as that provided in paragraph (b)(2)(iii) and § 48.6416(b)(2)–3.

(4) *Repayment or consent of ultimate vendor.* If the person claiming credit or refund of an overpayment to which this section applies has repaid, or agreed to repay, the amount of the overpayment to the ultimate vendor or if the ultimate vendor consents to the allowance of the credit or refund, a statement to that effect, signed by the ultimate vendor, must be shown on, or made a part of, the evidence required to be retained by the person claiming the credit or refund. In this regard, see §48.6416(a)–3(b)(2).

Par. 25. Section 48.6416(b)–4 is removed and the following new § 48.6416(b)(4)–1 is added immediately after § 48.6416(b)(3)–3.

§ 48.6416(b)(4)–1 Tax-paid tires or inner tubes used for further manufacture.

(a) *In general.* In the case of any payment of tax under section 4071 in respect of tires or inner tubes that is determined to be an overpayment under section 6416(b)(4) and paragraph (b) of this section by reason of any exportation, use, or sale described in paragraph (b) of this section, the person who paid the tax may file a claim for refund of the overpayment or may claim a credit for the overpayment on any return of tax under this subpart subsequently filed. No interest shall be paid on any credit or refund allowed under this section. For provisions relating to the evidence required in support of a claim for credit or refund under this section, see § 301.6402–2 of this chapter (Regulations on Procedure and Administration) and paragraph (c) of this section. For provisions authorizing the taking of a credit in lieu of filing a claim for refund, see section 6416(f) and § 48.6416(f)–1.

(b) *Conditions causing overpayment.* (1) The payment of tax under section 4071 on the sale of a tire or inner tube by the manufacturer of the article will be considered to be an overpayment under section 6416(b)(4) if the tire or inner tube is sold by that manufacturer on or in connection with, or with the sale of, any other article manufactured or produced by that manufacturer and such other article—

(i) Is an automobile bus chassis or an automobile bus body, or

(ii) Is by any person (A) exported to a foreign country or shipped to a possession of the United States, (B) sold to a State, any political subdivision thereof, or the District of Columbia for the exclusive use of a State, any political subdivision thereof, or the District of Columbia, (C) sold to a nonprofit educational organization for its exclusive use, or (D) used or sold for use as supplies for vessels or aircraft.

(2) If the second article is exported or shipped as provided in this paragraph (b), it is immaterial whether the manufacturer sold the article with the knowledge that it would be exported or shipped.

(3) An overpayment arises under paragraph (b)(1) of this section only if the tire or inner tube constitutes a part of, or is associated with, the second article at the time the second article is exported, shipped, sold, used, or sold for use, as prescribed in this paragraph.

(4) Paragraph (b)(1) of this section applies only in those cases where the exportation, use, or sale (or any combination thereof) occurs before any other use.

(5) For definition of certain terms used in this paragraph (b), see section 4221 and the regulations thereunder.

(6) For provisions relating to overpayments arising by reason of the tax-paid sale of tires or inner tubes by the manufacturer of the same and their resale by any person to another manufacturer for use as provided in this paragraph, see section 6416(b)(2)(E) and § 48.6416(b)(2)–2(f).

(7) For provisions relating to overpayments arising by reason of the tax-paid sale of tires or inner tubes, directly or indirectly, by the manufacturer of the same, to a subsequent manufacturer who uses them as provided in this paragraph (b), see section 6416(b)(3)(C) and § 48.6416(b)(3)–2(d).

(8) For provisions relating to the credit allowable in respect of tires or inner tubes sold on or in connection with, or with the sale of, another article taxable under chapter 32, see section 6416(c) and § 48.6461(c)–1.

(9) If a second article referred to in paragraph (b)(1)(ii) of this section is sold for a use described in that paragraph and is not so used, this paragraph (b) is in all respects inapplicable.

(c) *Evidence to be submitted by claimant.* No claim for credit or refund of an overpayment, within the meaning of section 6416(b)(4) and paragraph (b) of this section, shall be allowed unless the person who paid the tax submits with the claim the evidence required by § 48.6416(a)–3(b)(2) and a statement, supported by sufficient available evidence—

(1) Showing the amount claimed in respect of each category of exportations, uses, or sales on which the claim is based and which give rise to a right of credit or refund under section 6416(b)(4) and paragraph (a) of this section,

(2) Indicating that the person claiming the credit or refund is the manufacturer of the articles in respect of which credit or refund is claimed,

(3) Identifying the article, both as to nature and quantity, in respect of which credit or refund is claimed,

(4) Showing the amount of tax paid in respect of the article and the date of payment of the tax,

(5) Indicating that the person claiming the credit or refund sold the article on or in connection with, or with the sale of, or used the article as a component part of, a second article manufactured or produced by that person,

(6) Identifying the second article, both as to nature and quantity, and

(7) Indicating that the person claiming the credit or refund evidence available (as set forth in paragraph (b) of this section) that the second article is an automobile bus chassis or body, or has been exported, used, or sold as provided in section 6416(b)(4)(B)(ii) and paragraph (b)(1)(ii) of this section.

(d) *Evidence required to be in possession of claimant.*—(1) *In general.*—The evidence required to be retained by the person claiming credit or refund, as provided in paragraph (c)(7) of this section, must, in the case of an exportation of the second article, consist of proof of exportation of the second article in the form prescribed in the regulations under section 4221 or must, in other cases (except when the second article is an automobile bus chasis or automobile body) consist of a certificate, executed and signed by the ultimate purchaser of the second article, in the form prescribed in paragraph (d)(2) of this section. However, if the second article has passed through a chain of sales from the manufacturer of the second article to the ultimate purchaser of the second article, the evidence may consist of a certificate, executed and signed by the ultimate vendor of the second article, in the form prescribed in paragraph (d)(3) of this section, rather than the proof of exportation itself of the second article or the certificate of the ultimate purchaser of the second article.

(2) *Certificate of ultimate purchaser of second article.* The certificate executed and signed by the ultimate purchaser of the second article must contain the same information as that required in paragraph (b)(1)(ii) of § 48.6416(b)(2)–3, except that the information shall be furnished in respect of the second article, rather than the article to which the claim relates.

(3) *Certificate of ultimate vendor of second article.* Any certificate executed and signed by an ultimate vendor as evidence to be retained by the person claiming credit or refund must be executed in the same form and manner as that provided in paragraph (b)(2)(iii) of § 48.6416(b)(2)–3.

(4) *Repayment or consent of ultimate vendor.* If the person claiming credit or refund of an overpayment to which this section applies, has repaid, or agreed to repay, the amount of the overpayment to the ultimate vendor or if the ultimate vendor consents to the allowance of the refund or credit, a statement to the effect, signed by the ultimate vendor, must be shown on, or made a part of, the evidence required to be retained by the person claiming refund or credit. In this regard, see § 48.6416(a)–3 (b)(2).

Par. 26. Section 48.6416(b)–5 is removed and the following new § 48.6416(b)(5)–1 is added immediately after § 48.6416(b)(4)–1.

§ 48.6416(b)(5)–1 Return of installment accounts causing overpayments of tax.

(a) *In general*. In the case of any payment of tax under section 4216(e)(1) in respect of the sale of any installment account that is determined to be an overpayment under section 6416(b)(5) and paragraph (b) of this section upon return of the installment account, the person who paid the tax may file a claim for refund of the overpayment or may claim credit for the overpayment on any return of tax under this subpart which that person subsequently files. No interest shall be paid on any credit or refund allowed under this section. For provisions relating to the evidence required in support of a claim for credit or refund under this section, see § 301.6402–2 of this chapter (Regulations on Procedure and Administration) and paragraph (c) of this section. For provisions authorizing the taking of a credit in lieu of filing a claim for refund, see section 6416(f) and § 48.6416(f)–1.

(b) *Overpayment of tax allocable to repaid consideration.* The payment of tax imposed by section 4126(e) (1) on the sale of an installment account by the manufacturer will be considered to be an overpayment under section 6416(b)(5) to the extent of the tax allocable to any consideration repaid or credited to the purchaser of the installment account upon the return of the account to the manufacturer pursuant to the agreement under which the account originally was sold, if the readjustment of the consideration occurs pursuant to the provisions of the agreement. The tax allocable to the repaid or credited consideration is the amount which bears the same ratio to the total tax paid under section 4216(e)(1) with respect to the installment account as the amount of consideration repaid or credited to the purchaser bears to the total consideration for which the account was sold. This paragraph (b) does not apply where an installment account is originally sold pursuant to the order of, or subject to the approval of, a court of competent jurisdiction in a bankruptcy or insolvency proceeding.

(c) *Evidence to be submitted by claimant.* No claim for credit of refund of an overpayment, within the meaning of section 6416(b)(5) and paragraph (b) of this section, of tax under section 4216(e)(1) shall be allowed unless the person who paid the tax submits with the claim the evidence required by paragraph (a)(2) of § 48.6416(a)–3 and a statement supported by sufficient available evidence, indicating—

(1) The name and address of the person to whom the installment account was sold,

(2) The amount of tax due under section 4216(e)(1) by reason of the sale of the installment account, the amount of the tax paid under section 4216(e)(1) with respect to the sale, and the date of payment,

(3) The amount for which the installment account was sold,

(4) The amount which was repaid or credited to the purchaser of the account by reason of the return of the account to the person claiming the credit or refund, and

(5)(i) The fact that the amount repaid or credited to the purchaser of the account was so repaid or credited pursuant to the agreement under which the account was sold, and

(ii) The fact that the account was returned to the manufacturer pursuant to that agreement.

Par. 27. Section 48.6416 (c)–1 is revised to read as follows:

§ 48.6416 (c)–1 Credit for tax paid on tires or inner tubes.

(a) *Allowance of credit against tax on sale of taxable article.* If tax has been paid under section 4071 on the sale, or under section 4218 on the use, of a tire or inner tube, and the manufacturer of a another article taxable under chapter 32 sells the tire or inner tube on or in connection with the sale of that other article, a credit in respect of the tire or inner tube is allowable under section 6414(c) against the tax imposed on the sale of that other article. The amount of the credit is to be determined as provided in paragaph (b) or (c) of this section.

(b) *Tires or tubes purchased by manufacturer of the other article.* If the manufacturer of the other article purchased the tire or inner tube tax-paid, the amount of the credit shall be determined by applying to the purchase price of the tire or inner tube the percentage rate of tax applicable to the sale of the other article. For this purpose, the purchase price shall be determined by including any tax passed on to the manufacturer and, in the case of a tire, by excluding any part of the price attributable to the metal rim or rim base. For example, if the selling price of an automobile truck is $24,000, tax equivalent to 10 percent of the price (*i.e.*, $2,400) is imposed under section 4601 (a) on the sale of the automobile truck. If the tires or inner tubes sold on or in connection with the automobile truck are purchased by the manufacturer of the automobile truck for $1,500 (computed as provided in this paragraph) a credit of $150 (10 percent of $1,500) is allowable against the tax imposed on the sale of the automobile truck.

(c) *Tires or tubes manufactured by manufacturer or other articles.* If the manufacturer of the other article is also the manufacturer of the tire or inner tube and incurs tax liability under section 4218 on the use by that manufacturer of the tire or inner tube, the amount of the credit shall be determined by applying to the fair market price of the tire or inner tube, the percentage rate of tax applicable to the sale of the other article. For this purpose, the fair market price of the tire or inner tube shall be the price at which the same or similar tires or inner tubes are sold by manufacturers of tires or inner tubes in the ordinary course of trade, as determined by the Commissioner, and by excluding, in the case of a tire, any part of the price attributable to the metal rim or rim base. The determination of the Commissioner shall be made in the same manner as determinations made under section 4218.

(d) *Other applicable rules.* (1) For purposes of this section, the term "manufacturer" includes the original manufacturer of the other article and any succeeding purchaser of the article who further manufactures the article so as to become liable as a manufacturer of an article taxable under chapter 32. Therefore, the credit provided by section 6416(c) and this section is available both to the original manufacturer of the other article and also to every succeeding purchaser of that article who sells that article on or in connection with, or with the sale of, another article taxable under chapter 32.

(2) No interest shall be paid on any credit allowed under this section.

(3) If credit is not claimed under this section against the tax applicable to the sale of the other article, the manufacturer of the other article may claim refund of an amount equivalent to the credit or may claim credit on any return of tax under this subpart subsequently filed.

Par. 28. Section 48.6416(e)–1 is revised to read as follows.

§ 48.6416(e)–1 Refund to exporter or shipper.

(a) *In general.* Any payment of tax imposed by section 4041 or chapter 32 that is determined to be an overpayment within the meaning of section 6416(b)(2)(A) or (E), section 6416(b)(3)(C), or section 6416(b)(4), and the regulations thereunder, by reason of the exportation of any article may be refunded to the exporter or shipper of the article pursuant to section 6416(e) of this section, if—

(1) The exporter or shipper files a claim for refund of the overpayment, and

(2) The person who paid the tax waives the right to claim credit or refund of the tax.

No interest shall be paid on any refund allowed under this section. For provisions relating to the evidence required in support of a claim under this paragraph (a), see § 301.6402 of this chapter (Regulations on Procedure and Administration) and paragraph (b) of this section.

(b) *Supporting evidence required.* No claim for refund of any overpayment of tax to which this section applies shall be allowed unless the exporter or shipper submits with that claim the evidence required by § 48.6416(a)–2(b), or § 48.6416(a)–3(b), proof of exportation in the form prescribed by the regulations under section 4221, and a statement, signed by the person who paid the tax, showing—

(1) That the person who paid the tax waives the right to claim credit or refund of the tax,

(2) In the case of an overpayment determined under section 6416(b)(2)(A) and paragraph (b) of § 48.6416(b)(2)–2 in respect of a truck, bus, tractor, etc., taxable under section 4061(a), that, pursuant to section 6416(g), the person who paid the tax possessed at the time that person shipped the article or at the time title to the article passed to that perons's vendee, whichever is earlier, evidence that the article was to be exported to a foreign country or shipped to a possession of the United States.

(3) The amount of tax paid on the sale of the article and the date of payment, and

(4) The internal revenue service office to which the tax was paid.

Par. 29. Section 48.6416(f)–1 is revised to read as follows:

§ 48.6416(f)–1 Credit on returns.

Any person entitled to claim refund of any overpayment of tax imposed by section 4041 or chapter 32 may, in lieu of claiming refund of the overpayment, claim credit for the overpayment of any return of tax under this subpart subsequently filed. Any such credit claimed on a return must be supported by the evidence prescribed in the applicable regulations in this subpart and § 301.6402 of this chapter (Regulations on Procedure and Administration).

Par. 30. Section 48.6416(g)–1 is revised to read as follows:

§ 48.6416(g)–1 Intent to export trucks, buses, tractors, etc.

In the case of any payment of tax imposed by section 4061 (a) in respect of the sale of a truck, bus, tractor, etc., an overpayment of tax will not be considered to arise by reason of an exportation described in section 6416(b)(2)(A) and paragraph (b) of § 48.6416(b)(2)–2 unless the manufacturer of the article possessed at the time the article was shipped or at the time title to the article passed to that manufacturer's vendee, whichever is earlier, evidence that the article was to be exported to a foreign country or shipped to a possession of the United States.

Part. 31. Section 48.6416(h)–1 is revised to read as follows:

§ 48.6416(h)–1 Accounting procedures for like articles.

(a) *Identification of manufacturer.* In applying section 6416 and the regulations thereunder, a person who has purchased like articles from various manufacturers may determine the particular manufacturer from whom that person purchased any one of those articles by a first-in-first-out (FIFO) method, by a last-in-first-out (LIFO) method, or by any other consistent method approved by the district director. For the first year for which a person makes a determination under this section, the person may adopt any one of the following methods without securing prior approval by the district director.

(1) FIFO method.

(2) LIFO method.

(3) Any method by which the actual manufacturer of the article is in fact identified.

Any other method of determining the manufacturer of a particular article must be approved by the district director before its adoption. After any method for identifying the manufacturer has been properly adopted, it may not be changed without first securing the consent of the district director.

(b) *Determining amount of tax paid.* In applying section 6416 and the regulations thereunder, if the identity of the manufacturer of any article has been determined by a person pursuant to a method prescribed in paragraph (a) of this section, that manufacturer of the article must determine the tax paid under chapter 32 with respect to that article consistently with the method used in identifying the manufacturer.

Par. 32. Sections 48.6420(a)–1, 48.6420(b)–1, 48.6420(c)–1, 48.6420(d)–1, 48.6420(e)–1, 48.6420(f)–1, 48.6420(g)–1, 48.6420(h)–1, and 140.6420–1 are removed. The following new §§ 48.6420–1, 48.6420–2, 48.6420–3, 48.6420–4, 48.6420–5, 48.6420–6, and 48.6420–7 are added immediately after § 48.6416(h)–1.

§ 48.6420–1 Credits or payments to ultimate purchaser of gasoline used on a farm.

(a) *In general.* If gasoline is used on a farm from farming purposes after June 30, 1965, a credit (under the circumstances described in paragraph (b) of this section) or a payment (under the circumstances described in paragraph (c) of this section) in respect of the gasoline shall be allowed or made to the ultimate purchaser of the gasoline in an amount determined by multiplying (1) the number of gallons of gasoline so used by (2) the rate of tax on gasoline under section 4081 that applied on the date the gasoline was purchased by the ultimate purchaser. No interest shall be paid on any payment, allowed under paragraph (c) of this section. However, interest may be paid on any overpayment (as defined by section 6401) arising from a credit allowed under paragraph (b) of this section. See section 39(a), relating to credit for certain uses of gasoline, special, fuels, and lubricating oil. See § 48.6420–2 for the time within which a claim for credit or payment must be made. See section 4081 and the regulations thereunder for the rates of tax on gasoline. See § 48.6420–2 for meaning of the terms "Used on a farm for farming purposes," "farm," "gasoline," "ultimate purchaser," and "taxable year."

(b) *Allowance of income tax credit in lieu of payment.* With respect to persons subject to income tax, repayment of the tax paid under section 4081 on gasoline used on a farm for farming purposes may be obtained only by claiming a credit for the amount of this tax against the income tax imposed by subtitle A of the Code. The amount of the credit shall be an amount equal to the payment which would be made under section 6420 with respect to gasoline used during the taxable year on a farm for farming purposes if section 6420(g)(1) and paragraph (c) of this section did not apply. See section 39(a)(1).

(c) *Allowance of payment.* Payments in respect of gasoline upon which tax was paid under section 4081 that is used on a farm for farming purposes shall be made only to—

(1) The United States or agency or instrumentality thereof, a State, a political subdivision of a State, or an agency or instrumentality of one or more States or political subdivisions of a State, or the District of Columbia, or

(2) An organization which is exempt from tax under section 501(a) and is not

required to made a return of the income tax imposed under subtitle A for its taxable year.

(d) *Use of gasoline.* (1) The credit or payment described in paragraph (a) of this section is allowable only in respect of gasoline used on a farm in the United States for farming purposes. The credit or payment is not allowable with respect to gasoline used for nonfarming purposes, or gasoline used off a farm, regardless of the nature of the use. If a vehicle or other equipment is used both on a farm and off the farm, or if it is used on a farm both for farming and nonfarming purposes, the credit or payment is allowable only with respect to that portion of the gasoline which was "used on a farm for farming purposes" as defined in paragraph (a) of § 48.6420–4. In determining if this requirement is met, neither the type of equipment or vehicle used nor its registration for highway use is material. However, the actual use of the equipment or vehicle and the place where it is used are material. For example, if a truck used on a farm for farming purposes is also used on the highways, gasoline used in connection with operating the truck on the highways is not taken into account in computing the credit or payment.

(2) For purposes of determining the allowable credit or payment in respect of gasoline used on a farm for farming purposes, gasoline on hand shall be considered used in the order in which it was purchased. Thus, if the owner, tenant, or operator of a farm has on hand gasoline acquired in two purchases made at different times and subject to different rates of tax, in determining credit or payment for gasoline used on a farm for farming purposes, it will be assumed that the gasoline purchased first was the first gasoline used, and the rate applicable to that purchase will apply in determining the credit or payment, until all that gasoline is accounted for.

§ 48.6420–2 Time for filing claim for credit or payment.

(a) *In general.* A claim for credit or payment described in § 48.6420–1 with respect to gasoline used after June 30, 1965, on a farm for farming purposes, shall cover only gasoline used during the taxable year on a farm for farming purposes. Therefore, gasoline on hand at the end of a taxable year as, for example, in fuel supply tanks of farm machinery or in storage tanks or drums, must be excluded from a claim filed for that taxable year (but may be included in a claim filed for a later taxable year if used during that later year on a farm for farming purposes). Gasoline used during a taxable year may be covered by a claim filed for that taxable year although the gasoline was not paid for at the time the claim is filed. For purposes of applying this section, a governmental unit or exempt organization described in § 48.6420–1 (c) is considered to have as its taxable year, the calendar year or fiscal year on the basis of which it regularly keeps its books; see paragraph (h) of this section.

(b) *Time for filing.* (1) A claim for credit with respect to gasoline used on a farm for farming purposes shall not be allowed unless it is filed no later than the time prescribed by section 6511 and the regulations thereunder for filing a claim for credit or refund of income tax for the particular taxable year.

(2) A claim for payment of a governmental unit or exempt organization described in § 48.6420–1(c) must be filed no later than 3 years following the close of its taxable year. (See paragraph (h) of this section).

(3) See § 301.7502–1 of this chapter (Regulations on Procedure and Administration) for provisions treating timely mailing as timely filing and § 301.7502–1 of this chapter for time for performance of an act where the last day falls on Saturday, Sunday, or a legal holiday.

(c) *Limit of one claim per taxable year.* Not more than one claim may be filed under section 6420 by any person with respect to gasoline used during the same taxable year.

(d) *Form and content of claim.*—(1) *Claim for credit.* (i) The claim for credit with respect to gasoline used on a farm for farming purposes must be made by attaching a Form 4136 to the income tax return of an individual or a corporation. Form 4136 must be executed in accordance with the instructions prescribed for the preparation of the form. A partnership may not file Form 4136. When a partnership files Form 1065, U.S. Partnership Return of Income, it must include a statement showing how many gallons of gasoline are allocated to each partner and the use made of the gasoline.

(ii) If an individual dies during the taxable year, the claim for credit may be made only for that portion of the individual's taxable year ending with the date of death. If a sole proprietorship, a partnership or corporation is terminated or liquidated during the taxable year, the claim for credit may be made only for the portion of its year ending with the date of the termination or liquidation.

(2) *Claim for payment.* The claim for payment with respect to gasoline used on a farm for farming purposes by a governmental unit or exempt organization described in § 48.6420–1(c) must be made on Form 843 in accordance with the instructions prescribed for the preparation of the form. The claim by such a unit or organization must be filed with the service center for the internal revenue region in which the principal place of business or principal office of the claimant is located.

§ 48.6420–3 Exempt sales; other payments or refunds available.

(a) *Exempt sales.* Credits or payments are allowable only for gasoline that was sold by the producer or importer in a transaction that was subject to tax under section 4081. No credit or payment shall be allowed or made under § 48.6420–1 with respect to gasoline which was exempt from the tax imposed by section 4081. For example, a State or local government may not file a claim with respect to any gasoline which it purchased tax free from the producer, even though the State or local government used the gasoline on a farm for farming purposes. Similarly, payment may not be made with respect to gasoline purchased by a State tax free for its exclusive use, as provided in section 4221, which is used on a State prison farm for farming purposes.

(b) *Other payments or refunds available.* Any amount which, without regard to the second sentence of section 6420(d) and this paragraph (b), would be allowable as a credit or payable to any person under § 48.6420–1 with respect to any gasoline is reduced by any other amount which is allowable as a credit or payable under section 6420, or is refundable under any other provision of the Code, to any person with respect to the same gasoline. Thus, a person who is the ultimate purchaser of gasoline may not file a claim for credit or payment with respect to that gasoline if another person is entitled to claim a payment, credit, or refund with respect to the same gasoline. For example, a State or local government may not file a claim for payment if it has executed, or intends to execute, a written consent to enable the producer to claim a credit or refund for the tax that was paid. See, for example, §§ 48.6416(a)–3(b)(2), 48.6416(b)(2)–2(d), and 48.6416(b)(2)–3(b)(1).

§ 48.6420–4 Meaning of terms.

For purposes of the regulations under section 6420, unless otherwise expressly indicated—

(a) *Used on a farm for farming purposes.* The term "used on a farm for farming purposes" applies only to

gasoline which is used (1) in carrying on a trade or business of farming, (2) on a farm in the United States, and (3) for farming purposes. Gasoline used in an aircraft will qualify if its use otherwise satisfies these requirements. For the meaning of the term "trade or business of farming," see paragraph (b) of this section. For the definition of the term "farm," see paragraph (c) of this section. For the definition of the term "farming purposes," see paragraphs (d) through (g) of this section. The term "United States" has the meaning assigned to it by section 7701(a)(9).

(b) *Trade or business of farming.* A person will be considered to be engaged in the trade or business of farming if the person cultivates, operates, or manages a farm for gain or profit, either as an owner or a tenant. A person engaged in forestry or the growing of timber is not thereby engaged in the trade or business of farming. A person who operates a garden plot, orchard, or farm for the primary purpose of growing produce for the person's own use is not considered to be engaged in the trade or business of farming. Generally, the operation of a farm does not constitute the carrying on of a trade or business if the farm is occupied by a person primarily for residential purposes or is used primarily for pleasure, such as for the entertainment of guests or as a hobby.

(c) *Farm.* The term "farm" is used in its ordinary and accepted sense, and generally means land used for the production of crops, fruits, or other agricultural products or for the sustenance of livestock or poultry. The term "livestock" includes cattle, hogs, horses, mules, donkeys, sheep, goats, and captive fur-bearing animals. The term "poultry" includes chickens, turkeys, geese, ducks, and pigeons. Thus, a farm includes livestock, dairy, poultry, fish, fruit, fur-bearing animal, and truck farms, plantations, ranches, nurseries, ranges, orchards, feed yards for fattening cattle, and greenhouses and other similar structures used primarily for the raising of agricultural or horticultural commodities. Greenhouses and other similar structures that are used primarily for purposes other than the raising of agricultural or horticultural commodities do not constitute farms, as, for example, structures that are used primarily for the display, storage, fabrication, or sale of wreaths, corsages, and bouquets. A fish farm is an area where fish are grown or raised, as opposed to merely caught or harvested.

(d) *Gasoline used in cultivating, raising, or harvesting.* Gasoline is used for "farming purposes" when it is used on a farm by the owner, tenant, or operator of the farm in connection with cultivating the soil, raising or harvesting any agricultural or horticultural commodity, or raising, shearing, feeding, caring for, training, or managing livestock, poultry, bees, or wildlife. Examples of operations which are considered to be operations for "farming purposes" within the meaning of this paragraph include plowing, seeding, fertilizing, weed killing, corn or cotton picking, threshing, combining, baling, silo filling, and chopping silage.

(e) *Gasoline used in handling, packing, or storing.* (1) Gasoline is used for "farming purposes" when it is used by the owner, tenant, or operator of the farm in handling, drying, packing, grading, or storing any agricultural or horticultural commodity in its unmanufactured state, but only if the owner, tenant, or operator produced more than one-half of the commodity which was so treated during the taxable year for which claim for credit or payment is filed.

(2) Gasoline used in connection with canning, freezing, packaging, or processing operations will not be considered to be used for farming purposes, even though these operations are performed on a farm. Thus, for example, although gasoline used on a farm in connection with the production or harvesting of maple sap or oleoresin from a living tree is considered to be used for farming purposes under paragraph (d) of this section, gasoline used in the processing of maple sap into maple syrup or maple sugar or used in the processing of oleoresin into gum spirits of turpentine or gum resin is not used for farming purposes, even though these processing operations are conducted on a farm.

(3) Gasoline used in connection with processing operations which change a commodity from its raw or natural state, or operations performed with respect to a commodity after its character has been changed from its raw or natural state by a processing operation, will not be considered to be used for farming purposes. For example, gasoline used for the extraction of juices from fruits or vegetables is used in a processing operation which changes the character of the fruits or vegetables from their raw or natural state and will not be considered to be used for "farming purposes."

(4) The term "commodity," as used in this paragraph (e), refers to a single agricultural or horticultural product. For example, all apples are treated as a single commodity while apples and peaches are treated as two separate commodities. Operations with respect to each commodity are to be considered separately in applying the "one-half" production test described in paragraph (e)(1) of this section.

(f) *Gasoline used in planting, cultivating, or caring for trees.* Gasoline is used "for farming purposes" when it is used by the owner, tenant, or operator of the farm in connection with the planting, cultivating, caring for, or cutting of trees that is incidental to the farming operations of the farm on which it is performed or incidental to the farming operations of the owner, tenant, or operator of the farm, or in connection with the preparation (other than milling) of trees for market that is incidental to these farming operations. These operations include the felling of trees and cutting them into logs or firewood but do not include sawing logs into lumber, chipping, or other milling operations. Operations of the prescribed character will be considered incidental to farming operations only if they are of a minor nature in comparison with the total farming operations involved. Therefore, a tree farmer or timber grower may not claim credit or payment under § 48.6420–1 with respect to gasoline used in connection with the trade or business of tree farming or timber growing.

(g) *Gasoline used in the maintenance of a farm or farm equipment.* Gasoline is used "for farming purposes" when it is used by the owner, tenant, or operator of a farm in connection with the operation, management, conservation, improvement, or maintenance of the farm and its tools and equipment. The activities included are those which contribute in any way to the conduct of the farm as such, as distinguished from any other enterprise in which the owner, tenant, or operator may be engaged. Examples of included operations are clearing land, repairing fences and farm buildings, building terraces or irrigation ditches, cleaning tools or farm machinery, and painting farm buildings. Since the gasoline must be used by the owner, tenant, or operator of the farm to which the operations relate, gasoline used by an organization which contracts with a farmer to renovate his farm properties is not used for farming purposes. Gasoline used in a gasoline-powered lawn mower for maintaining a lawn is not used for farming purposes.

(h) *Taxable year.* The "taxable year" of a governmental unit or tax-exempt organization described in § 48.6420–1(c) is the calendar or fiscal year on the basis of which it regularly keeps its books. The "taxable year" of persons subject to income tax shall have the

meaning as it has under section 7701(a)(23).

(i) *Gasoline.* The term "gasoline" has the same meaning given to this term by section 4082(b) and the regulations thereunder.

(j) *Ultimate purchaser.*—The term "ultimate purchaser" includes only a person who is an owner, tenant, or operator of a farm. A person who is an owner, tenant, or operator of a farm is an ultimate purchaser of gasoline only with respect to such gasoline as is purchased by the person and used for farming purposes on a farm of which the person is the owner, tenant, or operator. Thus the owner of a farm who purchases gasoline which is used on the farm by its owner, tenant, or operator for farming purposes is generally the ultimate purchaser of the gasoline. If, however, the cost of gasoline supplied by an owner, tenant, or operator of a farm, is by agreement or other arrangement borne by a second person who is an owner, or operator of the farm, the second person who bore the cost of the gasoline is considered to be the ultimate purchaser of the gasoline.

(k) *Certain farming use by persons other than the owner, tenant or operator.*—(1) *In general.* Except as provided in paragraph (l) of this section, the owner, tenant, or operator of a farm on which gasoline is used by any other person for the purposes described in section 6420 (c)(3)(A) and paragraph (d) of this section (relating to gasoline used in cultivating, raising, or harvesting) will be treated, for the purposes of § 48.6420–1 (a), as the ultimate purchaser who used the gasoline on the farm for farming purposes.

(2) *Example.* The rule of paragraph (k)(1) of this section may be illustrated by the following example.

Example. Farmer A hired custom operator B to cultivate the soil on A's farm. B used 200 gallons of gasoline which B had purchased in performing the work on A's farm. In addition, A hired Farmer C to do some plowing on A's farm, using C's own tractor and 50 gallons of gasoline which C had purchased. A is deemed to be the ultimate purchaser and user of the gasoline used on A's farm by B and C, and A is entitled to take a credit in respect of the gasoline. Accordingly, no credit in respect to the gasoline may be taken by either B or C.

(l) *Aerial applicators treated as ultimate purchasers.*—(1) *General rule.* Section 6420(c)(3)(A) provides that only the owner, tenant, or operator of a farm is entitled to be treated as a user and ultimate purchaser. Section 6420(c)(4) provides that, under section 6420(c)(3)(A), an aerial applicator is entitled to be treated as the user and ultimate purchaser of gasoline used by it on a farm for the purposes described in section 6420(c)(3)(A), but only if the owner, tenant, or operator who is otherwise entitled to treatment as the user and ultimate purchaser waives the right to credit or payment. See paragraph (l)(2) of this section.

(2) *Form and manner of waiver.* To waive the right to be treated as user and ultimate purchaser of gasoline which is used on a farm by an aerial applicator, the owner, tenant, or operator of a farm who is otherwise entitled to treatment as user and ultimate purchaser must execute an irrevocable written agreement (as here described) no later than the date on which the aerial applicator claiming the credit or payment files its return for the taxable year in which the gasoline is used. The agreement must identify the period for which the owner, tenant, or operator waives the right to credit or payment. The effective period of the waiver cannot extend beyond the last day of the taxable year of the owner, tenant, or operator of the farm on which the gasoline was used. If the owner, tenant, or operator's taxable year extends beyond the taxable year of the applicator, the applicator can only claim a credit or payment for periods included in the applicator's taxable year. Periods after the last day of the applicator's taxable year which are included under the agreement must be claimed on the applicator's return for the next succeeding taxable year. The waiver may be in the form shown under paragraph (l)(6) of this section or in any other form that meets the requirements of this paragraph and clearly states that the owner, tenant, or operator of the farm knowingly waives the right to receive the credit or payment.

(3) *Agreement included on aerial applicator's invoice.* The agreement waiving a right to receive a credit or payment under section 6420 may be a separate document or may appear on the invoice for aerial application services or other unrelated document from the aerial applicator to the owner, tenant, or operator of the farm. If the waiver agreement appears on an invoice or other unrelated document, however, it must be printed in a section of the invoice or other document clearly set off from all other material contained in the invoice or other document, and it must be printed in type sufficiently large to put the owner, tenant, or operator of the farm on notice that the person has waived the right to receive a credit or payment under section 6420. Additionally, if the waiver agreement appears as part of any invoice or other unrelated document, it must be executed separately from any other item included in the invoice or other document which requires the owner, tenant, or operator's signature.

(4) *Copies of agreement waiving right to credit or payment.* No copies of any agreement waiving a right to credits or payments under section 6420 are to be submitted to the Internal Revenue Service unless a request is made by the Service to the taxpayer for the waivers. Aerial applicators must, however, retain copies of all waivers, and a copy of each waiver must be supplied by the aerial applicator to the owner, tenant, or operator of the farm who waives the right to receive a credit or payment. See regulations § 48.6420–6 for general requirements for records to be kept.

(5) *Waiver on behalf of owner, tenant, or operator of farm.* An agent of the owner, tenant, or operator of a farm who is expressly authorized to act on behalf of and to bind the owner, tenant, or operator may waive that person's rights to a credit or payment under section 6420 by signing the waiver on the person's behalf.

(6) *Sample form of agreement.* While no specific form is required for an effective waiver, an acceptable form waiving the right to receive a credit or payment under section 6420 follows:

I hereby waive my right as owner/tenant/operator of a farm located at (address) to receive credit or payment from the United States for gasoline used by (aerial applicator) on the farm in connection with cultivating the soil, or the raising or harvesting of any agricultural or horticultural commodity. This waiver applies to gasoline used during the period , both dates inclusive. I understand that by signing this waiver, I give up my right to claim any credit or payment for gasoline used by the aerial applicator during the period indicated, and I acknowledge that I have not previously claimed any credit for that gasoline.

(Signature of Owner/Tenant/Operator)

§ 48.6420–5 Applicable laws.

(a) *Penalties, excessive claims, etc.* All provisions of law, including penalties, applicable in respect of the tax imposed by section 4081 shall, to the extent applicable and consistent with section 6420, apply in respect of the payments provided for in section 6420 to the same extent as if these payments were refunds of overpayments of the tax imposed on the sale of gasoline under section 4081. For special rules applicable to the assessment and collection of amounts constituting excessive payments under section 6420, see section 6206 and the regulations thereunder. For the civil penalty assessable in the case of excessive

claims under section 6420, see section 6675 and the regulations thereunder. For the treatment as an overpayment of an amount allowable as an excessive credit under section 39 with respect to amounts payable under section 6420, see section 6401(b).

(b) *Examination of books and witnesses.* For the purpose of ascertaining (1) the correctness of any claim made under section 6420 or (2) the correctness of any credit or payment made in respect of the claim, the Commissioner shall have the same authority granted by paragraphs (1), (2), and (3) of section 7602, relating to examination of books and witnesses, as if the person claiming credit or payment under section 6420 were the person liable for tax.

(c) *Fractional part of a dollar.* Section 6420(e)(3) provides that section 7504, relating to fractional parts of a dollar, shall not apply with respect to the allowance of any amount as a credit or payment under section 6420. Accordingly, credits or payments authorized by section 6420 shall be made in the exact amount to which the claimant is entitled and shall not be rounded to the nearest whole dollar amount.

§ 48.6420–6 Records to be kept in substantiation of credits or payments.

(a) *In general.* Every person making a claim for credit or payment under section 6420 must keep records sufficient to enable the district director to determine whether the person is entitled to credit or payment under section 6420 and, if so, the amount of the credit or payment. No particular form is prescribed for keeping the records, but the records must include a copy of the income tax return or claim and a copy of any statement or document submitted with the return or claim. The records must also show with respect to the taxable year covered by the claim—

(1) The number of gallons of gasoline purchased and the dates of purchase,

(2) The name and address of each vendor from whom gasoline was purchased and the total number of gallons purchased from each,

(3) The number of gallons of gasoline purchased by the claimant and used during the taxable year for farming purposes on a farm of which the claimant is the owner, tenant, or operator,

(4) The number of gallons of gasoline used during the taxable year for the purposes described in section 6420(c)(3)(A) and § 48.6420–4(d) (relating to cultivating, raising, or harvesting) by a person other than the owner, tenant, or operator on a farm of which the claimant is the owner, tenant, or operator, and

(5) Other information as necessary to establish the correctness of the claim.

(b) *Acceptable records.* (1) Evidence of purchases of gasoline, and the purposes for which it was used, to substantiate claims may include paid duplicate sales invoices or tickets from the gasoline dealer or other vendor, and detailed records of all fuel used which show the amount consumed on a farm for farming purposes and the amount used for other purposes.

(2) Records maintained for Federal or State income tax purposes, or to support claims for refund of a State tax on gasoline, may be used to the extent that they contain the information necessary to substantiate the accuracy of the claim for credit under section 6420. However, the records must show separately the number of gallons of gasoline used on a farm for farming purposes.

(3) If trucks or other vehicles are used both on and off the farm, an allocation of gasoline used in the vehicle will be required to show separately the number of gallons of gasoline used on a farm for farming purposes in respect of which the claim is made.

(4) If the owner, tenant, or operator is entitled under section 6420(c)(4)(A) to claim credit or payment in respect of gasoline used on the person's farm by another person other than an owner, tenant, or operator of the farm for a purpose described in section 6420(c)(3)(A) and § 48.6420–4(d), the claimant must have records showing (i) the name and address of the person who performed the farming operation, (ii) a description of the type of work (such as plowing, threshing, combining, etc.) and the type of equipment used, (iii) the date or dates on which the work was done, and (iv) the number of gallons of gasoline so used on the claimant's farm.

(c) *Place and period for keeping records.* (1) All records required by this section must be kept by the claimant at a convenient and safe location within the United States which is accessible to internal revenue officers and shall during normal business hours be available for inspection by internal revenue officers. If the claimant has a principal place of business in the United States, the records must be kept at that place of business.

(2) Records required to substantiate a claim under section 6420 must be maintained for a period of at least 3 years from the last date prescribed for the filing of the claim for credit or payment.

§ 48.6420–7 Cross references.

(a) *Gasoline used by local transit systems or for certain nonhighway purposes other than farming.* For provisions with respect to payments to the ultimate purchaser of gasoline used for certain nonhighway purposes (other than farming) or by local transit systems, see section 6421 and the regulations thereunder.

(b) *Diesel fuel and special motor fuels used on a farm for farming purposes.* For provisions with respect to exemption from tax in the case of diesel fuel and special motor fuels used on a farm for farming purposes, see section 4041(f) and the regulations thereunder. For credit or payment in respect of special fuels used after June 30, 1970, for farming purposes, see section 6427(c) and § 48.6427–1.

Par. 33. Sections 48.6421(a)–1, 48.6421(b)–1, 48.6421(c)–1, 48.6421(d)–1, 48.6421(e)–1, 48.6421(f)–1, and 48.6421(g)–1 are removed and the following new §§ 48.6421–1, 48.6421–2, 48.6421–3, 48.6421–4, 48.6421–5, 48.6421–6, and 48.6421–7 are added immediately after § 48.6420–7.

§ 48.6421–1 Credits or payments to ultimate purchaser of gasoline used for certain nonhighway purposes.

(a) *In general.* (1) If gasoline is used in a qualified business use or as fuel in an aircraft (other than aircraft in noncommercial aviation), a credit (under the circumstances described in paragraph (b) of this section) or a payment (under the circumstances described in paragraph (c) of this section) in respect of the gasoline shall be allowed or made to the ultimate purchaser of the gasoline. For gasoline used in a qualified business use, the credit or payment under this section shall be an amount equal to 1 cent for each gallon of gasoline so used on which the tax was paid at the rate of 3 cents a gallon, and 2 cents for each gallon of gasoline so used on which the tax was paid at the rate of 4 cents a gallon. For gasoline used as a fuel in an aircraft (other than aircraft in noncommercial aviation) the credit or payment under this section shall be an amount equal to the amount determined by multiplying the number of gallons so used by the rate at which tax was imposed on the gasoline under section 4081. No interest shall be paid on any payment allowed under paragraph (c) of this section. However, interest may be paid on any overpayment (as defined by section 6401) arising from a credit allowed under paragraph (b) of this section. See section 39(a), relating to credit for certain uses of gasoline, special fuels,

and lubricating oil. See § 48.6421–3 for the time within which a claim for credit or payment must be made under this section. See § 48.6421–4 for the meaning of the terms "gasoline," "qualified business use," "noncommercial aviation," and "taxable year."

(2) For purposes of determining the allowable credit or payment in respect of gasoline used in a qualified business use or as fuel in an aircraft (other than aircraft in noncommercial aviation), gasoline on hand shall be considered used in the order in which it was purchased. Thus, if the ultimate purchaser has on hand gasoline acquired in two purchases made at different times and subject to different rates of tax, in determining credit or payment for the gasoline used in a qualified business use or as fuel in an aircraft (other than aircraft in noncommercial aviation), it will be assumed that the gasoline first purchased was the first gasoline used, and the rate applicable to that purchase will apply in determining the credit or payment, until all that gasoline is accounted for.

(b) *Allowance of income tax credit in lieu of payment.* Except as provided in paragraph (c) of this section, repayment under this section of the tax paid under section 4081 on gasoline used in a qualified business use or as a fuel in an aircraft (other than aircraft in noncommercial aviation) by a person subject to income tax may be obtained only by claiming a credit for the amount of this tax against the tax imposed by subtitle A of the Code. The amount of the credit shall be an amount equal to the payment which would be made under section 6421 with respect to gasoline used during the taxable year in a qualified business use or as a fuel in an aircraft (other than aircraft in noncommercial aviation) if section 6421(i) and paragraph (c) of this section did not apply. See section 39(a)(2).

(c) *Allowance of payment.* Payments in respect of gasoline upon which tax was paid under section 4081 that is used in a qualified business use or as a fuel in an aircraft (other than aircraft in noncommercial aviation) shall be made only to—

(1) The United States or any agency or instrumentality thereof, a State, a political subdivision of a State, or an agency or instrumentality of one or more State political subdivisions of a State, or the District of Columbia,

(2) An organization which is exempt from tax under section 501(a) and is not required to make a return of the income tax imposed under subtitle A for its taxable year, or

(3) A person described in section 6421(c)(2) to whom $1,000 or more is payable (without regard to paragraph (b) of this section) under this section with respect to gasoline used during any of the first three quarters of the person's taxable year.

(d) *Dual use of gasoline.* (1) No credit or payment may be claimed in respect of gasoline used in a highway vehicle used in a trade or business or for the production of income solely by reason of the fact that the propulsion motor in the vehicle is also used for a purpose other than the propulsion of the vehicle. Thus, if the propulsion motor of a highway vehicle (used in a trade or business or for the production of income) also operates special equipment, such as a mixing unit on a concrete mixer truck or a pump for discharging fuel from a tank truck, by means of a power takeoff or power transfer, no credit or payment may be claimed in respect of the gasoline used to operate the special equipment, even though the special equipment is mounted on the highway vehicle.

(2) If a highway vehicle is equipped with a separate motor to operate the special equipment used in a trade or business or for the production of income, such as a refrigeration unit, pump, generator, or mixing unit, credit or payment may be claimed in respect of the gasoline used in the separate motor.

(3) If gasoline used in a separate motor is drawn from the same tank as the one which supplies gasoline for the propulsion of the highway vehicle, the determination as to the quantity of gasoline used in the separate motor operating the special equipment must be based on operating experience and supported by records.

(4) Devices to measure the number of miles the highway vehicle has traveled, such as hubometers, may be used in making a preliminary determination of the number of gallons of gasoline used to propel the vehicle. In order to make a final determination of the number of gallons of gasoline used to propel the vehicle, there must be added to this preliminary determination the number of gallons of gasoline consumed while idling or warming up the motor preparatory to propelling the vehicle.

(e) *Gasoline lost or destroyed.* Gasoline lost or destroyed through spillage, fire, or other casualty is not considered to have been "used" in a qualified business use or as fuel in an aircraft (other than aircraft in noncommercial aviation) and, accordingly, credit or payment in respect of the gasoline may not be claimed.

(f) *Supporting evidence required.* Each claim under this section for credit or payment must include a statement showing—

(1) The total number of gallons of gasoline purchased and used during the period covered by the claim in a qualified business use multiplied by the rate of payment allowable in respect of the gasoline (1 or 2 cents, as the case may be).

(2) The total number of gallons of gasoline purchased and used during the period covered by the claim for use as fuel in an aircraft (other than aircraft in noncommercial aviation) multiplied by the rate of payment allowable in respect of the gasoline.

(3) The purpose or purposes for which the gasoline was used, determined by reference to general categories, and the amount used for each purpose; and

(4) If a claim on Form 843 is being filed, the internal revenue district or service center with which the claimant last filed an income tax return (if any).

§ 48.6421–2 Credits or payments to ultimate purchasers of gasoline used in intercity, local, or school buses.

(a) *In general.* If gasoline is used in an intercity or local bus while engaged in furnishing (for compensation) passenger land transportation available to the general public or in a school bus engaged in the transportation of students or employees of schools, a credit (under the circumstances described in paragraph (b) of this section) or a payment (under the circumstances described in paragraph (c) of this section) in respect to the gasoline shall be allowed or made to the ultimate purchaser of the gasoline. The credit or payment under this section shall be an amount equal to the product of the number of gallons of gasoline so used multiplied by the rate at which tax was imposed on the gasoline by section 4081. No interest shall be paid on any payment allowed under paragraph (c) of this section. However, interest may be paid on an overpayment (as defined by section 6401) arising from a credit allowed under paragraph (b) of this section. See section 39(a) relating to credit for certain uses of gasoline, special fuels, and lubricating oil. See § 48.6421–3 for the time within which a claim for credit or payment must be made under this section. See § 48.6421–4 for the meaning of "gasoline." See section 4221(d)(7) and the regulations thereunder for the definition of "intercity bus," "local bus" and "school bus."

(b) *Allowance of income tax credit.* Except as provided in paragraph (c) of

this section, repayment under this section of the tax paid under section 4081 of gasoline used while engaged in furnishing (for compensation) passenger land transportation available to the general public or in school bus transportation operations by a person subject to income tax may be obtained only by claiming a credit for the amount of this tax against the tax imposed by subtitle A of the Code. The amount of the credit shall be an amount equal to the payment which would be made under section 6421 with respect to gasoline used during the taxable year for this passenger land transportation or school bus operations if section 6421(i) and paragraph (c) of this section did not apply. See section 39(a)(2).

(c) *Allowance of payment.* Payments in respect of gasoline upon which tax was paid under section 4081 that is used while engaged in furnishing (for compensation) passenger land transportation available to the general public or in school bus transportation operations shall be made only to—

(1) The United States or any agency or instrumentality thereof, a State, or political subdivision of a State, or an agency or instrumentality of one or more States or political subdivisions of a State, or the District of Columbia,

(2) An organization which is exempt from tax under section 501(a) and is not required to make a return of the income tax imposed under subtitle A for its taxable year, or

(3) A person described in section 6421(c)(2) to whom $1,000 or more is payable (without regard to paragraph (b) of this section) under this section with respect to gasoline used during any of the first three quarters of the person's taxable year.

(d) *Supporting evidence required.* Each claim under this section for credit or payment must include a statement showing—

(1) The total number of gallons of gasoline purchased and used during the period covered by the claim for each intercity or local bus while engaged in furnishing (for compensation) passenger land transportation available to the general public multiplied by the rate at which tax was imposed on the gasoline by section 4081.

(2) The total number of gallons of gasoline purchased and used in each bus while engaged in school bus transportation operations multiplied by the rate at which tax was imposed on the gasoline by section 4081, and

(3) If a claim on Form 843 is being filed, the internal revenue district or service center with which the claimant last filed an income tax return (if any).

§ 48.6421-3 Time for filing claim for credit or payment.

(a) *In general.* A claim for credit or payment described in § 48.6421-1 with respect to gasoline used in a qualified business use or as a fuel in an aircraft (other than aircraft in noncommercial aviation) or in § 48.6421-2 with respect to gasoline used either in an intercity or local bus while engaged in furnishing (for compensation) passenger land transportation available to the general public or in school bus transportation operations, shall cover only gasoline used during the taxable year, or when paragraph (b)(2) of this section applies, gasoline used during the calendar quarter. Therefore, gasoline on hand at the end of a taxable year, or, if applicable, a calendar quarter, such as gasoline in fuel supply tanks of vehicles or in storage tanks or drums, must be excluded from a claim filed for the taxable year or calendar quarter, as the case may be. However, this gasoline may be included in a claim filed for a later taxable year or a later calendar quarter if it is used during that later year or quarter in a qualified business use, as fuel in an aircraft (other than aircraft in noncommercial aviation), or in intercity, local, or school buses. Gasoline used during the taxable year or calendar quarter may be covered by the claim for that period although the gasoline was not paid for at the time the claim is filed. For purposes of applying this section, a governmental unit or exempt organization described in § 48.6421-1(c) or § 48.6421-2(c) is considered to have as its taxable year, the calendar year or fiscal year on the basis of which it regularly keeps its books; see § 48.6421-4(g).

(b) *Time for filing*—(1) *Annual claims.* (i) A claim under this section for credit or payment with respect to gasoline shall not be allowed unless it is filed no later than the time prescribed by section 6511 and the regulations thereunder for filing a claim for credit or refund of income tax for the particular taxable year.

(ii) A claim for payment of a governmental unit or exempt organization described in § 48.6421-1(c) or § 48.6421-2(c) must be filed no later than 3 years following the close of its taxable year (see § 48.6421-4).

(2) *Quarterly claims.* A claim for payment of $1,000 or more in respect of gasoline used during any of the first three quarters of the taxable year, filed either under § 48.6421-1(c)(3) in respect of gasoline used in a qualified business use or as a fuel in an aircraft (other than aircraft used in noncommercial aviation) or under § 48.6421-2(c)(3) in respect of gasoline used while engaged in furnishing (for compensation) passenger land transportation available to the general public or in school bus operations, shall not be allowed unless the claim is filed on or before the last day of the first calendar quarter following the calendar quarter for which the claim is filed. No quarterly claim may be filed for the last calendar quarter of the taxable year. Amounts for which payment is disallowed under this paragraph (b)(2) merely because the claim was not filed on time may be included in an annual claim filed under paragraph (b)(1) of this section, but other amounts for which a claim for payment has been filed under this paragraph (b)(2) may not be included in an annual claim filed under paragraph (b)(1) of this section.

(3) *Other applicable rules.* See § 301.7502-1 of this chapter (Regulations on Procedure and Administration) for provisions treating timely mailing as timely filing and § 301.7503-1 of this chapter for time for performance of an act where the last day falls on Saturday, Sunday, or a legal holiday.

(c) *Limit on claims per taxable year.* Not more than one claim may be filed under § 48.6421-1 or § 48.6421-2 by any person with respect to gasoline used during any taxable year, except to the extent that quarterly claims may be filed under paragraph (b)(2) of this section with respect to any calendar quarter (other than the last calendar quarter) of the taxable year.

(d) *Form and content of claim*—(1) *Claim for credit.* The claim for credit to which this section applies must be made by attaching a Form 4136 to the income tax return of an individual or a corporation. Form 4136 must be executed in accordance with the instructions prescribed for the preparation of the form. A partnership may not file Form 4136. When a partnership files Form 1065, U.S. Partnership Return of Income, it must include a statement showing how many gallons of gasoline are allocated to each partner and the use made of the gasoline.

(2) *Claim for payment.* The claim for payment to which this section applies must be made on Form 843 in accordance with the instructions prescribed for the preparation of the form. Each form must designate the taxable year, or calendar quarter, for which it is filed. The form must be filed with the same service center where the income tax return was last filed or, in the case of a governmental unit or exempt organization described in § 48.6421-1(c) or § 48.6421-2(c), with the service center for the internal revenue

region in which the principal place of business or principal office of the claimant is located.

(3) *Death or termination.* (i) If an individual dies, or if a sole proprietorship, partnership, or corporation is terminated or liquidated, during the taxable year, the claim for credit or payment may be filed in respect of gasoline used during the short taxable year in the same manner as is provided for gasoline used in a full taxable year. Those months which constitute a quarter of a full taxable year will constitute the same quarter of the short taxable year. For example, if a corporation using the calendar year is liquidated on September 30, 1982, and is entitled to $900 under § 48.6421–1 in respect of gasoline used in a qualified business use for the calendar quarters ending June 30 and September 30, it may file a claim for payment in respect of the gasoline used during the calendar quarters ending June 30, and September 30, 1981, and take a credit of $900 on its income tax return for the short taxable year in respect of the gasoline used during the calendar quarter ending March 31, 1982.

(ii) A claim for payment on behalf of a decedent may be filed by the decedent's executor, administrator, or any other person charged with responsibility for the decedent's affairs. Such a claim must be accompanied by copies of the letters testamentary, letters of administration, or, in the case of a claim filed by other than the executor or administrator, the information called for in Form 1310 (Statement of Person Claiming Refund Due a Deceased Taxpayer). The claim may cover only a gasoline in respect of which the decedent would have been entitled to claim payment. For example, if an individual dies on July 15, 1982, prior to claiming payment under § 48.6421–1 or $1,000 or more applicable to gasoline purchased and used in a qualified business use during the calendar quarter ending June 30, 1982, the decedents's executor or other legal representative may file a claim for payment covering that calendar quarter, and take the credit provided by section 39(a)(2) against the decedent's income tax on the income tax return for the short taxable year in respect of gasoline purchased by the decedent and so used during the period from July 1, 1982, to July 15, 1982, the date of death.

(e) *Restrictions on claims for credit or payment.* Credits or payments are allowable only in respect of gasoline that was sold by the producer or importer in a transaction that was subject to tax under section 4081. For example, a State or local government may not file a claim with respect to any gasoline which it purchased tax free from the producer, even though the State or local government used the gasoline as a fuel for the purposes described in paragraph (a) of this section. Similarly, a governmental unit or tax-exempt organization that is the ultimate purchaser of gasoline may not file a claim for payment if it is known that another person is entitled to claim credit, payment, or refund with respect to the same gasoline. For example, a State or local government may not file a claim for payment if it has executed, or intends to execute, a written consent, or other documentation, to enable the producer to claim credit or refund for the tax that was paid. See, for example, §§ 48.6416(a)–3 and 48.6416(b)(2)–3(b)(1).

§ 48.6421–4 Meaning of terms.

For purposes of the regulations under section 6421, unless otherwise expressly indicated—

(a) *Gasoline.* The term "gasoline" has the same meaning given to such term by section 4082(b) and regulations thereunder.

(b) *Qualified business use.* (1) The term "qualified business use" means any use by a person in a trade or business of the person or in an activity of the person described in section 212 (relating to production of income) otherwise than as a fuel in a highway vehicle—

(i) That at the time of the use is registered, or is required to be registered, for highway use under the laws of any state, the District of Columbia, or a foreign country, or

(ii) That, in the case of a highway vehicles owned by the United States, is used on the highway.

The term "qualified business use" does not include any use in a motorboat, other than a vessel used in the fisheries or whaling business. See paragraph (c) of this section for the definition of "highway vehicle." See paragraph (d) of this section for the definition of "highway."

(2) Any highway vehicle operated under a dealer's tag, license, or permit will be considered to be registered. A highway vehicle is not considered to be "registered" solely because there has been issued a special permit for operation of the vehicle at particular times and under specified conditions. However, a highway vehicle that is required to be registered and that is also issued a special permit for operation of the vehicle under specified conditions, such as carrying an oversize load, is still considered to be "registered."

(3) Nonbusiness, off-highway use of gasoline by such vehicles and equipment as minibikes, snowmobiles, power lawn mowers, chain saws, and other yard equipment does not qualify as gasoline used a qualified business use.

(4) Examples of gasoline used in a qualified business use include (i) gasoline used (in a trade or business or for the production of income) in stationary engines to operate pumps, generators, compressors, and power saws; (ii) gasoline used (in a trade or business or for the production of income) for cleaning purposes; (iii) gasoline used (in a trade or business or for the production of income) in forklift trucks, bulldozers, and earthmovers; and (iv) gasoline used by a nonhighway vehicle in connection with the trade or business of construction, mining or logging.

(5) *Illustration.* The application of this paragraph (b) may be illustrated by the following example.

Example. M Corporation, a logging company, files its income tax return on the basis of the calendar year. During 1982, the company used 20,000 gallons of gasoline in its logging business. Of this amount, 12,000 gallons were used as fuel in registered highway vehicles which were operated both on the public highways and on the company's private roads. Of the remaining 8,000 gallons, 6,000 were used in nonhighway vehicles, such as tractors and bulldozers, and 2,000 gallons were used in highway vehicles, such as heavy trucks which, at the time of use, were neither registered nor required to be registered under state law for highway use by reason of being operated entirely on the company's property. As the ultimate purchaser, M may take a credit on its income tax return for 1982 under this section in respect of the 6,000 gallons used in the nonhighway vehicles and the 2,000 gallons used in the unregistered highway vehicles. However, no credit may be allowed with respect to the 12,000 gallons used in the registered highway vehicles even though a portion of this gasoline was used in operating the vehicles on the company's own property.

(c) *Highway vehicle.* The term "highway vehicle" has the same meaning assigned to this term under § 48.4061(a)–1(d).

(d) *Highway.* The term "highway" includes any road, whether a Federal highway, State highway, city street, or otherwise, in the United States which is not a private roadway.

(e) *Noncommercial aviation.* The term "non-commercial aviation" has the same meaning given to such term by section 4041(c)(4).

(f) *Calendar quarter.* The term "calendar quarter" means a period of three calendar months ending on March 31, June 30, and September 30, or December 31.

(g) *Taxable year.* The "taxable year" of a governmental unit or tax-exempt organization described in § 48.6421–1(c) or § 48.6421–2(c) is the calendar or fiscal year on the basis of which it regularly keeps its books. The "taxable year" of persons subject to income tax shall have the meaning it has under section 7701(a)(23).

§ 48.6421–5 Exempt sales; other payments or refunds available.

(a) *Exempt sales.* No credit or payment shall be allowed or made under § 48.6421–1 or § 48.6421–2 with respect to gasoline which was exempt from the tax imposed by section 4081. For example, credit or payment may not be allowed or made with respect to gasoline purchased tax free for use as supplies for certain vessels and airplanes, or with respect to gasoline purchased by a State tax free for its exclusive use, as provided in section 4221.

(b) *Other payments or refunds available.* Any amount which, without regard to the second sentence of section 6421(e)(1) and this paragraph (b), would be allowable as a credit or payable to any person under § 48.6421–1 or § 48.6421–2 is reduced by any other amount which is allowable as a credit or payable under section 6421, or is refundable under any other provision of the Code, to any person with respect to the same gasoline.

(c) *Gasoline used on farms.* Payments with respect to gasoline used on a farm for farming purposes shall be claimed under section 6420 and § 48.6420–1, and no claim in respect of that gasoline may be made under section 6421 and the regulations thereunder.

§ 48.6421–6 Applicable laws.

(a) *Penalties, excessive claims, etc.* All provisions of law, including penalties, applicable in respect of the tax imposed by section 4081 shall, to the extent applicable and consistent with section 6421, apply in respect of the payments provided for in section 6421 to the same extent as if these payments were refunds of overpayments of the tax imposed on the sale of gasoline by section 4081. For special rules applicable to the assessment and collection of amounts constituting excessive payments under section 6421, see section 6206 and the regulations thereunder. For the civil penalty assessable in the case of excessive claims under section 6421, see section 6675 and the regulations thereunder. For the treatment as an overpayment of an amount allowable as an excessive credit under section 39 with respect to amounts payable under section 6421, see section 6401(b).

(b) *Examination of books and witnesses.* For the purpose of ascertaining (1) the correctness of any claim made under section 6421 or (2) the correctness of any credit or payment made in respect of the claim, the Commissioner shall have the same authority granted by paragraphs (1), (2), and (3) of section 7602, relating to examination of books and witnesses, as if the person claiming credits or payment under section 6421 were the person liable for tax.

§ 48.6421–7 Records to be kept in substantiation of credits or payments.

(a) *In general.* Every person making a claim for credit or payment under section 6421 must keep records sufficent to enable the district director to determine whether the person is entitled to credit or payment under section 6421 and, if so, the amount of the credit or payment. No particular form is prescribed for keeping the records, but the records must include a copy of any statement or document submitted with the return or claim. The records must also show with respect to the period covered by the claim—

(1) The number of gallons of gasoline purchased and the dates of purchase,

(2) The name and address of each vendor from whom gasoline was purchased and the total number of gallons purchased from each,

(3) The number of gallons of gasoline purchased by the claimant and used during the period covered by the claim for nonhighway purposes or in intercity, local or school buses,

(4) Other information as necessary to establish the correctness of the claim.

(b) *Acceptable records.* (1) Evidence of purchases of gasoline, and the purposes for which it was used, to substantiate claims may included paid duplicate sales invoices or tickets from the gasoline dealer or other vendor, and detailed records of all fuel used which show the amount used for the prescribed purpose and the amount use for other purposes.

(2) Records maintained for Federal or State income tax purposes, or to support claims for refund of a State tax on gasoline, may be used to the extent that they contain the information necessary to substantiate the accuracy of the claim for credit under section 6421. However, the records must show separately the number of gallons of gasoline used for nonhighway purposes or in intercity, local, or school buses during the period covered by the claim.

(4) Other information as necessary to establish the correctness of the claim.

(b) *Acceptable records.* (1) Evidence of purchases of gasoline, and the purposes for which it was used, to substantiate claims may include paid duplicate sales invoices or tickets from the gasoline dealer or other vendor, and detailed records of all fuel used which show the amount used for the prescribed purpose and the amount used for other purposes.

(2) Records maintained for Federal or State income tax purposes, or to suport claims for refund of a State tax on gasoline, may be used to the extent that they contain the information necessary to substantiate the accuracy of the claim for credit under section 6421. However, the records must show separately the number of gallons of gasoline used for nonhighway purposes or in intercity, local, or school buses during the period covered by the claim.

(c) *Place and period for keeping records.* (1) All records required by this section must be kept by the claimant at a convenient and safe location within the United States which is accessible to internal revenue officers and shall during normal business hours be available for inspection by internal revenue officers. If the claimant has a principal place of business in the United States, the records must be kept at that place of business.

(2) Records required to substantiate a claim under section 6421 must be maintained for a period of at least 3 years from the last date prescribed for the filing of the claim for credit or payment.

Par. 34. The following new §§ 48.6424–1, 48.6424–2, 48.6424–3, 48.6424–4, 48.6424–5, and 48.6424–6 are added immediately following § 48.6421–7.

48.6424–1 Credits or payments to ultimate purchaser of lubricating oil used in a qualified business use or in a qualified bus.

(a) *In general.* If lubrication oil (other than cutting oils, as defined in section 4092(b) and other than previously used oil) is used in a qualified business use or in a qualified bus, a credit (under the circumstances described in paragraph (b) of this section) or a payment (under the circumstances described in paragraph (c) of this section) in respect of the lubricating oil shall be allowed or made to the ultimate purchaser of the lubricating oil in an amount equal to 6 cents for each gallon of lubricating oil so used on which tax was paid under section 4091. No interest shall be paid on any payment allowed under paragraph (c) of this section. However, interest may be paid on a overpayment (as defined by section 6401) of tax arising from a credit allowed under

paragraph (b) of this section. See section 39(a), relating to credit for certain uses of gasoline, special fuels, and lubricating oil. See § 48.6424–2 for the time within which a claim for credit or payment must be made under this section. See § 48.6424–3 for the meaning of the terms "lubricating oil," "use in a qualified business use" "qualified bus," "calendar year," and "taxable year." See § 48.6424–2 for the time within which a claim for credit or payment must be made under this section. See § 48.6424–3 for the meaning of the terms "lubriciating oil," "use in a qualified business use" "qualified bus," "calendar year," and "taxable year."

(b) *Allowance of income tax credit in lieu of payment.* Except as provided in paragraph (c) of this section, repayment under this section of the tax paid under section 4091 on lubricating oil used in a qualified business use or in a qualified bus by a person subject to income tax may be obtained only by claiming a credit for the amount of this tax against the tax imposed by subtitle A of the Code. The amount of the credit shall be an amount equal to the payment which would be made under section 6424 with respect to lubricating oil used during the taxable year in a qualified business use or in a qualified bus if section 6424(f) and paragraph (c) of this section did not apply. See section 39(a)(3).

(c) *Allowance of payment.* Payments in respect of lubricating oil upon which tax was paid under section 4091 that is used in a qualified business use or a qualified bus shall be made only to—

(1) The United States or any agency or instrumentality thereof, a State, a political subdivision of a State, or an agency or instrumentality of one or more States or political subdivisions of a State, or the District of Columbia,

(2) An organization which is exempt from tax under section 501(a) and is not required to make a return of the income tax imposed under subtitle A for its taxable year, or

(3) A person described in section 6424(b)(2) to whom $1,000 or more is payable (without regard to paragraph (b) of this section) under this section with respect to lubricating oil used during any of the first three quarters of the person's taxable year.

(d) *Uses which qualify for credit or payment.* The use contemplated by section 6424 is a use of lubricating oil (previously unused) through which the oil is consumed or rendered unfit for further use as a lubricant or for sale as a lubricant. If previously unused lubricating oil is blended or mixed with previously used lubricating oil which has been reclaimed or rerefined, the unused oil is considered to have lost its identity and the resulting product will be treated as previously used. Thus, no credit or payment will be allowed under this section with respect to the use of such blended lubricating oil regardless of how this mixture is eventually used.

(e) *Dual use of lubricating oil.* (1) No credit or payment may be claimed in respect of lubricating oil used as a lubricant in a highway vehicle used in a trade or business or for the production of income solely by reason of the fact that the propulsion motor in the vehicle is also used for a purpose other than the propulsion of the vehicle. Thus, if the propulsion motor of a highway vehicle (used in a trade or business or for the production of income) also operates special equipment, such as a mixing unit on a concrete mixer truck, by means of a power takeoff or power transfer, no credit or payment may be claimed in respect of the lubricating oil used to operate the special equipment, even though the special equipment is mounted on the highway vehicle.

(2) If a highway vehicle is equipped with a separate motor to operate special equipment (used in a trade or business or for the production of income) such as a refrigeration unit, pump, generator, or mixing unit, the credit or payment may be claimed in respect of the lubricating oil used in the separate motor.

(f) *Lubricating oil lost or destroyed.* Lubricating oil lost or destroyed through spillage, fire, or other casualty is not considered to have been "used" in a qualified business use or in a qualified bus and, accordingly, credit or payment in respect of this lubricating oil may not be claimed.

(g) *Supporting evidence required.* Each claim under this section for credit or payment must include a statement showing—

(1) The total number of gallons of lubricating oil purchased and used in a qualified business or in a qualified bus during the period covered by the claim, multiplied by 6 cents;

(2) The purpose or purposes for which the lubricating oil was used, determined by reference to general categories, and the amount used for each purpose; and

(3) If a claim on Form 843 is being filed, the internal revenue district or service center with which the claimant last filed an income tax return, if any.

§ 48.6424–2 Time for filing claim for credit or payment.

(a) *In general.* A claim for credit or payment described in § 48.6424–1 with respect to lubricating oil used in a qualified business use or in a qualified bus shall cover only lubricating oil used during the taxable year, or when paragraph (b)(2) of this section applies, used during the calendar quarter, for these purposes. Therefore, lubricating oil on hand at the end of a taxable year, or, if applicable, a calendar quarter, such as lubricating oil in storage tanks or drums, must be excluded from a claim filed for the taxable year or calendar quarter, as the case may be. However, this lubricating oil may be included in a claim filed for a later taxable year or a later calendar quarter if it is used during that later year or quarter in a qualified business or in a qualified bus. Lubricating oil used during the taxable year or calendar quarter may be covered by the claim for that period although the lubricating oil was not paid for at the time the claim is filed. For purposes of applying this section, a governmental unit or exempt organization described in § 48.6424–1(c) is considered to have as its taxable year, the calendar year or fiscal year on the basis of which it regularly keeps its books. See § 48.6424–3(g).

(b) *Time for filing*—(1) *Annual claims.* (i) A claim under this section for credit or payment with respect to lubricating oil used during a taxable year, shall not be allowed unless it is filed no later than the time prescribed by section 6511 and the regulations thereunder for filing a claim for credit or refund of income tax for the particular taxable year.

(ii) A claim for payment of a governmental unit or exempt organization described in §48.6424–1(c) must be filed no later than 3 years following the close of its taxable year. See §48.6424–3(f).

(2) *Quarterly claims.* A claim for payment of $1,000 or more in respect of lubricating oil used during any of the first three quarters of the taxable year, filed under § 48.6424–1(c)(3) in respect of lubricating oil used in a qualified business use or in a qualified bus, shall not be allowed unless the claim is filed on or before the last day of the first calendar quarter following the calendar quarter for which the claim is filed. No quarterly claim may be filed for the last calendar quarter of the taxable year. Amounts for which payment is disallowed under this paragraph (b)(2) merely because the claim was not filed on time may be included in an annual claim filed under paragraph (b)(1) of this section but other amounts for which a claim for payment has been filed under this paragraph (b)(2) may not be included in an annual claim filed under paragraph (b)(1) of this section.

(3) *Other applicable rules.* See § 301.7502–1 of this chapter (Regulations on Procedure and Administration) for provisions treating timely mailing as timely filing and § 301.7503–1 of this

chapter for time for performance of an act where the last day falls on Saturday, Sunday, or a legal holiday.

(c) *Limit on claims per taxable year.* Not more than one claim may be filed under § 48.6424–1 by any person with respect to lubricating oil used during any taxable year, except to the extent that quarterly claims may be filed under paragraph (b)(2) of this section with respect to any calendar quarter (other than the last calendar quarter) of the taxable year.

(d) *Form and content of claim*—(1) *Claim for credit.* The claim for credit to which this section applies must be made by attaching a Form 4136 to the income tax return of an individual or a corporation. Form 4136 must be executed in accordance with the instructions prescribed for the preparation of the form. A partnership may not file Form 4136. When a partnership files Form 1065, U.S. Partnership Return of Income, it must include a statement showing how many gallons of lubricating oil are allocated to each partner and the use made of the lubricating oil.

(2) *Claim for payment.* The claim for payment to which this section applies must be made on Form 843 in accordance with the instructions prescribed for the preparation of the form. Each form must designate the taxable year, or calendar quarter, for which it is filed. The form must be filed with the same service center where the income tax return was last filed or, in the case of a governmental unit or exempt organization described in § 48.6424–1(c) with the service center for the internal revenue region in which the principal place of business or principal office of the claimant is located.

(3) *Death or termination.* (i) If an individual dies, or if a sole proprietorship, partnership, or corporation is terminated or liquidated, during the taxable year, the claim for credit or payment may be filed in respect of lubricating oil used during the short taxable year in the same manner as is provided for lubricating oil used in a full taxable year. Those months which constitute a quarter of a full taxable year will constitute the same quarter of the short taxable year. For example, if a corporation using the calendar year is liquidated on September 30, 1982, and is entitled to $900 under § 48.6424–1 in respect of lubricating oil used in a qualified business use of in a qualified bus for the calendar quarter ending March 31 and is also entitled to payments of $1,500 for each of the calendar quarters ending June 30 and September 30, it may file a claim for payment in respect of the lubricating oil used during the calendar quarters ending June 30, and September 30, 1982, and take a credit of $900 on the corporation's income tax return for the short taxable year in respect of the lubricating oil used during the calendar quarter ending March 31, 1982.

(ii) A claim for payment on behalf of a decedent may be filed by the decedent's executor, administrator, or any other person charged with responsibilty for the decedent's affairs. Such a claim must be accompanied by copies of the letters testementary, letters of administration, or, in the case of a claim filed by other than the executor or administrator, the information called for in Form 1310 (Statement of Person Claiming Refund Due a Deceased Taxpayer). The claim may cover only lubricating oil in respect of which the decedent would have been entitled to claim payment. For example, if an individual dies on July 15, 1982, prior to claiming payment under § 48.6424–1 of $1,000 or more applicable to lubricating oil purchased and used in a qualified business use during the calendar quarter ending June 30, 1982, the decedent's executor or other legal representative may file a claim for payment covering that calendar quarter, and take the credit provided by section 39(a)(3) against the decedent's income tax on the income tax return for the short taxable year in respect of lubricating oil purchased by the decedent and so used during the period from July 1, 1982, to July 15, 1982, the date of death.

(e) *Restrictions on claims for credit or payment.* Credits or payments are allowable only in respect of lubricating oil that was sold by the manufacturer in a transaction that was subject to tax under section 4091. For example, a State or local government may not file a claim with respect to any lubricating oil which it purchased tax free from the manufacturer, even though the State or local government used the lubricating oil in a qualified business use or in a qualified bus. Similarly, a governmental unit or tax-exempt organization that is the ultimate purchaser of lubricating oil may not file a claim for payment if it is known that another person is entitled to claim a credit, payment, or refund with respect to the same lubricating oil. For example, a State or local government may not file a claim for payment if it has executed, or intends to execute, a written consent, or other documentation, to enable the producer to claim a credit or refund for the tax that was paid. See, for example, §§ 48.6416(a)–3(b)(2), 48.6416(b)(2)–2(d), and 48.6416(b)(2)–3(b)(1).

§ 48.6424–3 Meaning of terms.

For purposes of the regulations under section 6424, unless otherwise expressly indicated—

(a) *Lubricating oil.* The term "lubricating oil" has the same meaning given to this term by the regulations under section 4091. It does not include cutting oil, as defined in section 4092(b) and the regulations thereunder, or any oil which has previously been used.

(b) *Qualified business use.* The term "qualified business use" means any use by a person in a trade or business of such person or in an activity of the person described in section 212 (relating to production of income).

Qualified business use does not include:

(1) use in a highway vehicle which is registered or required to be registered for highway use in any State or foreign country,

(2) use on the highway in a highway vehcle owned by the United States or

(3) use in a motor boat.

Lubricating oil in respect of which credit or payment may be claimed under section 6424 includes, for example, previously unused lubricating oil used—

(i) In stationary engines (used in a trade or business or for the production of income) to operate pumps, generators, compressors, or power saws; or

(ii) In forklift trucks, bulldozers, earthmovers, trench diggers, road graders, farm tractors, cotton pickers, and other motorized agricultural equipment of similar nature, if used in a trade or business or for the production of income.

(c) *Qualified bus.* The term "qualified bus" has the same meaning assigned to this term by section 4221(d)(7) and the regulations thereunder.

(d) *Highway vehicle.* The term "highway vehicle" has the same meaning assigned to this term under § 48.4061(a)–1(d).

(e) *Highway.* The term "highway" includes any road, whether a Federal highway, State highway, city, street, or otherwise, in the United States which is not a private roadway.

(f) *Calendar quarter.* The term "calendar quarter" means a period of three calendar months ending March 31, June 30, September 30, or December 31.

(g) *Taxable year.* The "taxable year" of a governmental unit or a tax-exempt organization described in § 48.6424–1(c) is the calendar or fiscal year on the basis of which it regularly keeps its books. The "taxable year" of persons subject to income tax shall have the meaning it has under section 7701(a)(23).

§ 48.6424–4 Exempt sales; other payments or refunds available.

(a) *Exempt sales.* No credit or payment shall be allowed or made under § 48.6424–1 with respect to lubricating oil which was exempt from the tax imposed by section 4091. For example, credit or payment may not be allowed or made with respect to lubricating oil purchased tax free for use as supplies for certain vessels and airplanes, or with respect to lubricating oil purchased by a State tax free for its exclusive use, as provided in section 4221.

(b) *Other payments or refunds available.* Any amounts which, without regard to the second sentence of section 6424(c) and this paragraph (b), would be allowable as a credit or payable to any person under § 48.6424–1 is reduced by any other amount which is allowable as a credit or payable under section 6424, or is refundable under any other provision of the Code, to any person with respect to the same lubricating oil.

§ 48.6424–5 Applicable laws.

(a) *Penalties, excessive claims, etc.* All provisions of law, including penalties, applicable in respect of the tax imposed by section 4091 shall, to the extent applicable and consistent with section 6424, apply in respect of the payments provided for in section 6424 to the same extent as if these payments were refunds of overpayments of the tax imposed on the sale of lubricating oil by section 4091. For special rules applicable to the assessment and collection of amounts constituting excessive payments under section 6424, see section 6406 and the regulations thereunder. For the civil penalty assessable in the case of excessive claims under section 6424, see section 6675 and the regulations thereunder. For the treatment as an overpayment of an amount allowable as an excessive credit under section 39 with respect to amounts payable under section 6424, see section 6401(b).

(b) *Examination of books and witnesses.* For the purpose of ascertaining (1) the correctness of any claim made under section 6424 or (2) the correctness of any credit or payment made in respect of the claim, the Commissioner shall have the same authority granted by paragraphs (1), (2), and (3) of section 7602, relating to examination of books and witnesses, as if the person claiming credit or payment under section 6424 were the person liable for tax.

§ 48.624–6 Records to be kept in substantiation of credit or payments.

(a) *In general.* Every person making a claim for credit or payment under section 6424 must keep records sufficient to enable the district director to determine whether the person is entitled to credit or payment under section 6424 and, if so, the amount of the credit or payment. No particular form is prescribed for keeping the records, but the records must include a copy of the income tax return or claim and a copy of any statement or document submitted with the return or claim. The records must also show with respect to the period covered by the claim—

(1) The number of gallons of lubricating oil purchased and the dates of purchase.

(2) The name and address of each vendor from whom lubricating oil was purchased and the total number of gallons purchased from each,

(3) The number of gallons of lubricating oil purchased by the claimant and used, during the period covered by the claim in a qualified business use or in a qualified bus, and

(4) Other information as necessary to establish the correctness of the claim.

(b) *Acceptable records.* (1) Evidence of purchases of lubricating oil, and the purposes for which it was used, to substantiate claims may include paid duplicate sales invoices or tickets from the dealer or other vendor, and detailed records of all lubricating oil used which show the amount used for the prescribed purpose and the amount used for other purposes.

(2) Records maintained for Federal or State income tax purposes, or to support claims for refund of a State tax on lubricating oil, may be used to the extent that they contain the information necessary to substantiate the accuracy of the claim for credit under section 6424.

(c) *Place and period for keeping records.* (1) All records required by this section must be kept by the claimant at a convenient and safe location within the United States which is accessible to internal revenue officers and shall during normal business hours be available for inspection by internal revenue officers. If the claimant has a principal place of business in the United States, the records must be kept at that place of business.

(2) Records required to substantiate a claim under section 6424 must be maintained for a period of at least 3 years from the last date prescribed for the filing of the claim for credit or payment.

Par. 35 The following §§ 48.6427–1, 48.6427–2, 48.6427–3, 48.6427–4 and 48.6427–5 are added immediately following § 48.6424–6.

§ 48.6427–1 Credit or payments to purchaser of special fuels resold or used for nontaxable, farming, or other purposes.

(a) *Amount of repayment—*(1) *Nontaxable or other uses.* (i) If tax has been paid under section 4041(a)(1) on the sale of diesel fuel for use as a fuel in a diesel-powered highway vehicle or under section 4041(b)(1) on the sale of special motor fuel for use as a fuel in a motor vehicle or a motorboat and the fuel is used by the purchaser for a nontaxable purpose or for a purpose taxable at a lower rate than the purposes for which sold, a credit (under the circumstances described in paragraph (b) of this section) or a payment (under the circumstances described in paragraph (c) of this section) in respect of the fuel shall be allowed or made to the purchaser of the fuel in an amount equal to—

(A) The amount of the tax imposed on the sale of the fuel to the purchaser if the purchaser resells the fuel, or

(B) If the purchaser uses the fuel, the amount of tax imposed on the sale of the fuel to the purchaser, less the amount of tax, if any, that would have been imposed on the purchaser's use of the fuel if no tax had been imposed on the sale of the fuel to the purchaser.

(ii) For purposes of paragraph (a)(1)(i) of this section, and for the regulations under section 6427 applying such paragraph, tax imposed on the sale of fuel will be treated as an overpayment by the purchaser if the person resells the fuel or uses it for a nontaxable purpose or for a purpose taxable at a lower rate than that for which sold to the purchaser. Thus, for example, special motor fuel which was sold tax paid to the purchaser for use otherwise than in a qualified business use in a motor vehicle will qualify for the payment under section 6427 if the purchaser uses it as a fuel in a qualified business use.

(2) *Used for farming purposes.* (i) If tax has been paid under section 4041(a)(1) on the sale of diesel fuel for use as a fuel in a diesel-powered highway vehicle, or under section 4041(b)(1) on the sale of special motor fuel for use as a fuel in a motor vehicle or a motor boat and the fuel is used on a farm for farming purposes, a credit (under the circumstances described in paragraph (b) of this section) or a payment (under the circumstances described in paragraph (c)(1) or (2) of this section) in respect of the fuel shall be allowed or made to the purchaser of

the fuel in an amount equal to the amount of tax that was imposed under section 4041 on the sale of the fuel. The provisions of section 6420(c) (1), (2), and (3) and § 48.6420–4 shall apply under this paragraph (a)(2) in determining whether the fuel is used on a farm for farming purposes.

(ii) The term "purchaser," as used in paragraph (a)(2)(i) of this section, includes only a person who is an owner, tenant, or operator of a farm. A person who is owner, tenant, or operator of a farm is a purchaser of fuel only with respect to such fuel as is purchased by the person and used for farming purposes on a farm of which the person is the owner, tenant, or operator. Thus, the owner of a farm who purchases fuel which is used on the farm by its owner, tenant, or operator for farming purposes is generally the purchaser of the fuel. If, however, the cost of fuel supplied by an owner, tenant, or operator of a farm, is by agreement or other arrangement borne by a second person who is an owner, tenant, or operator of the farm, the second person who bore the cost of the fuel is considered to be the purchaser of the fuel.

(iii) Except as provided in paragraph (a)(2)(iv) of this section, if fuel is used on a farm by any person other than the owner, tenant, or operator for the purposes described in section 6420(c)(3)(A) and § 48.6420–4(d) (relating to gasoline used in cultivating, raising, or harvesting), the owner, tenant, or operator (as the case may be) will be treated for the purposes of § 48.6427–1(a)(2)(i) as the purchaser who used the fuel on the farm for farming purposes.

(iv) Section 6427(c) provides that an aerial applicator is entitled to be treated as the user and ultimate purchaser of fuel that the applicator uses on a farm for the purposes described in section 6420(c)(3)(A), but only if the owner, tenant, or operator of the farm who is otherwise entitled to be treated as the ultimate purchaser waives the right to credit or payment. The rules contained in section 6420 and the regulations under the section regarding waivers by owners, tenants, and operators of farms of their rights to payments under section 6420 for gasoline used by aerial applicators on a farm for farming purposes apply to waivers under this section.

(3) *Defintions, uses, and other rules.* (i) No interest shall be paid on any payment allowed under paragraph (c) of this section. However, interest may be paid on any overpayment (as defined by section 6401) arising from a credit. See section 39(a), relating to credit for certain uses of gasoline, special fuels, and lubricating oil. See section 6611, relating to interest on overpayments.

(ii) See § 48.6427–3 for the time within which a claim for credit or payment must be made under this section.

(iii) See § 48.6420–4 for the meaning of the terms "used on a farm for farming purposes" and "farm." The term "gasoline" has the same meaning given to this term by section 4082(b) and the regulations thereunder. For the meaning of the terms "diesel fuel," "special motor fuel," "motor vehicle," "highway vehicle," and "registered" see section 4041 and the regulations thereunder. The term "fuel" means diesel fuel, special motor fuel, or gasoline, as the context requires. Where appropriate, the term "use" includes a resale. See § 48.6421–4 for the meaning of "calendar quarter" and "taxable year".

(iv) For purposes of determining the allowable credit or payment in respect of fuel used for nontaxable purposes, on a farm for farming purposes, or for purposes taxable at a lower rate, fuel on hand shall be considered used in the order in which it was purchased. Thus, if the purchaser made purchases at different times and subject to different rates of tax, then in determining credit or payment for fuel used for a described purpose, it will be assumed that the fuel first purchased was the first fuel used, and the rate applicable to that purchase will apply in determining the credit of payment, until all of that fuel is accounted for.

(v) Fuel lost or destroyed through spillage, fire, or other casualty is not considered to have been "used" within the meaning of this section, and, accordingly, no credit or payment of the tax paid on the sale of the fuel may be made under this section.

(b) *Allowance of income tax credit in lieu of payment.* Except as provided in paragraph (c) of this section, repayment under this section of the tax paid under section 4041 on fuel used by a person subject to income tax may be obtained only by claiming a credit for the amount of this tax against the tax imposed by subtitle A of the Code. The amount of the credit shall be an amount equal to the payment which would be made under section 6427 with respect to fuel used during the taxable year for nontaxable purposes on a farm for farming purposes, or for purposes taxable at a lower rate, if section 6427(i) and paragraph (c) of this section did not apply. See section 39(a)(4).

(c) *Allowance of payment.* Payments in respect of fuel upon which tax was paid under section 4041 that is used for nontaxable purposes, on a farm for farming purposes, or for purposes taxable at a lower rate, shall be made only to—

(1) The United States or any agency or instrumentality thereof, a State, a political subdivision of a State, or an agency or instrumentality of one or more States or political subdivisions of a State, or the District of Columbia,

(2) An organization which is exempt from tax under section 501(a) and is not required to make a return of the income tax imposed under subtitle A for its taxable year, or

(3) In the case of fuel used for nontaxable purposes to which section 6427(a) applies, to a person described in section 6427(g)(2) to whom $1,000 or more is payable (without regard to paragraph (b) of this section) under this section with respect to fuel used during any of the first three quarters of his taxable year.

(d) *Dual use of fuel.* The principles set forth in § 48.4041–7, relating to dual use of fuel, for determining whether liability is incurred under section 4041 at the time of sale of the fuel, are equally applicable in determining whether a credit or payment is to be allowed under this section. Thus, if diesel fuel or special motor fuel used in a separate motor is drawn from the same tank as the one which supplies fuel for the propulsion of the vehicle, a reasonable determination of the quantity of the fuel used in the separate motor will be acceptable for purposes of computing the payment or credit under this section. The determination must be based, however, on the operating experience of the person using the fuel, and a statement, signed by the person, evidencing the operating experience must be maintained as a part of the records of the person claiming the payment or credit.

(e) *Supporting evidence required.* Each claim under this section for credit or payment must include a statement showing—

(1) The total number of gallons of fuel purchased and used for nontaxable or farming purposes during the period covered by the claim, multiplied by the rate of payment allowable under this section with respect to such fuel;

(2) The purpose or purposes for which the fuel was used, determined by reference to general categories, and the amount used for each of the purposes; and

(3) If a claim on Form 843 is being filed, the internal revenue district or service center with which the claimant last filed an income tax return, (if any).

(f) *Illustrations.* The application of this section may be illustrated by the following example:

Example. Special motor fuel was sold for use as fuel in a highway vehicle that was registered for highway use. Tax was imposed on the sale at the rate of 4 cents a gallon under section 4041(b)(1). The special motor fuel was eventually used by the purchaser in a qualified business use. The credit or payment of tax is to be computed as follows:

	Cents per gallon
Rate at which tax was paid	4
Less: Rate at which tax would have been imposed on a qualified business use under sec. 4041(b).	2
Net credit or payment under sec. 6427(a)	2

§ 48.6427-2 Credits or payments to purchaser of diesel or special motor fuels used in intercity, local, or school buses.

(a) *In general.* (1) If tax has been paid under section 4041(a)(1) on the sale of diesel fuel for use as a fuel in a diesel-powered highway vehicle or under section 4041(b)(1) on the sale of special motor fuel for use as a fuel in a motor vehicle or a motorboat and the fuel is used by the purchaser in an intercity or local bus while engaged in furnishing (for compensation) passenger land transportation available to the general public or in a school bus in the transportation of students and employees of schools, a credit (under the circumstances described in paragraph (b) of this section) or a payment (under the circumstances described in paragraph (c) of this section) in respect of the fuel so used shall be allowed or made to the purchaser of the fuel. The credit or payment under this section shall be an amount equal to the product of the number of gallons of fuel so used multiplied by the rate at which tax was imposed on the fuel by section 4041(a) or (b). No interest shall be paid on any payment allowed under paragraph (c) of this section. However, interest may be paid on any overpayment (as defined by section 6401) arising from a credit. See section 39(a), relating to credit for certain uses of gasoline, special fuels, and lubricating oil. See section 6611, relating to interest on overpayments. See § 48.6427-3 for the time within which a claim for credit or payment must be made under this section.

(2) The terms "diesel fuel" and "special motor fuel" have the same meaning as in section 4041 and the regulations thereunder. The term "fuel" means diesel fuel and special motor fuel. See § 48.6421-4 for the meaning of "calendar quarter" and "taxable year."

(b) *Allowance of income tax credit.* Except as provided in paragraph (c) of this section, repayment under this section of the tax paid under section 4041(a) or (b) on diesel or special motor fuel used while engaged in furnishing (for compensation) passenger land transportation available to the general public or in school bus transportation operations by a person subject to income tax may be obtained only by claiming a credit for the amount of this tax against the tax imposed by subtitle A of the Code. The amount of the credit shall be an amount equal to the payment which would be made under section 6427 with respect to fuel used during the taxable year for passenger land transportation or school bus operations if section 6427(i) and paragraph (c) of this section did not apply. See section 39(a)(4).

(c) *Allowance of payment.* Payments in respect of diesel or special motor fuel upon which tax was paid under section 4041(a) or (b) that is used while engaged in furnishing (for compensation) passenger land transportation available to the general public or in school bus transportation operations shall be made only to—

(1) The United States or any agency or instrumentality thereof, a State, a political subdivision of a State, or an agency or instrumentality of one or more States or political subdivisions of a State, or the District of Columbia,

(2) An organization which is exempt from tax under section 501(a) and is not required to make a return of the income tax imposed under subtitle A for its taxable year, or

(3) A person described in section 6427(g)(2) to whom $1,000 or more is payable (without regard to paragraph (b) of this section) under this section with respect to fuel used during any of the first three quarters of the person's taxable year.

(d) *Supporting evidence required.* Each claim under this section for credit or payment must include a statement showing—

(1) The total number of gallons of fuel purchased and used in each intercity or local bus while engaged in furnishing (for compensation) passenger land transportation available to the general public multiplied by the rate at which tax was imposed on the fuel by section 4041(a) or (b).

(2) The total number of gallons of fuel purchased and used in each bus while engaged in school bus transportation operations multiplied by the rate at which tax was imposed on the fuel by subsection (a) or (b) of section 4041.

(3) If a claim on Form 843 is being filed, the internal revenue district or service center with which the purchaser last filed an income tax return (if any).

§ 48.6427-3 Time for filing claim for credit or payment.

(a) *In general.* A claim for credit or payment described in § 48.6427-1 with respect to fuel used for nontaxable, farming, or other purposes taxable at a lower rate or in § 48.6427-2 with respect to fuel used either in an intercity or local bus while engaged in furnishing (for compensation) passenger land transportation available to the general public or in school bus transportation operations shall cover only fuel used during the taxable year, or when paragraph (b)(2) of this section applies, used during the calendar quarter. Therefore, fuel on hand at the end of a taxable year, or, if applicable, a calendar quarter, such as fuel in supply tanks of vehicles or in storage tanks or drums, must be excluded from a claim filed for the taxable year or calendar quarter, as the case may be. However, this fuel may be included in a claim filed for a later taxable year or a later calendar quarter if it is used during that later year or quarter for nontaxable or farming purposes, or in an intercity or local bus while engaged in furnishing (for compensation) passenger land transportation available to the general public or in school bus transportation operations. Fuel used during the taxable year or calendar quarter may be covered by the claim for that period although the fuel has not been paid for at the time the claim is filed. The purposes of applying this section, a governmental unit or exempt organization described in § 48.6427-1(c) or § 48.6427-2(c) is considered to have as its taxable year the calendar year or fiscal year on the basis of which it regularly keeps its books; see § 48.6421-4.

(b) *Time for filing*—(1) *Annual claims.* (i) A claim under this section for credit or payment with respect to fuel used during a taxable year shall not be allowed unless it is filed no later than the time prescribed by section 6511 and the regulations thereunder for filing a claim for credit or refund of income tax for the particular taxable year.

(ii) A claim for payment of a governmental unit or exempt organization described in § 48.6427-1(c) or unit or exempt organization described in § 48.6427-2(c), must be filed no later than 3 years following the close of its taxable year. See § 48.6421-4.

(2) *Quarterly claims.* A claim for payment of $1,000 or more in respect to fuel used during any of the first three quarters of the taxable year, filed either under § 48.6427-1(c)(3) in respect of fuel used for nontaxable purposes or for purposes taxable at a lower rate, or under § 48.6427-2(c)(3) in respect of fuel

used while engaged in furnishing (for compensation) passenger land transportation available to the general public or in school bus transportation operations, shall not be allowed unless the claim is filed on or before the last day of the first calendar quarter following the calendar quarter for which the claim is filed. No quarterly claim may be filed for the last calendar quarter of the taxable year. Amounts for which payment is disallowed under this paragraph (b)(2) merely because the claim was not file on time may be included in an annual claim filed under paragraph (b)(1) of this section, but other amounts for which a claim for payment has been filed under this paragraph (b)(2) may not be included in an annual claim filed under paragraph (b)(1) of this section.

(3) *Other applicable rules.* See § 301.7502–1 of this chapter (Regulations on Procedure and Administration) for provisions treating timely mailing as timely filing and § 301.7503–1 of this chapter for time for performance of an act where the last day falls on Saturday, Sunday, or a legal holiday.

(c) *Limit on claims per taxable year.* Not more than one claim may be filed under § 48.6427–1 or § 48.6427–2 by any person with respect to fuel used during any taxable year, except to the extent that quarterly claims may be filed under paragraph (b)(2) of this section with respect to any calendar quarter (other than the last calendar quarter) of the taxable year.

(d) *Form and content of claim.*—(1) *Claim for credit.* The claim for credit to which this section applies must be made by attaching a Form 4136, to the income tax return of an individual or a corporation. Form 4136 must be executed in accordance with the instructions prescribed for the preparation of the form. A partnership may not file Form 4136. When a partnership files Form 1065, U.S. Partnership Return of Income, it must include a statement showing how many gallons of fuel are allocated to each partner and the use made of the fuel.

(2) *Claim for payment.* The claim for payment to which this section applies must be made on Form 843 in accordance with the instructions prescribed for the preparation of the form. Each form must designate the taxable year, or calendar quarter, for which it is filed. The form must be filed with the same service center where the income tax return was last filed or, in the case of a governmental unit or exempt organization described in § 48.6427–1(c) or § 48.6427–2(d), with the service center for the internal revenue region in which the principal place of business or principal office of the claimant is located.

(3) *Death or termination.* (i) If an individual dies, or if a sole proprietorship, partnership, or corporation is terminated or liquidated, during the taxable year, the claim for credit or payment may be filed in respect of fuel used during the short taxable year in the same manner as is provided for fuel used in a full taxable year. Those months which constitute a quarter of a full taxable year will constitute the same quarter of the short taxable year. For example, if a corporation using the calendar year is liquidated on September 30, 1982, and is entitled to $900 under § 48.6427–1 in respect of fuel used for nontaxable purposes for the calendar quarter ending March 31 and is also entitled to payments of $1,500 for each of the calendar quarters ending June 30 and September 30, it may file a claim for payment in respect of the fuel used for nontaxable purposes during the calendar quarters ending June 30, and September 30, 1982, and take a credit of $900 on its income tax return for the short taxable year in respect of the fuel used during the calendar quarter ending March 31, 1982.

(ii) A claim for payment on behalf of a decedent may be filed by the decedent's executor, administrator, or any other person charged with responsibility for the decedent's affairs. Such a claim must be accompanied by copies of the letters testamentary, letters of administration, or, in the case of a claim filed by other than the executor or administrator, the information called for in Form 1310 (Statement of Person Claiming Refund Due a Deceased Taxpayer).
The claim may cover only fuel in respect of which the decedent would have been entitled to claim payments. For example, if an individual dies on July 15, 1982, prior to claiming payment under § 48.6427–1 of $1,000 or more applicable to fuel purchased and used for nontaxable purposes during the calendar quarter ending June 30, 1982, the decedent's executor or other legal representative may file a claim for payment covering that calendar quarter, and take the credit provided by section 39(a)(4) against the decedent's income tax on the income tax return for the short taxable year in respect of fuel purchased by the decedent and so used during the period from July 1, 1982, to July 15, 1982, the date of death.

(e) *Restrictions on claims for credit or payment.* Credits or payments are allowable only in respect of fuel that was sold by the producer or importer in a transaction that was subject to tax under section 4041. For example, a State or local government may not file a claim with respect to any fuel which it purchased tax free from the producer, even though the State or local government used the fuel for the purposes described in paragraph (a) of this section. Similarly, a State or local government may not file a claim with respect to the use of fuel if it is known that another person is entitled to claim a payment, credit, or refund with respect to the same fuel. For example, a State or local government may not file a claim in respect of tax-paid fuel that has been resold by the purchaser to the State or local government.

§ 48.6427–4 Applicable laws.

(a) *Penalties, excessive claims, etc.* All provisions of law, including penalties, applicable in respect of the tax imposed by section 4041 shall, to the extent applicable and consistent with section 6427, apply in respect of the payments provided for in section 6427 to the same extent as if these payments constituted refunds of overpayments of the tax imposed on the sale of fuels by section 4041. For special rules applicable to the assessment and collection of amounts constituting excessive payments under section 6427, see section 6206 and the regulations thereunder. For the civil penalty assessable in the case of excessive claims under section 6427, see section 6675 and the regulations thereunder. For the treatment as an overpayment of an amount allowable as an excessive credit under section 39 with respect to amounts payable under section 6427, see section 6401(b).

(b) *Examination of books and witnesses.* For the purpose of ascertaining (1) the correctness of any claim made under section 6427 or (2) the correctness of any credit or payment made in respect of the claim, the Commissioner shall have the same authority granted by paragraphs (1), (2), and (3) of section 7602, relating to examination of books and witnesses, as if the person claiming credit or payment under section 6427 were the person liable for tax.

§ 48.6427–5 Records to be kept in substantiation of credits or payments.

(a) *In general.* Every person making a claim for credit or payment under section 6427 must keep records sufficient to enable the district director to determine whether the person is entitled to credit or payment under such section and, if so, the amount of the credit or payment. No particular form is prescribed for keeping the records, but the records must include a copy of the

income tax return or claim and a copy of any statement or document submitted with the return or claim. The records must also show with respect to the period covered by the claim—

(1) The number of gallons of fuel purchased and the dates of purchase,

(2) The name and address of each vendor from whom fuel was purchased and the total number of gallons purchased from each,

(3) The number of gallons of fuel purchased by the claimant and used during the period covered by the claim for nontaxable purposes, farming purposes, for othe purposes taxable at a lower rate, in local, intercity, or school buses, and

(4) Other information as necessary to establish the correctness of the claim.

(b) *Acceptable records.* (1) Evidence of purchases of fuel, and the purposes for which it was used, to substantiate claims may include paid duplicate sales invoices or tickets from the fuel dealer or other vendor, and detailed records of all fuel used which show the amount used the prescribed purpose and the amount used for other purposes.

(2) Records maintained for Federal or State income tax purposes, or to support claims for refund of a State tax on fuel, may be used to the extent that they contain the information necessary to substantiate the accuracy of the claim for credit under section 6427. However, the records must show separately the number of gallons of fuel used for nontaxable purposes, farming purposes, other purposes taxable at a lower rate, or in intercity, local, or school buses during the period covered by the claim.

(c) *Place and period for keeping records.* (1) All records required by this section must be kept by the claimant at a convenient and safe location within the United States which is accessible to internal revenue officers and shall during normal business hours be available for inspection by internal revenue officers. If the claimant has a principal place of business in the United States, the records must be kept at that place of business.

(2) Records required to substantiate a claim under section 6427 must be maintained for a period of at least 3 years from the last date prescribed for the filing of the claim for credit or payment.

Par. 36. Section 48.6675–1 is revised to read as follows:

§ 48.6675–1 Excessive claims under section 6420, 6421, 6424, or 6427.

(a) *Civil penalty.* Any person making a claim for credit or payment under section 6420 (relating to gasoline used on farms), section 64211 (relating to lubricating oil used for certain nontaxable purposes), or section 6427 (relating to fuels not used for taxable purposes) for an excessive amount shall be liable, in addition to any criminal penalty provided by law, to penalty in an amount equal to the greater of either (1) two times the excessive amount or (2) ten dollars, unless the person shows that the making of the excessive claim was due to reasonable cause. For provisions relating to the assessment and collection of the civil penalty provided by section 6675, see section 6206 and the regulations thereunder.

(b) *Excessive amount defined.* For purposes of section 6675(a), the term "excessive amount" means the amount by which—

(1) The claim for credit or payment under section 6420, section 6421, section 6424, or section 6427 exceeds

(2) The amount of credit or payment under the section for the period covered by the claim.

§ 140.6427–1 [Removed]

Par. 37. Section 140.6427–1 (Temporary Regulations in connection with section 3 of the Act of October 14, 1978) is removed.

§ 154.4–1 [Removed]

Par. 38. Paragraph (e) of § 154.4–1 (Temporary Regulations in connection with the Airport and Airway Revenue Act of 1970) is removed.

Roscoe L. Egger, Jr.,

Commissioner of Internal Revenue.

[FR Doc 82–35481 Filed 12–30–82; 8:45 am]

BILLING CODE 4830–01–M

Office of the Secretary

31 CFR Part 1

Privacy Act of 1974; Proposed Notice of Rules Exempting a System of Records From Certain Requirements

AGENCY: Office of the General Counsel, Office of the Secretary, Treasury.

ACTION: Proposed rule.

SUMMARY: Pursuant to the requirements of the Privacy Act of 1974, 5 U.S.C. 552a, the Office of the General Counsel gives notice of a proposed revision of 31 CFR 1.36. This revision will (1) change the name of the system of records, Treasury/OS 00.144, from "Civil Litigation Records" to "Treasury Interagency Automated Litigation System (TRIALS)", (2) exempt TRIALS from the application of certain parts of the Privacy Act in accordance with 31 CFR 1.23(c) and § 1.36, and (3) revise § 1.36 to reflect TRIALS' operational characteristics.

DATE: Comments must be received on or before March 7, 1983.

ADDRESS: Comments should be sent to: Office of the Assistant General Counsel (Enforcement and Operations), Room 2310, Main Treasury, 1500 Pennsylvania Avenue, NW., Washington, D.C. 20220.

FOR FURTHER INFORMATION CONTACT: Stephanie Dick, Office of the Assistant General Counsel (Enforcement and Operations), Room 2000, Main Treasury, 1500 Pennsylvania Avenue, NW., Washington, D.C. 20220.

SUPPLEMENTARY INFORMATION: The existing system of records, Civil Litigation Records, is a manual system. The Office of the General Counsel proposes to revise and supplement this system through automation. The revised system, TRIALS, is essentially a computerized indexing version of the Civil Litigation Records system. TRIALS is a case-management index which provides summary data on Treasury non-tax litigation and administrative proceedings. This document amends 31 CFR 1.36 to reflect the existence of the revised system.

As required by Executive Order 12291, it has been determined that this proposed rule is not a "major" rule and therefore does not require a Regulatory Impact Analysis.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601–612), it has been determined that these regulations do not have significant economic impact on a substantial number of small entities.

In accordance with the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96–511), the Department of the Treasury has made a determination that this proposed rule would not impose new recordkeeping, application, reporting, or other types of information collection requirements.

List of Subjects in 31 CFR Part 1

Privacy.

Dated: December 16, 1982.

Cora P. Beebe,

Assistant Secretary (Administration).

Title 31 CFR 1.36 of Subpart C is amended by revising paragraphs (a), (b) and (c) to read as follows:

§ 1.36 [Amended]

* * * * *

Office of the Secretary

Office of the General Counsel

Notice Exempting a System of Records from Requirements of the Privacy Act.

(a) *In General.* The General Counsel of the Treasury exempts the system of records entitled "Treasury Interagency Automated Litigation System (TRIALS)" from the provisions of subsections (e)(3), (d), (e)(1), (e)(4) (G), (H), and (I), and (f) of 5 U.S.C. 552a. The manual part of this system of records contains information or documents relating to litigation or administrative proceedings involving or concerning the Department or its officials, and includes pending, active, and closed files. The manual records consist of copies of pleadings, investigative reports, information compiled in reasonable anticipation of a civil action or proceeding, legal memoranda, and related correspondence. Pleadings which have been filed with a court or administrative tribunal are matters of public record, and no exemption is claimed as to them. The computerized part of the system contains summary data on Treasury Department non-tax litigation and administrative proceedings, *e.g.* plaintiff, defendant, attorney, witness, judge and/or hearing officer names, type of case, relief sought, date, docket number, pertinent dates, and issues. The purpose of the exemptions is to maintain the confidentiality of investigatory materials compiled for law enforcement purposes; information compiled in reasonable anticipation of a civil action or proceeding is exempt from access under subsection (d)(5) until the file is closed; thereafter subsection (k)(2) may apply in part to the information. Legal memoranda and related correspondence contain no personal information and are not subject to disclosure under section 552a. Determinations concerning whether particular information contained in this system is exempt from disclosure will be made at the time a request is received from an indivudual to gain access to information pertaining to him.

(b) *Authority.* These rules are promulgated pursuant to the authority vested in the Secretary of the Treasury by 5 U.S.C. 552a(k), and pursuant to the authority vested in the General Counsel by 31 CFR 1.23(c).

(c) *Name of System.* Treasury Interagency Automated Litigation System (TRIALS).

* * * * *

[FR Doc. 83-166 Filed 1-4-83; 8:45 am]

BILLING CODE 4810-25-M

POSTAL RATE COMMISSION

39 CFR Part 3001

[Docket No. RM83-4]

December 29, 1982.

AGENCY: Postal Rate Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Postal Rate Commission, pursuant to 39 U.S.C. 3603, 3622, 3623, 3661, and 3662, proposes two changes in its rules of practice (39 CFR Part 3001). One change would amend the rules governing complaints filed under 39 U.S.C. 3662 by persons who believe that the United States Postal Service is rendering service not consistent with the policies of title 39, U.S.C. The rule change would provide for a period of informal investigation, where the Commission determined that such a procedure would be helpful, before the Postal Service is required to file a formal answer to the complaint. The rules affected are 39 CFR 3001.84 and 3001.85.

The second change amends 39 CFR 3001.23(C) to reflect the fact that the Commisson now regularly hears cases en banc and does not employ Administrative Law Judges. It deletes a portion of the cited subsection which properly applies only to Administrative Law Judges, but not to Commissioners.

DATE: Comments responsive to this Notice should be filed on or before February 7, 1983.

ADDRESS: Comments and other correspondence relating to this Notice should be sent to David F. Harris, Secretary of the Commission, 2000 L Street, N.W., Washington, D.C. 20268 (telephone: 202/254-3880).

FOR FURTHER INFORMATION CONTACT: David F. Stover, General Counsel, 2000 L Street, N.W., Washington, D.C. 20268 (telephone: 202/254-3824).

SUPPLEMENTARY INFORMATION: This Notice proposes two changes in the rules of practice of the Commission, 39 CFR Part 3001. One is intended to simplify and clarify the procedures to be followed upon the filing of a complaint, pursuant to 39 U.S.C. 3662, by an interested party who believes he or she is "not receiving postal service in accordance with the policies of this title." If adopted, it will result in changes to 39 CFR 3001.84 and 3001.85. The second change affects 39 CFR 3001.23(c), and is intended only to eliminate language which has ceased to be useful since the Commission adopted the practice of hearing cases en banc, without the services of an administrative law judge (ALJ).

Changes in the complaint rules. Experience has indicated to the Commission that the existing procedural rules regarding complaints under section 3662 of the Postal Reorganization Act may, in cases involving complaints as to service, be unnecessarily rigid. The rules as they stand, particularly § 3001.84 (39 CFR 3001.84), require that "[w]ithin thirty days after the filing of a complaint with the Commission the Postal Service shall file and serve an answer in the form and manner required by [the relevant sections of the general rules of practice]." This answer resembles the answer filed by the respondent in a court proceeding, and has the effect of formally joining issue and permitting litigation to go forward.

While in many cases there may be no reason not to proceed directly to adversarial stages, as § 3001.84 contemplates, the Commission believes that in some cases—and in service complaint cases particularly—time and litigation costs may be saved if the procedures are more flexible and allow for some preliminary investigation by the Commission before the Postal Service is called upon to file a formal answer. That procedure would, in particular, be consistent with § 3001.85 of the rules of practice, which states that:

> It shall be the general policy and practice of the Commission to encourage the resolution and settlement of complaints by informal procedures, including correspondence, conferences between the parties, and the conduct of proceedings off the record with the consent of the parties.

As the rules currently stand, this initiative toward informal disposition can begin to operate only after an answer is filed, unless the Commission, for good reasons and on an ad hoc basis, arranges for some informal procedures and defers the filing of the answer to await their completion. If, however, as experience indicates is possible, a portion of a compliant indicates not so much a genuine dispute between an interested party and the Postal Service as a misunderstanding of actual Postal Service rules or practices, or a situation which the Postal Service is pleased to correct voluntarily once it has been brought up in a complaint, it is not efficient to use the formal, adversarial answer as a vehicle for disclosing and discussing the problem.

Accordingly, the Commission proposes to amend the relevant rules to make it clear that, in appropriate cases and with notice to those concerned, it may undertake informal investigative procedures in a service complaint and correspondingly postpone the formal answer required by § 3001.84 of the rules.

Because section 3662 contemplates, in some types of cases, trial-type hearings on the record, and in general the action taken by the Commission should rest on bases known to the interested parties, the Commission proposes that when informal investigative procedures are utilized the Commission will issue an order summarizing their results when they are completed. Any correspondence engaged in during the period when the informal procedures are in use would be made part of the record as well.

On the other hand, there may be cases of the general type dealt with in this proposal where the Commission concludes that informal procedures can accomplish nothing significant, and that a formal answer from the Postal Service is indeed the appropriate next step. In that event, the Commission would issue an order indicating its intent not to use the informal procedures. In either event it could extend the time available for the Service to answer, to the extent fairness required.

The purposes of the proposed amendment, as expressed in its language, would be looked to as a guide for deciding whether to use informal procedures and, if so, what kind. The purposes are:

—To define the issues;

—To facilitate the exchange of information and explanations between the complainant and the Postal Service; and

—To facilitate the achievement of agreement between the Service and the complainant.

While most of the amendatory language proposed would affect section 85, a conforming amendment must be made to section 84 to recognize the effect of the proposed new procedure on the schedule for filing of answers by the Postal Service.

Amendment of § 3001.23(c). The first sentence of § 3001.23(c) of the rules of practice (39 CFR 3001.23(c)) preserves a principle which reflected legal obligations imposed by 5 U.S.C. 3105. In the past, the Commission employed one or more Administrative Law Judges, and, correspondingly, incorporated in its rules of practice the mandate of section 3105 that these officers "not perform duties inconsistent with their duties and responsibilities as administrative law judges." The Commission's current practice is to dispense with the services of an ALJ; instead, the Commission itself presides, en banc, at the taking of evidence and issues a final decision thereon. One Commissioner is designated as Presiding Officer in each case, and is responsible for making procedural and evidentiary rulings and executing the other functions set forth in § 3001.23.

The purpose of 5 U.S.C. 3105 being to preserve the independence from agency suasion of Administrative Law Judges as a distinct class, there is no current reason to retain its language in § 3001.23(c). Accordingly, to remove any possible confusion regarding the ability of a Commissioner who happens to be serving as Presiding Officer in a case to perform other functions (which may indeed be required by his or her position as a Commissioner), the Commission proposes to strike the first sentence of § 3001.23(c). By doing so, the Commission would leave a single subject matter in place in that subsection; its subtitle would therefore be changed from *"Limitations"* to *"Ex parte communications"*. This change clarifies the long-standing meaning of that part of § 3001.23(c) which would remain following the amendment: that presiding officers are subject to the rules prohibiting *ex parte* communications (*see* §§ 3000.735–501 *et seq.* and 3001.7). Since this historic limitation would be the only remaining directive contained in § 3001.23(c), the more specific subtitle is appropriate.[1]

List of Subjects in 39 CFR Part 3001

Administrative practice and procedure.

PART 3001—RULES OF PRACTICE AND PROCEDURE

For the reasons set out above, the Commission proposes to amend §§ 3001.23(c) and 3001.84 and 3001.85 of the rules or practice [39 CFR 3001.23(c), 3001.84, 3001.85], as follows:

1. In § 3001.23(c), change the title from *"Limitation."* to *"Ex parte communication."* and remove the first sentence in its entirety.

2. Revise § 3001.84 introductory text to read as follows:

§ 3001.84 Answers by the Postal Service.

Within 30 days after the filing of a complaint with the Commission (unless more time is allowed under § 3001.85(a)), the Postal Service shall file and serve an answer. Such answer shall be in the form and manner required by §§ 3001.9 to 3001.12, and shall include the following:

* * * * *

3. Redesignate present § 3001.85 as paragraph (b), and add before it a new paragraph (a), as follows:

§ 3001.85 Informal procedures.

(a) In case of a complaint alleging service not in accordance with the policies of the Act, the Commission, acting through such appropriate Commission employees as the Chairman shall designate, may use correspondence, conferences, or other appropriate informal inquiry methods to define the issues, further the exchange of information and explanations between the Postal Service and the complainant, and facilitate negotiated settlement. On receiving a service complaint, the Commission will give notice of whether or not it intends to use informal procedures. In either case, it will give the Postal Service such additional time to answer the complaint as is just and appropriate. After expeditiously conducting informal inquiries, it will issue an order summarizing the results. All correspondence and other documents issued by or lodged with the Commission during informal inquiries will be part of the public record of the case

* * * * *

David F. Harris,

Secretary

[FR Doc. 83-306 Filed 1-4-83; 8:45 am]

BILLING CODE 7715-01-M

[1] This part of § 3001.23(c) parallels 5 U.S.C. 554(d); for discussion of that provision, *see* 3 Davis, *Administrative Law Treatise* §§ 17.8 *et seq.* (2d ed., 1980).

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 123

[SW-9-FRL 2279-1]

Guam's Application for Interim Authorization, Phase I, Hazardous Waste Management Program.

AGENCY: Environmental Protection Agency, Region 9.

ACTION: Notice of public comment period and public hearing.

SUMMARY: Today EPA is announcing the availability for public review of the Territory of Guam application for Phase I interim authorization, for the hazardous waste management program, inviting public comment, and giving notice that if significant public interest is expressed, EPA will hold a public hearing on the application.

DATE: If significant public interest is expressed in holding a hearing, a public hearing is scheduled for February 24, 1983 at 7:00 p.m. EPA reserves the right to cancel the public hearing if significant public interest in holding a hearing is not communicated to EPA by telephone or in writing by February 4, 1983. EPA

will determine by February 7, 1983, whether there is significant interest to hold the public hearing. All written comments on the Guam Interim Authorization application must be received by the close of business on February 4, 1983.

ADDRESSES: If significant public interest is expressed, EPA will hold a public hearing on Guam's application for Interim Authorization on February 24, 1983 at 7:00 p.m. at the Harmon Plaza in Upper Tumon, Guam.

Written comments on the application and written or telephone communications of interest in EPA's holding a public hearing on the Guam application must be sent to: U.S. Environmental Protection Agency, Region 9, Toxics and Waste Management Division, Attention: Gary Lance (T-2-1), 215 Fremont Street, San Francisco, Calif. 94105, (415) 974-8125.

If you wish to find out whether or not EPA will hold a public hearing on the Guam application based upon EPA's decision that there was significant public interest in such a hearing, write or telephone after February 7, 1983, the EPA contact person listed below.

Copies of the Guam Phase I Interim Authorization application are available during normal business hours at the following addresses for inspection and copying:

Environmental Protection Agency, Region 9, Library Information Center, 215 Fremont Street, Room 601, San Francisco, Calif. 94105, (415) 974-8074

EPA Headquarters Library, 401 M Street, SW., Room 2404, Washington, D.C. 20460

Guam Environmental Protection Agency, Harmon Plaza, Upper Tumon, Guam 96910

FOR FURTHER INFORMATION, CONTACT: Environmental Protection Agency, RCRA State Programs Section Attn: Gary Lance (T-2-1), 215 Fremont Street, San Francisco, Calif. 94105, (415) 974-8125.

SUPPLEMENTARY INFORMATION: In the May 19, 1980 Federal Register (45 FR 33063) the Environmental Protection Agency promulgated Phase I of its regulations, pursuant to Subtitle C of the Resource Conservation and Recovery Act of 1976 (as amended), to protect human health and the environment from the improper management of hazardous waste. EPA's Phase I regulations establish, among other things: the initial identification and listing of hazardous wastes; the standards applicable to generators and transporters of hazardous wastes, including a manifest system; and the "interim status" standards applicable to existing hazardous waste management facilities before they receive permits.

The May 19 regulations also include provisions under which EPA can authorize qualified State hazardous waste management programs to operate in lieu of the Federal program. The regulations provide for a transitional stage in which qualified State programs can be granted interim authorization.

As noted in the May 19, 1980, Federal Register, copies of State submittals for interim authorization are to be available for public inspection and comment. The purpose of this notice is to announce the availability of the Guam submittal for Phase I interim authorization; to invite public comment; and, that if significant public interest is expressed in holding a hearing, to give notice of a public hearing to be held on the Guam application. A listing and a description of requirements for interim authorization are stated in 40 CFR Part 123, Subpart F.

List of Subjects in 40 CFR Part 123

Hazardous materials, Indian-land, Reporting and recordkeeping requirements, Waste treatment and disposal, Water pollution control, Water supply, Intergovernmental relations, Penalties, Confidential business information.

Authority

This notice is issued under the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. 6901 *et seq.* and implementing regulation in 40 CFR Part 123, Subpart F.

Dated: December 23, 1982.

Sonia F. Crow,

Regional Administrator.

[FR Doc. 83-192 Filed 1-4-83; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 180

[PP 2E2648/P263; PH-FRL 2278-8]

Cyano(3-Phenoxyphenyl)Methyl 4-Chloro-Alpha-(1-Methylethyl) Benzeneacetate; Proposed Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This notice proposes that a tolerance be established for residues of the insecticide cyano(3-phenoxyphenyl)methyl 4-chloro-alpha-(1-methylethyl)benzeneacetate in or on the raw agricultural commodity artichokes. The proposed regulation to establish a maximum permissible level for residues of the insecticide in or on the commodity was submitterd, pursuant to a petition, by the Interregional Research Project No. 4 (IR-4).

DATE: Comments must be received on or before February 4, 1983.

ADDRESS: Written comments to: Emergency Response Section, Process Coordination Branch, Registration Division (TS-767C), Environmental Protection Agency, Rm. 716B, CM No. 2, 1921 Jefferson Davis Highway, Arlington, Va. 22202.

FOR FURTHER INFORMATION CONTACT: Donald Stubbs (703-557-1192) at the above address.

SUPPLEMENTARY INFORMATION: The Interregional Research Project No. 4 (IR-4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, has submitted pesticide petition 2E2648 to EPA on behalf of the IR-4 Technical Committee and the Agricultural Experiment Station of California.

This petition requested that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act, propose the establishment of a tolerance for residues of the insecticide cyano(3-phenoxyphenyl)methyl 4-chloro-alpha-(1-methylethyl)benzeneacetate in or on the raw agricultural commodity artichokes at 0.2 ppm.

The data submitted in the petition and other relevant material have been evaluated. The pesticide is considered useful for the purpose for which the tolerance is sought. The toxicological data considered in support ot the proposed tolerance included an acute oral rat toxicity study with a median lethal dose (LD_{50}) of 1-3 grams(g)/kilogram(kg) of body weight(bw) (water vehicle) and 450 milligrams(mg)/kg of bw (dimethyl sulfoxide (DMSO) vehicles); a 90-day dog feeding study with a no-observed-effect level (NOEL) of 500 ppm (highest dose tested); a 90-day rat feeding study with a NOEL of 125 ppm; an 18-month mouse feeding study with a NOEL of less than 100 ppm with no oncogenic effects observed at the highest level fed (3,000 ppm); a 24-month mouse feeding study with a NOEL of 10-50 ppm for males and 50-250 ppm for females (no oncogenic effects were noted at 1,250 ppm, the highest does tested); a 24-month rat feeding study that demonstrated no oncogenic effects at 1,000 ppm (only level tested) (significantly decreased body weight was observed at this dose level); a 2-year rat feeding study with a NOEL of 250 ppm (highest level fed), no onogenic effects were observed; a three-generation rat reproduction study with a NOEL of 250 ppm (highest level fed);

teratology studies (in mice and rabbits), each negative at 50 mg/kg/day (highest dose tested); and the following mutagenicity studies: mouse dominant lethal (negative at 100 mg/kg of bw, which was the highest level fed); mouse host-mediated bioassay (negative at 50 mg/kg of bw, which was the highest level fed); Ames test *in vitro* (negative), and a bone marrow cytogenic study in the Chinese hamster (negative at 25 mg/kg of bw). The following studies assessing neurological effects were performed: a hen study negative at 1.0 g/kg of bw for 5 days, repeated at 21 days; a rat (8-day) acute study with a NOEL of 200 mg/kg of bw; a 15-month rat feeding study which resulted in a systemic NOEL of 500 ppm and a NOEL of 1,500 ppm with respect to nerve damage.

The acceptable daily intake (ADI), based on the 2-year rat feeding study (NOEL of 12.5 mg/kg, or 250 ppm) and using a 100-fold safety factor, is calculated to be 0.1250mg/kg of body weight (bw)/day. The maximum permitted intake (MPI) for a 60-kg human is calculated to be 7.5 mg/day. The theoretical maximum residue contribution (TMRC) from existing tolerances for a 1.5 kg daily diet is calculated to be 0.6283 mg/day; the current action will increase the TMRC by 0.00009 mg/day (0.014 percent). Published tolerances utilize 8.38 percent of the ADI; the current action will untilize an additional 0.001 percent.

The nature of the residues is adequately understood and an adequate analytical method, electron-capture gas chromatography, is available for enforcement purposes. Since there are no animal feed item involved, there will be no secondary residues in meat, milk, poultry, or eggs. There are presently no actions pending against the continued registration of this chemical.

Based on the above information considered by the Agency, the tolerance established by amending 40 CFR 180.379 would protect the public health. It is proposed, therefore, that the tolerance be established as set forth below.

Any person who has registered or submitted an application for registration of a pesticide, under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, which contains any of the ingredients listed herein, may request within 30 days after publication of this notice in the **Federal Register** that this rulemaking proposal be referred to an Advisory Committee in acordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the document control number, [PP 2E2648/P263]. All written comments filed in response to this petition will be available in the Emergency Response Section, Registration Division, at the address given above from 8:00 a.m. to 4:00 p.m., Monday through Friday, except legal holidays.

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

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-534, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

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

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

Dated: December 23, 1982.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

PART 180—[AMENDED]

Therefore, it is proposed that 40 CFR 180.379 be amended by adding and alphabetically inserting the raw agricultural commodity artichokes to read as follows:

§ 180.379 Cyano(3-phenoxyphenyl)methyl 4-chloro-alpha-(1-methylethyl) benzeneacetate; tolerances for residues.

* * * * *

Commodities	Parts per million
* * * * *	
Artichokes	0.2
* * * * *	

[FR Doc. 82-190 Filed 1-4-83; 8:45 am]

BILLING CODE 6560-50-M

Notices

Federal Register
Vol. 48, No. 3
Wednesday, January 5, 1983

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

National Agricultural Research and Extension Users Advisory Board; Meeting

According to the Federal Advisory Committee Act of October 6, 1972 (Pub. L. 92-463, 86 Stat. 770-776), Science and Education announces the following meeting:

Name: National Agricultural Research and Extension Users Advisory Board.
Date: February 1-2, 1983.
Time: 8:00 a.m.-5:00 p.m., February 1 and 2, 1983.
Place: Hyatt Regency—Crystal City, 2799 Jefferson Davis Highway, Arlington, VA.

Type of Meeting

Open to the public. Persons may participate in the meeting as time and space permit.

Comments

The public may file written comments before or after the meeting with the contact person below.

Purpose

The Board will be preparing a report assessing the President's proposed FY 1984 budget for agricultural research and extension.

Contact Person for Agenda and More Information

Barbara L. Fontana, Executive Secretary, National Agricultural Research and Extension Users Advisory Board; Room 351-A Administration Building, U.S. Department of Agriculture; Washington, D.C. 20250; telephone 202-447-3684.

Done at Washington, D.C., this 20th day of December 1982.

Robert D. Reinsel,

Acting Executive Director, National Agricultural Research and Extension Users Advisory Board.

[FR Doc. 83-175 Filed 1-4-83; 8:45 am]

BILLING CODE 3410-03-M

CIVIL AERONAUTIC BOARD

Announcement of Proposed Collection of Information

AGENCY CLEARANCE OFFICER FROM WHOM A COPY OF THE COLLECTION OF INFORMATION AND SUPPORTING DOCUMENTS IS AVAILABLE: Robin A. Caldwell (202) 673-5922.

New

Title of the Collection of Information: Part 326, "Procedures for Bumping Subsidized Air Carriers from Eligible Points"
Agency Form Number: None
How often the Collection of Information must be filed: On occasion
Who is asked or required to report: Certificated Air Carriers
Estimate of number of annual responses: 10
Estimate of number of annual hours needed to complete the collection of information: 1,200

Revision

Title of the Collection of Information: Part 204, "Data to Support Fitness Determinations"
Agency Form Number: None
How often the Collection of Information must be filed: On occasion
Who is asked or required to report: Nonoperating Air Carriers
Estimate of number of responses: 176
Estimate of number of annual hours needed to complete the collection information: 8,620

Revision

Title of the Collection of Information: Part 291, "Domestic Cargo Transportation"
Agency Form Number: None
How often the Collection of Information must be filed: On occasion
Who is asked or required to report: Nonoperating All-Cargo Air Carriers
Estimate of number of annual responses: 25
Estimate of number of annual hours needed to complete the collection of information: 165

Revision

Title of the Collection of Information: "Reporting Required for International Civil Aviation Organization (ICAO)"
Agency Form Number: Appendices A, B & C of Board Order 81-3-120
How often the Collection of Information must be filed: Monthly, quarterly and annually
Who is asked or required to report: Certificated air carriers providing international scheduled or charter services
Estimate of number of annual responses: 85
Estimate of number of annual hours needed to complete the collection of information: 270

December 23, 1982.

Robin A. Caldwell,

Chief, Information Management Division, Office of Comptroller.

[FR Doc. 83-222 Filed 1-4-83; 8:45 am]

BILLING CODE 6320-01-M

Announcement of Approval of Information Collections by the Office of Management and Budget

On November 30, 1982, the Office of Management and Budget approved the following new information collection: Information collection contained in a "Charter Escrow Records Survey"—approved through March 31, 1983, under OMB No. 3024-0062.

On November 30, 1982, the Office of Management and Budget approved the extension of the following reporting requirements: Reporting requirements contained in Part 221 of the Economic Regulations, "Construction, Publication, Filing and Posting of Tariffs of Air Carriers and Foreign Air Carriers"—extended through June 30, 1985, under OMB No. 3024-0038.

Robin A. Caldwell,

Chief, Information Management Division, Office of Comptroller.

December 23, 1982.

[FR Doc. 83-223 Filed 1-4-83; 8:45 am]

BILLING CODE 6320-01-M

[Oder 82-12-127]

Fitness Determination of Air Sunshine, Inc.

AGENCY: Civil Aeronautics Board.

ACTION: Notice of Commuter Air Carrier Fitness Determination—Order 82-12-127, Order to Show Cause.

SUMMARY: The Board is proposing to find that Air Sunshine, Inc. is fit, willing, and able to provide commuter air carrier service under section 419(c)(2) of the

Federal Aviation Act, as amended, and that the aircraft used in this service will conform to applicable safety standards. The complete text of this order is available, as noted below.

DATES: Responses: All interested persons wishing to respond to the Board's tentative fitness determination shall serve their responses on all persons listed below no later than January 18, 1983, together with a summary of the testimony, statistical data, and other material relied upon to support the allegations.

ADDRESSES: Responses or additional data should be filed with the Special Authorities Division, Room 915, Civil Aeronautics Board, Washington, D.C. 20428, and with all persons listed in Attachment A to Order 82-12-127.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Klothe, Bureau of Domestic Aviation, Civil Aeronautics Board, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428 (202) 673-5450.

SUPPLEMENTARY INFORMATION: The complete text of Order 82-12-127 is available from the Distribution Section, Room 100, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428. Persons outside the metropolitan area may send a postcard request for Order 82-12-127 to that address.

By the Civil Aeronautics Board: December 28, 1982.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 82-224 Filed 1-4-83; 8:45 am]

BILLING CODE 6320-01-M

[Order 82-12-138]

Order Concerning Mail Rates

Order 82-12-138, December 30, 1982, Docket 41134, establishes temporary service mail rates for Alaska Island Air, Inc. at the same level as fixed by Order 82-11-108 for other intra-Alaska carriers and proposes final rates at the same level as determined in Docket 38961 for carriers providing substantially the same services.

FOR FURTHER INFORMATION CONTACT: James E. Gardner, Bureau of International Aviation, (202) 673-5391.

Copies of the order are available from the C.A.B. Distribution Section, Room 100, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428. Persons outside the Washington metropolitan area may send a postcard request.

By the Civil Aeronautics Board: December 30, 1982.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 83-220 Filed 1-4-83; 8:45 am]

BILLING CODE 6320-01-M

[Order 82-12-139]

Order Concerning Mail Rates

Order 82-12-139, December 30, 1982, Docket 41155, establishes temporary service service mail rates for Air Polynesia, Inc. t/a DHL Cargo at the same level as fixed by Order 82-12-33 for other intra-Hawaii carriers and proposes final rates at the same level as determined in Docket 40751 for carriers providing substantially the same services.

FOR FURTHER INFORMATION CONTACT: James E. Gardner, Bureau of International Aviation, (202) 673-5391.

Copies of the order are available from the C.A.B. Distribution Section, Room 100, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428. Persons outside the Washington metropolitan area may send a postcard request.

By the Civil Aeronautics Board: December 30, 1982.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 83-221 Filed 1-4-83; 8:45 am]

BILLING CODE 6320-01-M

CIVIL RIGHTS COMMISSION

Texas Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a press conference to be conducted by the Texas Advisory Committee to the Commission will convene at 10:00 am and will end at 12:00 noon, on January 28, 1983, at the Sheraton Crest Inn, First and Congress, in the Parlor Rooms C and D, Austin, Texas, 78701. The purpose of this press conference is to release the Committee's report on block grants.

Persons desiring additional information should contact the Chairperson, Denzer Burke, 1421 Pine Street, Texarkana, Texas, 75501, (214) 794-9741 or the Southwestern Regional Office, Heritage Plaza, 418 South Main, San Antonio, Texas, 78204, (512) 229-5570.

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., December 30, 1982.

John I. Binkley,

Advisory Committee Management Officer.

[FR Doc. 83-109 Filed 1-4-83; 8:45 am]

BILLING CODE 6335-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

National Marine Fisheries Service; Receipt of Application for Permit

Notice is hereby given that an Applicant has applied in due form for a Permit to take marine mammals as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216).

1. Applicant:

a. Name: Southwest Fisheries Center, National Marine Fisheries Service.

b. Address: P.O. Box 271, La Jolla, California 92038.

2. Type of Permit: Scientific Research.

3. Name and Number of Animals: Northern elephant seals (Mirounga angustirostris)—120.

4. Type of Take: to mark and/or tag up to 40 seals per year for population studies.

5. Location of Activity: San Clemente Island, California.

6. Period of Activity: 3 years.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, Washington, D.C. 20235, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries.

All statements and opinions contained in this application are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above application are available for review in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street, N.W., Washington, D.C.; and
Regional Director, National Marine Fisheries Service, Southwest Region, 300 South Ferry Street, Terminal Island, California 90731.

Dated: December 29, 1982.

R. B. Brumsted,

Acting Chief, Protected Species Division, National Marine Fisheries Service.

[FR Doc. 83-246 Filed 1-4-83; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Intent To Impose Controls on Imports of Cotton, Wool, and Man-Made Fiber Textile and Apparel From the People's Republic of China

On December 28, 1982 a notice was published in the **Federal Register** (47 FR 57748), which announced that, if no mutually satisfactory bilateral agreement is reached by January 15, 1983 between the Governments of the United States and the People's Republic of China, the United States Government will take further action under Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), to control imports of cotton, wool, and man-made fiber textile products from the People's Republic of China, effective on January 1, 1983. The level of restraint shown in that notice for Category 338 pt. during the twelve-month period which began on January 1, 1983 and extends through December 31, 1983 should have been 467,750 dozen, instead of 338,351 dozen.

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 82-35599 Filed 12-30-82; 2:48 pm]

BILLING CODE 3510-25-M

COMMISSION OF FINE ARTS

Meeting

The Commission of Fine Arts will next meet in open session on Thursday, January 20, 1983 at 10:00 a.m. in the Commission's offices at 708 Jackson Place, NW., Washington, D.C. 20006 to discuss various projects affecting the appearance of Washington including buildings, memorials, parks, etc., also matters of design referred by other agencies of the government. The Vietnam Veterans Memorial design may also be discussed at this meeting. Access for handicapped persons will be through the main entrance to the New Executive Office Building on 17th Street between Pennsylvania Avenue and H Street, NW.

Inquiries regarding the agenda and requests to submit written or oral statements should be addressed to Mr. Charles H. Atherton, Secretary, Commission of Fine Arts, at the above address or call 566-1066.

Dated in Washington, D.C., December 30, 1982.

Charles H. Atherton,

Secretary.

[FR Doc. 83-170 Filed 1-4-83; 8:45 am]

BILLING CODE 6330-01-M

CONSUMER PRODUCT SAFETY COMMISSION

Toxicological Advisory Board; Meeting

AGENCY: Consumer Product Safety Commission.

ACTION: Notice of meeting; Toxicological Advisory Board.

SUMMARY: This notice announces a meeting of the Toxicological Advisory Board on Tuesday January 11, 1983 from 9:00 a.m. to 4:00 p.m. and Wednesday January 12, 1983, from 9:00 a.m. to 2:00 p.m. The meeting, which is open to the public, will be held in Room 456 at 5401 Westbard Avenue, Bethesda, Maryland.

FOR FURTHER INFORMATION CONTACT: Ann L. Hamann, Directorate for Health Sciences, Consumer Product Safety Commission, Washington, D.C. 20207; (301) 492-6957.

SUPPLEMENTARY INFORMATION: The Toxicological Advisory Board is an established nine-member advisory committee which advises the Commission on precautionary labeling for acutely toxic household substances and on instructions for first aid treatment labeling. In addition the Board reviews labeling requirements that have been issued under the Federal Hazardous Substances Act (FHSA) and recommends revisions it deems appropriate. The Toxicological Advisory Board was created on November 10, 1978, under the authority of Section 20 of the FHSA, 15 U.S.C. 1275. The three year term of the original members has expired and the Commission has appointed new members.

The meeting on Tuesday, January 11, 1983, is primarily intended as an orientation of the new board members. Included at this meeting will be discussions on the purpose and scope of the board, background information on and labeling requirements of the FHSA, work of the previous Board, and recommendations made by the previous Board with respect to work to be done in the future. On Wednesday, January 12, 1983, the meeting will be devoted to discussion by members of priority activities for the next three years and determination of individual member assignments under the direction of the Board Chairman.

The two-day meeting is open to the public, but space is limited. Normally, members of the public may be permitted to make oral presentations to the members of the Commission's advisory committees. However, the purpose of this meeting is an orientation for Board members and is basically an organizational meeting. The time available for such presentations may be severely limited. Persons who wish to make oral or written presentations should notify Dr. Fred Marozzi, Directorate for Health Sciences, Consumer Product Safety Commission, Washington, D.C. 20207, telephone 301-492-6477, by January 3, 1983. The notification should list the name of the individual who will make the presentation, the person, company, group or industry on whose behalf the presentation will be made, the subject matter and the approximate time requested. Time premitting, these presentations and other statements from the audience to members of the Board may be allowed by the presiding officer. Requestors will be informed of the decision before the meeting.

Dated: December 30, 1982.

Sayde E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 83-229 Filed 1-4-83; 8:45 am]

BILLING CODE 6355-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 400-005, et al.]

Colorado-Ute Electric Assocation, Inc., 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:

1a. Type of Application: Amendment of License.

b. Project No: P-400-005.

c. Date Filed: August 16, 1982 and revised on October 19, 1982.

d. Applicant: Colorado-Ute Electric Association, Inc.

e. Name of Project: Tacoma-Ames.

f. Location: on the Animas and San Miquel Rivers and their tributaries in LaPlata, San Juan, and San Miguel Counties, Colorado, and affecting lands of the United States within the Uncompahgre and San Juan National Forests.

g. Filed Pursuant to: 16 U.S.C. 791(a)–825(r).

h. Contact Person: Girts Krumins, P.O. Box 1149, Montrose, Colorado 81402.

i. Comment Date: February 7, 1983.

j. Description of Project: Applicant proposes to install a fourth generating unit in the Tacoma Development powerhouse. A short length of penstock would be added to serve the new unit. The switchyard would be expanded to accommodate additional associated electrical equipment. The new Unit 4 and appurtenant facilities would cost $8,440,000.

Applicant proposes no changes in project storage capacity or other impoundment characteristics. The new Unit 4 would have a rated capacity of 14,000-kW at a gross head of 1,073 feet and hydraulic capacity of 200 cfs. The powerhouse would contain four generating units having a total rated capacity of 22,800-kW. Short-term peak discharge from the Tacoma powerhouse could increase from 130 to 320 cfs.

k. Purpose of Project: The project would continue to be operated to provide peaking power and voltage support for Applicant's system. Applicant estimates that the average annual Tacoma Development energy output would be increased to 31,000,000 kWh.

l. This notice also consists of the following standard paragraphs: B and C.

2a. Type of Application: Amendment of License (New Capacity).

b. Project No.: 2188–009.

c. Date Filed: June 28, 1982.

d. Applicant: The Montana Power Company (Licensee).

e. Name of Project: Missouri—Madison.

f. Location: Cascade County, Montana; Missouri River.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. §§ 791(a)–825(r).

h. Contact Person: Mr. R. J. Labrie, Vice President, The Montana Power Company, 40 East Broadway Street, Butte, Montana 59701.

i. Comment Date: February 9, 1983.

j. Description of Project: The modified project would consist of: (1) The existing Ryan Dam and reservoir, intake and 60-MW powerhouse; (2) a proposed intake structure at the upstream end of the left dam abutment; (3) a proposed 650-foot long penstock; (4) a proposed semi-outdoor 40-MW powerhouse located about 125 feet downstream and to the left of the existing powerhouse; (5) a proposed short, 60-foot wide tailrace channel facilities. The Licensee estimates the increase in average annual generation of the project to be 548 GWh.

k. Purpose of Project: The Licensee proposes to utilize the additional power to meet its expected growth in electrical demand.

l. This notice also consists of the following standard paragraphs: B and C.

3a. Type of Application: 5 MW Exemption.

b. Project No.: P–3464–001.

c. Date Filed: November 19, 1982.

d. Applicant: White Mountain Hydroelectric Corporation.

e. Name of Project: Lisbon Hydro Project.

f. Location: Grafton County, New Hampshire.

g. Filed Pursuant to: Section 408 of the Energy Security Act of 1980 (Act), 16 U.S.C. 2705, and 2708 as amended.

h. Contact Person: John M. A. Rolli, 126 Main Street, Littleton, New Hampshire 03561, and Edward M. Clark, Pesthouse Road, Lincoln, New Hampshire 03251.

i. Comment Date: February 4, 1983.

j. Description of Project: The proposed project would be run-of-the-river and would consist of: (1) The existing Lower Lisbon Dam, 300 feet long and 24 feet high, having concrete gravity construction with 228 feet of spillway at a crest elevation of 566.3 feet m.s.l.; (2) a reservoir having minimal pondage; (3) a new concrete lined canal (with wasteways), approximately 180 feet long, 24 feet wide and 15 feet deep, located at the left river bank and leading to (4) a gated intake structure, with trashracks, integral with a new powerhouse (adjacent to an old powerhouse) containing two turbine-generator units having rated capacities of 325 kW and 350 kW for a total rated capacity of 675 kW; (5) a tailrace returning flow to the Ammonoosuc River approximately 250 feet downstream of the dam; (6) a new 12-kV transmission line, 110 feet long, connecting to existing lines; and (7) appurtenant facilities. The Applicant estimates that the average annual energy output would be 2,225,000 kWh. Project energy would be sold to the Public Service Company of New Hampshire.

k. This notice also consists of the following standard paragraphs: A1, B, C and D3a.

l. Purpose of Exemption: An exemption, if issued, gives the Exemptee priority of control, development, and operation of the project under the terms of the exemption from licensing, and protects the Exemptee from permit or license applicants that would seek to take or develop the project.

4a. Type of Application: Major License (Less than 5MW).

b. Project No. 4142–001.

c. Date Filed: November 1, 1982.

d. Applicant: Borough of Grove City, Pennsylvania.

e. Name of Project: Shenango River Dam.

f. Location: Shenango River in Mercer County, Pennsylvania.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Philip J. Movish, Daverman Associates, Inc., 500 South Salina Street, Syracuse, New York 13202.

i. Comment Date: February 24, 1983.

j. Description of Project: The proposed project would make use of the existing U.S. Army Corps of Engineers Shenango Lake Dam and would consist of: (1) Modification of two existing sluiceways to create intake structures; (2) two proposed 120-foot long, 8-foot diameter steel penstocks; (3) a proposed powerhouse containing two turbine/generator units operating under an average head of 22 feet, each with a capacity of 850 kW; (4) a proposed tailrace; (5) a proposed switchyard; (6) a proposed 200-foot long transmission line; and (7) appurtenant facilities. The estimated average annual generation is 7,802,000 kWh. The license was filed during the term of the Applicant's Preliminary Permit for Project No. 4142.

k. Purpose of Project: Project energy will be used to offset power purchases from the local utility required to meet the needs of the residential, industrial and commercial consumers of the Borough of Grove City municipal electric system.

1. This notice also consists of the following standard paragraphs: A2, B, C and D1.

5a. Type of Application: Mayor License.

b. Project No: P–4900–001.

c. Date Filed: November 19, 1982, as revised on December 13, 1982.

d. Applicant: Lawrence R. Taft.

e. Name of Project: Forestport.

f. Location: on the Black River in the Towns of Forestport and Boonville, Oneida County, New York.

g. Filed Pursuant to: 16 U.S.C. 791(a)–825(r)

h. Contact Person: Mr. Neal F. Dunlevy, 185 Genesee Street, Utica, New York 13501.

i. Comment Date: February 28, 1982.

j. Description of Project: The proposed run-of-river project would utilize existing facilities owned by the State of New York, Department of

Transportation, consisting of: (1) A 300-foot-long 26-foot-high dam having crest elevation 1,126.3 feet m.s.l.; (2) a reservoir (Forestport) having a surface area of 75 acres and a storage capacity of 970 acre-feet at spillway crest elevation; (3) a 600-foot-long and 25-foot-wide intake canal with a gated control structure; (4) a 550-foot-long 15-feet-high earthern dam; (5) a forebay (Alder Pond) having a surface area of 15 acres and a storage capacity of 100 acre-feet at normal surface elevation 1,124.6 feet m.s.l.; and (6) a 1,700-foot-long and 25-foot-wide canal with a stop-log bypass control structure along its right bank.

Applicant proposes to: (1) Enlarge the intake canal control structure; (2) dredge a portion of the canal; (3) construct a downstream gated control structure across the canal; (4) construct an intake structure along the canal; (5) construct a 400-foot-long 9-foot-diameter penstock; (6) construct a powerhouse containing a generating unit having a rated capacity of 2,750-kW operated at a 59-foot head and a flow of 650 cfs; (7) construct a tailrace; (8) construct a switchyard/substation; (9) construct a 2-mile-long 46-kV transmission line; and (10) construct an access road and parking area. Applicant estimates that the proposed project would cost $6,400,000. The application was filed during the term of the Applicant's preliminary permit for Project No. 4900.

k. Purpose of Project: Project energy would be sold to Niagara Mohawk Power Corporation. Applicant estimates that the average annual energy output would be 12.6 million kWh.

l. This notice also consists of the following standard paragraphs: A2, B, C, and D1.

6a. Type of Application: 5MW Exemption.

b. Project No: P-5315-001.

c. Date Filed: September 15, 1982.

d. Applicant: The Phoenix Hydro Corporation.

e. Name of Project: Phoenix Project.

f. Location: Oswego River, Onondaga and Oswego Counties, New York.

g. Filed Pursuant to: Section 408 of the Energy Security Act of 1980 (Act), 16 U.S.C. 2705 and 2708 as amended, and Part I of the Federal Power Act.

h. Contact Person: Gary R. Schoonmaker, President, The Phoenix Hydro Corporation, 2701 Howlett Hill Road, Marcellus, New York 13108.

i. Comment Date: February 4, 1983.

j. Competing Application: Project No. 4113-001 Date Filed: October 30, 1981.

k. Description of Project: The proposed project would consist of: (1) The existing New York State Department of Transportation Dam at Lock No. 1, a concrete structure with 0.8-foot high flashboards in 3 sections, the north section is 11 feet high and 388 feet long, the middle section is 20 feet high and 206 feet long and consists of 6 Taintor gates, and the south section is 11 feet high and 180 feet long; (2) a reservoir having a surface area of 4,350 acres, a storage capacity of 3,500 acre-feet, and a normal water surface elevation of 362.8 m.s.l.; (3) the existing intake structure; (4) a new powerhouse containing three units with a total generating capacity of 3,300 kW; (5) a new tailrace; (6) a new 34.5-kV transmission line 1,500 feet long; and (7) appurtenant facilities. Applicant estimates the average annual energy production would be 15,263,500 kWh. All project facilities other than the dam and reservoir are owned by the Applicant. The Applicant estimates the cost of construction would be $4,330,000.

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: A3, 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 the exemption from licensing, and protects the Exemptee from permit or license applicants that would seek to take or develop the project.

7a. Type of Application: Preliminary Permit.

b. Project No.: 6561-000.

c. Date Filed: July 30, 1982.

d. Applicant: Energenics Systems Inc.

e. Name of Project: Rathbun Dam Hydroelectric Project.

f. Location: Chariton River in Appanoose County, Iowa.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a) 825(r).

h. Contact Person: Mr. Granville J. Smith, Energenics Systems Inc., 1717 K Street, NW., Suite 706, Washington, D.C. 20006.

i. Comment Date: March 2, 1983.

j. Description of Project: The proposed project would utilize a U.S. Army Corps of Engineers' dam and reservoir. Project No. 6561 would consist of: (1) A proposed 6 foot diameter and 150-foot-long penstock at the right side of the existing dam; (2) a proposed powerhouse containing one turbine/generator with a total installed capacity of 2 MW; (3) a 50-foot-long, 14-foot-wide concrete tailrace; (4) a proposed transmission line, less than one mile long, interconnecting with the Iowa Southern Utilities; and (5) appurtenant facilities. Applicant estimates the average annual energy production to be 5.5 GWh.

k. This notice also consists of the following standard paragraphs: A4a, A4c, B, and C.

l. 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 set, it will be presumed to have no comments.

8a. Type of Application: License (Less than 5 MW).

b. Project No: P-6588-000.

c. Date Filed: August 11, 1982.

d. Applicant: East Coast Engineering.

e. Name of Project: Milton Three Ponds Project.

f. Location: Salmon Falls River, Strafford County, New Hampshire and York County, Maine.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Contact Person: James M. Rea, East Coast Engineering, P.O. Box 25, Barrington, New Hampshire 03825.

i. Comment Date: March 4, 1983.

j. Description of Project: The proposed project would consist of: (1) The existing Milton Three Ponds Dam, 19 feet high and 156 feet long; (2) a reservoir having a storage capacity of 15,000 acre-feet, a surface area of 1400 acres, and a normal pool elevation of 413.8 feet NGVD; (3) a new 7-foot diameter steel penstock 60 feet long; (4) a new powerhouse containing 1 unit with a generating capacity of 180 kW; (5) a new tailrace; (6) a new 12.47-kV transmission line 100 feet long; and (7) appurtenant facilities. The existing project facilities are owned by the State of New Hampshire. The Applicant estimates the annual average energy production would be 900,000 kWh. The estimated cost of constructing the project would be $330,000.

k. Purpose of Project: All project power would be sold to the Public Service Company of New Hampshire.

l. This notice also consists of the following standard paragraphs: A2, B, C and D1.

9a. Type of Application: Preliminary Permit.

b. Project No: 6755-000.

c. Date Filed: October 4, 1982.

d. Applicant: Brown's Industries, Inc.

e. Name of Project: Hard and Hazard Creeks Hydroelectric Project.

f. Location: On Hard and Hazard Creeks, within Payette National Forest near the town of Riggins in Idaho County, Idaho.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)-825(r).

h. Contact Person: Mr. Judd W. DeBoer, President, Brown's Industries, Inc., P.O. Box 100, Eagle Idaho 83616 and CH2M Hill, Attention: Mr. Eric R. Schultz, 700 Clearwater Lane, P.O. Box 8748, Boise, Idaho 83707.

i. Comment Date: January 20, 1983.

j. Competing Applications: Project No. 6589 and Project No. 6590 Date Filed: August 12, 1982.

k. Description of Project: The proposed project would consist of: (1) Two 5-foot-high diversion structures, one 60 feet long and the other 50 feet long; (2) two 24-inch-diameter penstocks, one 12,550 feet long and the other 9,000 feet long; (3) a powerhouse to contain a single generating unit with a rated capacity of 1,500 kW, operating under a head of 480 feet; and (4) a 4,800-foot-long transmission line to tie into an existing Idaho Power Company line. The average annual energy output is 11 million kWh.

A preliminary permit, if issued, does not authorize construction. The Applicant seeks issuance of a preliminary permit for a period of 36 months to study the feasibility of constructing and operating the project. An existing access road will be upgraded. The estimated cost for conducting these studies is $39,000.

l. Purpose of Project: The project power will be sold to Idaho Power Company.

m. This notice also consists of the following standard paragraphs: A3, B, C, and D2.

10a. Type of Application: 5MW Exemption.

b. Project No. 6795–000.

c. Date Filed: October 25, 1982.

d. Applicant: Pownal Hydropower Corporation.

e. Name of Project: Pownal Project.

f. Location: Hoosic River, Bennington County, Vermont.

g. Filed Pursuant to: Section 408 of the Energy Security Act of 1980 (Act), 16 U.S.C. §§ 2705 and 2708 as amended, and Part I of the Federal Power Act.

h. Contact Person: Peter B. Clark, President, Swift River Company, Inc., 148 State Street, Boston, MA 02109.

i. Comment Date: February 7, 1983.

j. Description: The proposed project would consist of: (1) An existing concrete gravity overflow dam, 18 feet high and 153 feet long; (2) the replacement of 2.5-foot-high flashboards; (3) a reservoir with a storage capacity of 490 acre-feet, a surface area of 77 acres, and normal water surface elevation of 516.6 feet m.s.l.; (4) two existing 8-foot-diameter steel penstocks 129 feet long; (5) an existing powerhouse containing one new or rehabilitated generating unit with a capacity of 400 kw; (6) an existing tailrace; and (7) appurtenant facilities. The Applicant estimates the average annual energy production would be 1,800.00 kWh. All project energy would be sold to Central Vermont Public Service Company. All project facilities are owned by the Applicant.

k. Purpose of Exemption: An exemption, if issued, gives the Exemptee priority of control, development, and operation of the project under the terms of the exemption from licensing, and protects the Exemptee from permit or license applicants that would seek to take or develop the project.

l. This notice also consists of the following standard paragraphs: A1, B and C.

(m) Agency Comments: D3a.

11a. Type of Application: Preliminary Permit.

b. Project No: 6798–000.

c. Date Filed: October 25, 1982.

d. Applicant: Mountain West Hydro, Inc.

e. Name of Project: Tunnel Creek Project.

f. Location: On Tunnel Creek, near Idanha, in Marion County, Oregon.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Dave L. Browning, Mountain West Hydro, Inc., 2155 Christina N.W., Salem, Oregon 97304.

i. Comment Date: February 23, 1983.

j. Description of Project: The proposed run-of-the-river project would consist of: (1) Two 6-foot-high, 30-foot-long concrete diversion structures; (2) two 20-inch-diameter steel pipelines, one 1,220-foot-long, the other 2,240-foot-long; (3) a common 20-inch-diameter, 3,450-foot-long steel penstock; (4) a powerhouse containing a single 1,100-kW generating unit with an estimated average annual generation of 5.165 GWh; and (5) appurtenant facilities. The project would affect Willamette National Forest lands. Project power would be sold to Pacific Power & Light Company or to the Bonneville Power Administration.

A preliminary permit, if issued, does not authorize construction. The Applicant seeks a 36-month permit to study the feasibility of constructing and operating the project and estimates the cost of the studies at $83,000.

k. This notice also consists of the following standard paragraphs: A4a, A4c, B, C and D2.

12a. Type of Application: Preliminary Permit.

b. Project No: 6799–000.

c. Date Filed: October 25, 1982.

d. Applicant: Hydro Power Development, Inc.

e. Name of Project: Lost Creek Project.

f. Location: On Lost Creek, near McKenzie Bridge, in Lane County, Oregon.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Bill Sundin, Hydro Power Development, Inc., P.O. Box 511, 16840 Hoffman Lane, Sandy, Oregon 97055.

i. Comment Date: February 23, 1983.

j. Description of Project: The proposed run-of-the-river project would consist of: (1) A 6-foot-high, 30-foot-long concrete diversion structure; (2) a 7,070-foot-long, 108-inch-diameter steel pipeline; (3) a powerhouse containing a single 3,200-kW generating unit with an estimated average annual generation of 24.5 GWh; and (4) appurtenant facilities. The project would affect Willamette National Forest lands. Project power would be sold to Pacific Power & Light Company or to the Bonneville Power Administration.

A preliminary permit, if issued, does not authorize construction. The Applicant seeks a 36-month permit to study the feasibility of constructing and operating the project and estimates the cost of studies at $83,000.

k. This notice also consists of the following standard paragraphs: A4a, A4c, B, C and D2.

13a. Type of Application: Preliminary Permit.

b. Project No: 6800–000.

c. Date Filed: October 25, 1982.

d. Applicant: Hydro Power Development, Inc.

e. Name of Project: White Water Creek.

f. Location: On White Water Creek, near Marion Forks, in Marion and Linn Counties, Oregon.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Bill Sundin, Hydro Power Development, Inc., P.O. Box 511, 16840 Hoffman Lane, Sandy, Oregon 97055.

i. Comment Date: February 23, 1983.

j. Description of Project: The proposed run-of-the-river project would consist of: (1) A 6-foot-high, 30-foot-long concrete diversion structure; (2) 14,550-foot-long, 68-inch-diameter steel pipeline; (3) a powerhouse containing a single 3,600-kW generating unit with an estimated average generation of 16.65 GWh; and (4) appurtenant facilities. The project would affect Willamette National Forest lands. Project power would be sold to Pacific Power & Light Company or the Bonneville Power Administration.

A preliminary permit, if issued, does not authorize construction. The Applicant seeks a 36-month permit to study the feasibility of constructing and

operating the project and estimates the cost of studies at $83,000.

k. This notice also consists of the following standard paragraphs: A4a, A4c, B, C and D2.

14a. Type of Application: Preliminary Permit.

b. Project No: 6821–000.

c. Date Filed: November 2, 1982.

d. Applicant: Malcolm S. Brown.

e. Name of Project: Napanoch One.

f. Location: Ulster County, New York.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Malcolm S. Brown, 644 E. 24th St., Brooklyn, New York 11210 (212) 434–3702.

i. Comment Date: March 2, 1983.

j. Description of Project: The proposed run-of-river project would consist of: (1) An existing 42.2-foot-high concrete dam, owned by Recycled National Paper Products Company, Napanoch, New York; (2) an existing powerhouse containing an existing 200-kW generating unit and a proposed 75-kW generating unit, which will make the total rated capacity 275 kW. The powerhouse is owned by Mr. and Mrs. T. Kuwayama of New York, New York; (3) a new penstock 1425 feet long; (4) existing transmission lines owned by the Central Hudson Gas and Electric Company; and (5) appurtenant facilities. The Applicant estimates that the average annual energy out put would be 1,000 MWh.

k. Purpose of Project. The most likely market for the energy derived at the proposed project would be the Central Hudson Gas and Electric Company.

l. This notice also consists of the following standard paragraphs: A4a, A4c, B, C, and D2.

m. *Proposed Scope of Studies under Permit*—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit is 18 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on results of these studies Applicant would decide whether to proceed with more detailed studies, and the preparation of an application for license to construct and operate the project. Applicant estimates that the cost of the work to be performed under the preliminary permit would be $6,000.

15a. Type of Application: Preliminary Permit.

b. Project No: 6828–000.

c. Date Filed: November 4, 1982.

d. Applicant: Public Utility District No. 1 of Franklin County.

e. Name of Project: Lower Palouse River Hydroelectric Power Project.

f. Location: On Palouse River, in Franklin County, near Kahlotus, WA.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Sig T. Hansen, President of the Board of Commissioners, 1411 West Clark Street, P.O. Box 2407, Pasco, WA 99302, with a copy to Mr. Kenneth R. Engstorm, Manager, 1411 West Clark Street, P.O. Box 2407, Pasco, WA 99302.

i. Comment Date: February 23, 1983.

j. Description of Project: The proposed project would consist of: (1) A 375-foot-long, 150-foot-high concrete dam creating a reservoir with a storage capacity of about 20,000-acre-feet and a surface area of 200 acres; (2) an 80-foot-long, 30-foot-high intake structure; (3) two 2,000-foot-long, 12-foot-diameter concrete pipes; (4) three 250-foot-long, 8-foot-diameter steel penstocks leading to; (5) a powerhouse to contain three turbine-generating units with a total rated capacity of 50 MW operating under a gross head of 310 feet; (6) a 20-mile-long, 115-kV transmission line to connect to the existing Applicant's Kahlotus Substation; and (7) other appurtenant facilities. A preliminary permit, if issued, does not authorize construction. The Applicant seeks a 36-month permit to study the feasibility of constructing and operating the project. No new roads would be required to conduct the studies. Applicant states that the development stages of the studies are not expected to significantly alter or disturb lands or waters in the vicinity of the proposed project. Neither will the cultural resources or endangered species be affected by preparation of the studies.

k. Purpose of Project: The Applicant would use the entire output of the project, estimated to be about 117.4 million kWhs, within its own electrical system.

l. This notice also consists of the following standard paragraphs: A4b, A4c, A4d, B, C, and D2.

16a. Type of Application: Preliminary Permit.

b. Project No: 6851–000.

c. Date Filed: November 15, 1982.

d. Applicant: City of Kankakee, Illinois.

e. Name of Project: Kankakee Hydro Project.

f. Location: Kankakee County, Illinois on the Kankakee River.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: James R. Clarno, P. E., City Hall Building, 385 East Oak Street, Kankakee, Illinois 60911.

i. Comment Date: February 24, 1983.

j. Description of Project: The proposed project would consist of: (1) An existing 440-foot-long overflow type concrete dam with a curved ogee section; (2) an existing small reservoir; (3) a proposed powerhouse with an installed capacity of 2MW; (4) proposed transmission lines; and (5) appurtenant facilities. Applicant estimates that average annual generation would be 8 GWh. All power generated could be sold to a local utility company.

k. This notice also consists of the following standard paragraphs: A4a, A4c, B and C.

l. 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 set, it will be presumed to have no comments.

17a. Type of Application: Preliminary Permit.

b. Project No: P–6853–000.

c. Date Filed: November 15, 1982.

d. Applicant: Trans Mountain Hydro Corporation.

e. Name of Project: Elliot Creek Hydro Power Project.

f. Location: Summit County, Colorado.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Herbert C. Young, 123 S. Paradise Road, Golden, Colorado 80401.

i. Comment Date: Feburary 28, 1983.

j. Description of Project: The proposed project would utilize the existing Bureau of Reclamation and U.S. Forest Service's Elliot Creek Feeder Canal, and would consist of: (1) A proposed powerhouse containing a single turbine-generator having a rated capacity of 90 kW; (2) a new 750-foot-long penstock; (3) 300 feet of new 14.4-kV transmission line; and (4) appurtenant facilities. The Applicant estimates that the average annual energy output would be 560,000 kWh.

k. Purpose of Project: The most likely market for the energy derived at the proposed project would be the local rural electric association that serves the area.

l. This notice also consists of the following standard paragraphs: A4a, A4c, B, C and D2.

m. Proposed Scope of Studies Under Permit: A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit is 24 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.

18a. Type of Application: Preliminary Permit.

b. Project No: 6856–000.

c. Date Filed: November 16, 1982.

d. Applicant: City of Petersburg, Alaska.

e. Name of Project: Thomas Bay Project.

f. Location: On Cascade Creek, in the North Tongass National Forest, near Petersburg, Alaska.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Richard Underkofler, City of Petersburg, P.O. Box 329, Petersburg, Alaska 99833.

i. Comment Date: February 25, 1983.

j. Competing Application: Project No. 6211–000 Date Filed: 4/9/82, Alaska Industrial Power Corporation, Notice Issued: 7/12/82.

k. Description of Project: The proposed project would consist of: (1) The existing natural Swan Lake with the 572-acre surface area at 1,515 m.s.l; (2) a lake tap; (3) a 10-foot-diameter, 13,000-foot-long power tunnel; (4) an 8-foot-diameter, 2,100-foot-long penstock; (5) a powerhouse containing two generating units with a total installed capacity of 44 MW and an estimated average annual production of 200 GWh; and (6) appurtenant facilities. Applicant would transmit project energy via proposed and existing transmission lines from Thomas Bay to a U.S. Borax Company mining development southeast of Ketchikan.

A preliminary permit if issued, does not authorize construction. The Applicant seeks a 36-month permit to study the feasibility of constructing and operating the project and estimates the cost of the studies at $1,500,000.

l. This notice also consists of the following standard paragraphs: A3, B, C, and D2.

19a. Type of Application: Preliminary Permit.

b. Project No: 6859–000.

c. Date Filed: November 17, 1982.

d. Applicant: Hy-Tech Company.

e. Name of Project: Bull Run Creek.

f. Location: On Bull Run Creek within the Clearwater National Forest near the town of Elk River in Clearwater County, Idaho.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Carl W. Haywood, 2109 Broadview Drive, Lewiston, Idaho 83501 and Mr. David J. Milan, James M. Montgomery, Consulting Engineers, Inc., 1301 Vista Avenue, Boise, Idaho 83705.

i. Comment Date: February 28, 1983.

j. Description of Project: The proposed project would consist of: (1) A 6-foot-high, 45-foot-long diversion structure; (2) a 42-inch-diameter, 10,000-foot-long penstock; (3) a powerhouse to contain three generating units with a total capacity of 2,580 kW, operating under a head of 640 feet; (4) a tailrace; and (5) a 6-mile-long, 12.5-kV transmission line to tie into an existing transmission line owned by Washington Water Power Company (WWPC). The estimated average annual energy output of 8,825,000 kW would be sold to WWPC.

A preliminary permit, if issued, does not authorize construction. The Applicant seeks issuance of a preliminary permit for a period of 24 months to study the feasibility of constructing and operating the project. The estimated cost for conducting these studies is $40,000.

k. This notice also consists of the following standard paragraphs: A4a, A4c, B, C, and D2.

20a. Type of Application: Preliminary Permit.

b. Project No: 6861–000.

c. Date Filed: November 18, 1982.

d. Applicant: Alaska Power Authority.

e. Name of Project: Silver Lake.

f. Location: On Silver Lake and Duck River, within Chugach National Forest, near Valdez, Alaska.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Eric P. Yould, Executive Director, Alaska Power, Authority, 334 West 5th Avenue, Anchorage, Alaska 99501.

i. Comment Date: February 25, 1983.

j. Description of Project: The proposed project would consist of: (1) A 100- to 150-foot-high dam, which would raise the existing lake elevation from 306 feet to 450 feet msl., and impounding; (2) a 1,792-acre reservoir with a storage capacity of 200,000 acre-feet; (3) a 6,000-foot-long, 8-foot-diameter penstock; (4) a powerhouse containing 3 generating units, each rated at 5,000 kW; (5) an 82.2-mile-long transmission line; (6) a tailrace; and (7) an access road. The average annual energy generation is estimated to be 56.4 million kWh.

A preliminary permit, if issued, does not authorize any construction. Applicant seeks issuance of a preliminary permit for a period of 36 months, during which it would conduct environmental, economic, engineering, and feasibility studies, and prepare an FERC license application. No new roads would be required to conduct the studies. Applicant has already performed core drilling at the site. All disturbed lands have been or will be restored. The cost of the studies is estimated to be $2,400,000.

k. This notice also consists of the following standard paragraphs: A4b, A4c, A4d, B, C, D2.

21a. Type of Application: Preliminary Permit.

b. Project No: 6865–000.

c. Date Filed: November 22, 1982.

d. Applicant: Village of Sun, Louisiana.

e. Name of Project: Pools Bluff and Bogue Chitto.

f. Location: St. Tammany Parish, Louisiana.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mayor Nathan T. Wood, Village of Sun, P.O., Box 897, Sun, Louisiana 70463.

i. Comment Date: March 2, 1983.

j. Description of Project: The proposed project would utilize facilities owned by the U.S. Army Corps of Engineers and would consist of two developments:

(A) The Pools Bluff Development on the Pearl River would use the Corps' Pools Bluff Sill, 350 feet long and 14 feet high, and would include: (1) A new steel penstock 50 feet long and 8 feet in diameter leading to; (2) a new 100 by 85-foot powerhouse containing three 850 kW turbine/generator units and one 800 kW unit; (3) a new tailrace, 100 feet long, 20 feet wide and 18 feet deep; and (4) a new 230-kV transmission line 5 miles long.

(B) The Bogue Chitto Development on the Bogue Chitto River and the Pearl River Navigation Canal would use the Corps' Bogue Chitto Sill, 250 feet long and 9 feet high, and would include: (1) A new steel penstock 50 feet long and 6 feet in diameter leading to; (2) a new 100 by 50-foot powerhouse housing one 800 kW turbine/generator unit; (3) a new tailrace, 100 feet long, 20 feet wide and 15 feet deep; (4) the transmission line described above; and (5) appurtenant facilities. Applicant estimates the total capacity of the two developments would be 3970 kW.

k. Purpose of Project: The average annual generation of 21 million kWh would be sold to the Louisiana Power & Light Company or a local cooperative.

l. This notice also consists of the following standard paragraphs: A4a, A4c, B, and C.

m. 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 set, it will be presumed to have no comments.

22a. Type of Application: Preliminary Permit.

b. Project No: P-6871-000.

c. Date Filed: November 19, 1982.

d. Applicant: Energenics Systems, Inc.

e. Name of Project: Monongahela River Lock and Dam No. 7.

f. Location: Fayette County, Pennsylvania.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Contact Person: Mr. Granville J. Smith II, President, Energenics Systems, Inc., 1717 "K" Street NW., Suite 706 Washington, D.C., 20006.

i. Comment Date: February 23, 1983.

j. Description of Project: The proposed project would utilize the existing Corps of Engineers' Monongahela River Lock and Dam No. 7 and would consist of: (1) A new powerhouse containing two generating units having a total rated capacity of 13.5 MW.; (2) existing 115-kV transmission lines owned by the West Penn Power Company; and (3) appurtenant facilities. The Applicant estimates that the average annual energy output would be 50.7 GWh.

k. Purpose of Project: The most likely market for the energy derived at the proposed project would be West Penn Power Company.

l. This notice also consists of the following standard paragraphs: A4a, A4c, B, C and D2.

m. 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 $50,000.

23a. Type of Application: Preliminary Permit.

b. Project No: P-6872-000.

c. Date Filed: November 23, 1982.

d. Applicant: City of Ithaca.

e. Name of Project: Sixty-Foot Dam Project.

f. Location: Six Mile Creek, Tompkins County, New York.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Contact Person: Mr. Jay Ryder, Halliwell Associates, Inc., 865 Waterman Avenue, East Providence, Rhode Island 02914.

i. Comment Date: March 2, 1983.

j. Competing Application: Project No. 6520. Date Filed: July 15, 1982.

k. Description of Project: The proposed project would consist of: (1) The existing Sixty-Foot Dam 70.5 feet high and 220 feet long; (2) a reservoir having a storage capacity of 800 acre-feet, a surface area of 47 acres and normal water surface elevation of 704 feet m.s.l.; (3) a new 6-foot-diameter steel penstock 1,000 feet long; (4) a new powerhouse containing 1 unit with a generating capacity of 452 kW; and (5) appurtenant facilities. Applicant estimates that the average annual energy production would be 1,583,808 kWh. The dam is owned by the Applicant.

l. Purpose of Project: All project power would be sold to New York State Electric and Gas Company.

m. This notice also consists of the following standard paragraphs: A3, B, C, D2.

n. 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 perform studies to determine the feasibility of the project. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for FERC license. Applicant estimates that the cost of the studies under permit would be $25,400.

24a. Type of Application: Preliminary Permit.

b. Project No: 6897-000.

c. Date Filed: December 1, 1982.

d. Applicant: Energos Management, Inc.

e. Name of Project: Carters Lake & Dam Hydro Project.

f. Location: Oakman, Murray County, Georgia on the Coosawattee River.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a) 825(r).

h. Contact Person: George C. Welborn, Jr., Secretary, Energos Management, Inc., P.O. Box 724591, Atlanta, Georgia 30339.

i. Comment Date: February 28, 1983.

j. Description of Project: The proposed project would utilize a U.S Army Corps of Engineers' dam and reservoir, and would consist of: (1) A proposed intake structure; (2) a proposed powerhouse with an installed capacity of 5 MW; (3) a proposed return channel; (4) a proposed transmission line; and (5) appurtenant facilities. Applicant estimates that the average annual generation would be 23 GWh. All power generated would be sold to a local utility company.

k. This notice also consists of the following standard paragraphs: A4a, A4c, B and C.

l. 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 set, it will be presumed to have no comments.

25a. Type of Application: Preliminary Permit.

b. Project No: 6904-000.

c. Date Filed: December 2, 1982.

d. Applicant: Batten Kill Hydro Associates.

e. Name of Project: Upper Greenwich.

f. Location: Town of Greenwich, Washington County, New York.

g. Filed Pursuant to: 16 U.S.C. 791(a)-825(r).

h. Contact Person: Wayne L. Rogers, President, Synergics, Inc., 1444 Foxwood Court, Annapolis, Maryland 21401.

i. Comment Date: February 28, 1983.

j. Description of Project: The proposed project would consist of: (1) An existing 11.5-foot-high, 204-foot-long reinforced concrete dam; (2) an existing gate section at the south abutment containing four 10.66-foot-wide waste gates; (3) a 15-acre reservoir with no usable storage capacity at 340.0 feet M.S.L.; (4) an existing headgate section leading to a 200-foot-long, 30-foot-wide, 6-foot-deep power canal; (5) a new powerhouse containing turbine-generators with a total rated capacity of 660 kW; (6) a 4,500-foot-long transmission line; (7) a tailrace channel; and (8) appurtenant facilities. The project would generate up to 3,100,000 kWh annually. The dam and facilities are owned by Niagara Mohawk Power Corporation.

k. Purpose of Project: Energy produced at the project would be sold to Niagara Mohawk Power Corporation.

l. This notice also consists of the following standard paragraphs: A4a, A4c, B, C and D2.

m. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. The work proposed under 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. The cost of the studies under the preliminary permit has been estimated by the Applicant to be $36,000.

26a. Type of Application: Preliminary Permit.

b. Project No: 6908–000.

c. Dated Filed: December 6, 1982.

d. Applicant: Tom Coffman.

e. Name of Project: Sandy Creek Hydropower.

f. Location: On Sandy Creek in Coos County, Oregon; partially on lands of the United States administered by the Bureau of Land Management.

g. Filed Pursuant to: Federal Power Act (16 U.S.C. 791(a)–825(r)).

h. Contact Person: Mr. Tom Coffman, 1539 Carlisle Avenue, Myrtle Point, Oregon 97458.

i. Comment Date: February 25, 1983.

j. Description of Project: The proposed project would consist of: (1) An 8-foot-high concrete diversion structure; (2) a 30-inch-diameter, 5,000-foot-long pipeline; (3) a powerhouse containing four turbine-generating units with a total rated capacity of 1.0 MW and an average annual energy output of 3.3 GWh; and (4) a 35-foot-long tailrace. The project would utilize a 2-mile length of an existing transmission line after upgrading it from single to three-phase capacity.

A preliminary permit, if issued, does not authorize construction. The Applicant seeks issuance of a preliminary permit for a term of 36 months during which engineering, economic and environmental studies would be conducted to ascertain project feasibility and to support an application for a license to construct and operate the project. The estimated cost of permit activities is $19,000.

k. Purpose of Project: Project power would be sold to Pacific Power and Light Company and would provide a source of electricity for the southern Oregon coastal area.

l. This notice also consists of the following standard paragraphs: A4b, A4c, A4d, B, C and D2.

Competing Applications

A1. Exemptions for Small Hydroelectric Power Project under 5MW Capacity—Any qualified license applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, either a competing license application that proposes to develop at least 7.5 megawatts in that project, or a notice of intent to file such a license application. Submission of a timely notice of intent allows an interested person to file the competing license application no later than 120 days after the specified comment date for the particular application. Applications for preliminary permit will not be accepted.

A notice of intent must conform with the requirements of 18 CFR 4.33 (b) and (c) (1982). A competing license application must conform with the requirements of 18 CFR 4.33 (a) and (d).

A2. Applications for License—Anyone desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, either the competing application itself (see 18 CFR 4.33 (a) and (d), and Part 16, where applicable) or a notice of intent (see 18 CFR 4.33 (b) and (c)) to file a competing application. Submission of a timely notice of intent allows an interested person to file an acceptable competing application no later than the time specified in § 4.33(c) or §§ 4.101 to 4.104 (1982).

A3. Public notice of the filing of the initial 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, no competing application for license, exemption or preliminary permit, or notices of intent to file competing applications, will be accepted for filing in response to this notice (see 18 CFR 4.30 to 4.33 or §§ 4.101 to 4.104 (1982), as appropriate). Any application for license or exemption from licensing, or notice of intent to file a license or an exemption application, must be filed in accordance with the Commission's regulations (see 18 CFR 4.30 to 4.33 or §§ 4.101 to 4.104 (1982), as appropriate).

Preliminary Permits

A4a. Existing Dam or Natural Water Feature Project—Anyone desiring to file a competing application for preliminary permit for a proposed project at an existing dam or natual water feature project, must submit the competing application to the Commission on or before 30-days after the specified comment date for the particular application (see 18 CFR 4.30 to 4.33 (1982)). A notice of intent to file a competing application for preliminary permit will not be accepted for filing.

A4b. No Existing Dam—Anyone desiring to file a competing application for preliminary permit for a proposed project where no dam exists or there are proposed to be major modifications, must submit to the Commission on or before the specified comment date for the particular application, the competing application itself, or a notice of intent to file such an application (see 18 CFR 4.30 to 4.33 (1982)).

A4c. The Commission will accept applications for license or exemption from licensing, or a notice of intent to submit such an application in response to this notice. A notice of intent to file an application for license or exemption must be submitted to the Commission on or before the specified comment date for the particular application. Any application for license or exemption from licensing must be filed in accordance with the Commission's regulations (see 18 CFR 4.30 to 4.33 or §§ 4.101 to 4.104 (1982), as appropriate).

A4d. Submission of a timely notice of intent to file an application for preliminary permit allows an interested person to file an acceptable competing application for preliminary permit no later than 60 days after the specified comment date for the particular application.

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, .211, .214 (1982). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST" or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing is in response. Any of the above named documents must be filed by providing the original and the number of copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208 RB at the above address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments

D1. License applications (5 MW or less capacity)—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. Preliminary permit applications—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. Exemption applications (5 MW or less capacity)—The U.S. Fish and Wildlife Service, The National Marine Fisheries Service, and the State Fish and Game agency(ies) are requested, for the purposes set forth in Section 408 of the Act, to file within 60 days from the date of issuance of this notice appropriate terms and conditions to protect any fish and wildlife resources or to otherwise carry out the provisions of the Fish and Wildlife Coordination Act. General comments concerning the project and its resources are requested; however, specific terms and conditions to be included as a condition of exemption must be clearly identified in the agency letter. If an agency does not file terms and conditions within this time period, that agency will be presumed to have none. Other Federal, State, and local agencies are requested to provide any comments they may have in accordance with their duties and responsibilities. No other formal requests for comments will be made. Comments should be confined to substantive issues relevant to the granting of an exemption. If an agency does not file comments within 60 days from the date of issuance of this notice, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

D3b. Exemption applications (Conduit)—The U.S. Fish and Wildlife Service, The National Marine Fisheries Service, and the State Fish and Game agency(ies) are requested, for the purposes set forth in Section 30 of the 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: December 30, 1982.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-244 Filed 1-4-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP83-35-000]

Texas Eastern Transmission Corp.; Proposed Changes in the FERC Gas Tariff

December 30, 1982.

Take notice that Texas Eastern Transmission Corporation (Texas Eastern) an December 30, 1982, tendered for filing proposed changes in its FERC Gas Tariff, Second Revised Volume No. 1. Texas Eastern has filed six alternative sets of revised tariff sheets underlying its major rate increase. The primary revised tariff sheets reflect utilization of the *United* method of cost classification for allocation and rate design purposes, but does not reflect the utilization of the *South Georgia* method of amortizing Texas Eastern's future unfunded income tax liability. In the event of a Commission decision permitting Texas Eastern to utilize the *Seaboard* method of cost classification for allocation and rate design purposes or the fixed-variable method and/or in the event that the Internal Revenue Service (IRS) issues a ruling satisfactory to Texas Eastern, permitting Texas Eastern to utilize the *South Georgia* method without jeopardizing its ability to take accelerated depreciation, Texas Eastern will file to place into effect the revised tariff sheets included in Alternate I, II, III, IV, or V as appropriate.

The proposed increased rates reflected in the primary revised tariff sheets and the revised tariff sheets included in Alternates II and IV will increase the level of Texas Eastern's jurisdictional rates to provide an annual increase in revenues from jurisdictional sales and services of approximately $62.5 million based on the test period sales and services for the 12 months ended September 30, 1982, as adjusted. The increased rates reflected in the revised tariff sheets included in Alternates I, III, and V are based on a cost of service using the *South Georgia* method to amortize Texas Eastern's future unfunded income tax liability and, therefore, provide an annual increase in revenues from jurisdictional sales and services of approximately $58.5 million. Approximately $3 million of the proposed increase can be attributed to purchased gas cost increases reflected in the proposed rate level but not accounted for in the present rate level which Texas Eastern will track under the applicable provisions of its FERC Gas Tariff. The remainder of the increase is related to other than purchased gas cost increases.

Texas Eastern states that the principal reasons for the proposed rate increase are increased costs of labor, expenses, plant facilities cost, working capital requirements, income taxes, and rate of return.

As part of its proposed major rate increase, Texas Eastern has filed revised tariff sheets to reflect changes in and additions to its FERC Gas Tariff and related rate schedules. Included among them are:

(1) Section 28 providing for the tracking of the costs of transportation and compression services performed by others for Texas Eastern other than those performed pursuant to Section 311(a) of the Natural Gas Policy Act of 1978;

(2) Section 29 providing for the tracking of the costs of transportation and compression services performed by others for Texas Eastern pursuant to Section 311(a) of the Natural Gas Policy Act of 1978;

(3) Section 27 providing for the tracking of electric power costs incurred to operate the electric prime movers on the compressor facilities on Texas Eastern's system.

(4) A new tariff provision which will specifically permit tracking of prepayments to gas suppliers;

(5) A change in the PGA provisions of Texas Eastern's tariff to utilize total sales to expressly include the right to track certain take-or-pay for payments and to exclude capitalized gas costs;

(6) A change in the tariff to provide for payment by electronic transfer.

Texas Eastern has requested waiver of any rules and regulations of the Commission to the extent required to put the foregoing major rate increase and accompanying tariff revisions and rate schedule revisions into effect.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with the sections 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such petitions or protests should be filed on or before January 12, 1982. 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 petition to intervene. Copies of this application are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-343 Filed 1-4-83; 8:45 am]

BILLING CODE 6717-01-M

Office of Hearings and Appeals

Issuance of Proposed Decisions and Orders; Period of November 1 Through December 17, 1982

During the period of November 1 through December 17, 1982, the proposed decisions and orders summarized below were issued by the Office of Hearings and Appeals of the Department of Energy with regard to applications for exception.

Under the procedural regulations that apply to exception proceedings (10 CFR, Part 205, Subpart D), any person who will be aggrieved by the issuance of a proposed decision and order in final form may file a written notice of objection within ten days of service. For purposes of the procedural regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date an aggrieved person receives actual notice, whichever occurs first.

The procedural regulations provide that an aggrieved party who fails to file a Notice of Objection within the time period specified in the regulations will be deemed to consent to the issuance of the proposed decision and order in final form. An aggrieved party who wishes to contest a determination made in a proposed decision and order must also file a detailed statement of objections within 30 days of the date of service of the proposed decision and order. In the statement of objections, the aggrieved party must specify each issue of fact or law that it intends to contest in any further proceeding involving the exception matter.

Copies of the full text of these proposed decisions and orders are available in the Public Docket Room of the Office of Hearings and Appeals, Room 1111, New Post Office Building, 12th and Pennsylvania Ave. NW., Washington, DC. 20461, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays.

Geroge B. Breznay,

Director, Office of Hearings and Appeals.

December 29, 1982.

Briggs & Tillman Inc., Clinton, Missouri, HEE-0037, Petroleum Products.

Briggs & Tillman, Inc. (Briggs) filed an Application for Exception from the provisions of EIA Filing Requirements. The exception request, if granted, would permit Briggs to be relieved of the obligation to file Form EIA-764A. On December 16, 1982, the Department of Energy issued a Proposed Decision and Order which determined that the exception request be denied.

Deiter Bros. Fuel Co., Inc., Bethlehem, Pennsylvania, HEE-0038, Petroleum Products

Deiter Bros. Fuel Co., Inc. (Deiter Bros.) filed an Application for Exception from the provisions of the EIA Filing Requirements. The exception request, if granted, would permit Deiter to be relieved of the obligation to file Forms EIA-764A and EIA-172. On December 17, 1982, the Department of Energy issued a Proposed Decision and Order which determined that the exception request be denied.

Siler Oil Co., Inc., Washington, Indiana, HEE-0049, Petroleum Products

Siler Oil Company, Inc. (Siler) filed an Application for Exception from the provisions of EIA Filing Requirements. The exception request, if granted, would permit Siler to be relieved of the obligation to file Form EIA-9A. On December 13, 1982, the Department of Energy issued a Proposed Decision and Order which determined that the exception request be denied.

Thompson Oil Co., Inc., Waynesboro, Pennsylvania, HEE-0017, Petroleum Products

Thompson Oil Company, Inc. (Thompson) filed an Application for Exception from the provisions of EIA Filing Requirements. The exception request, if granted, would permit Thompson to be relieved of the obligation to file Form EIA-9A. On December 13, 1982, the Department of Energy issued a Proposed Decision and Order which determined that the exception request be denied.

[FR Doc. 83-200 Filed 1-4-83; 8:45 am]

BILLING CODE 6450-01-M

Issuance of Decisions and Orders; Week of December 6 Through December 10, 1982

During the week of December 6 through December 10, 1982, the decisions and orders summarized below were issued with respect to appeals and applications for other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Appeal

State of Mississippi, HFA-0097

The State of Mississippi filed an Appeal from a determination issued to it by the Manager of the DOE Chicago Operations Office (Manager) in response to a Freedom of Information Act (FOIA) request filed by the State. In his determination, the Manager had asserted that the certain portions of a document concerning the DOE's nuclear waste respository program were exempt from mandatory disclosure under Exemption 5 of the FOIA. In its Appeal, Mississippi requested that the Manager's determination be reversed and that the document be released in its entirety. In considering the Mississippi Appeal, the DOE found that the Manager's characterization of the withheld portions of the document was correct, and noted that even if the document was a final report of a contractor to the DOE, it was still pre-decisional and an integral part of the deliberative process of the agency. Accordingly, the State's Appeal was denied.

Remedial Order

Hunt Oil Company, DRO-0343

Hunt Oil Company (Hunt) objected to a Proposed Remedial Order which the DOE Economic Regulatory Administration (ERA) issued to the firm on August 2, 1979. In the Proposed Remedial Order, the ERA found that during the period September 1, 1973 through August 31, 1975, Hunt sold crude oil at prices exceeding the applicable ceiling prices under the crude oil producer price rule at 10 C.F.R. Part 212, subpart D. After considering Hunt's objections, the DOE concluded that the Statement of Objections should be granted in part and that the Proposed Remedial Order, as modified, should be issued as a final Order. The important issues discussed in the Decision and Order include (i) the determination of the relevant property when there are two overlapping, but not coextensive base leases; (ii) whether a compressor station constitutes a separate property and (iii) whether interest payments should be waived because of the

length of time which has elapsed in this proceeding.

Request for Modification and/or Rescission

Exxon Company, U.S.A., HRR-0025, HRD-0007, HRH-0002

Exxon Company, U.S.A. (Exxon) filed Motions for Reconsideration, Discovery and Evidentiary Hearing in connection with an enforcement proceeding pending against the firm. The Exxon Proposed Remedial Order involves alleged regulatory violations in its sales of motor gasoline as a result of reductions in the octane rating of that gasoline. In its Motion for Reconsideration, the firm argued that the Office of Hearings and Appeals erred in failing to summarily dismiss the Exxon PRO for its failure to establish a *prima facie* case of regulatory violation. The DOE denied the Motion for Reconsideration, holding that the findings in the PRO were sufficient to establish a *prima facie* case. It also found that Exxon's assertions of deficiencies in the PRO arose chiefly as a result of the firm's differing legal positions.

In its Motion for Discovery, Exxon sought information related to (1) the meaning of the regulatory term "price increase"; (2) the alleged requirement that it make adjustments to its base prices; (3) whether refunds may be ordered absent a finding that a firm exceeded its MLSP's; (4) what activities fall within the prohibitions of the Normal Business Practices Rule; (5) the basis for alleged changes in the DOE's position from that presented in the NOPV; and (6) the DOE's method for assigning monetary valuations to Exxon's octane reductions. The DOE granted limited discovery with regard to the necessary factual basis for a refund order, but denied the remaining discovery requests, predominantly because discovery was not necessary to determine the proper interpretation of the regulations to the facts at issue.

In its Motion for Evidentiary Hearing, Exxon asserted that a hearing should be held with regard to (1) the nature of Exxon's historical octane policies; (2) the dimensions of the firm's octane adjustments; and (3) the effect of its octane reductions on the overall satisfaction levels of its customers. The DOE granted an evidentiary hearing to better determine the impact of octane reductions on Exxon's customers. In all other respects, the Motion was denied.

Supplemental Order

Gulf Oil Corporation, HEX-0046

Gulf Oil Corporation sought reconsideration of a Decision and Order that the DOE issued to the Citronelle Unit on May 21, 1982. *The 341 Tract Unit of the Citronelle Field*, 9 DOE ¶ 82,571 (1982). In the May 21 Order, the DOE concluded that the Citronelle Unit should deposit the revenues from the sale of the Units tertiary crude oil into the escrow account that is used to fund the project on the Citronelle Field. In its motion, Gulf maintained that portions of the May 21 Order were unclear and therefore a clarification was necessary. In its determination, the DOE concluded that the provisions of the May 21 Order were unambiguous. Accordingly, no clarification of the May 21 Order was appropriate.

Refund Application

Tenneco Oil Co./Midway Enterprises, Inc., RR7-4

Midway Enterprises, Inc. (Midway) filed a Motion for Modification requesting the DOE to reconsider its Decision in *Tenneco Oil Co./Midway Enterprises, Inc.*, 10 DOE ¶ 85,010, (1982) (*Midway*). In that Decision, Midway's Application for Refund was partially denied on the basis that it had not submitted information demonstrating that it maintained banks of unrecovered increased product costs during the consent order period. Midway was therefore limited to the threshold volume of 600,000 gallons per year per covered product. In considering its Motion, the DOE found that Midway did not meet the requirements for a Motion for Modification. The DOE also found that there was no error in the holding in *Midway* that in order to be eligible for a refund in excess of the threshold amount, an applicant must first demonstrate that it maintained banks. Accordingly, Midway's Motion for Modification was denied.

Dismissals

The following submissions were dismissed without prejudice:

Duffy's Oil Co., Inc., HEE-0043; Kansas Refined Helium Company, Inc., HEE-0044; Sonat, Inc., HRD-0058, HRH-0058.

Copies of the full text of these decisions and orders are available in the Public Docket Room of the Office of Hearings and Appeals, Room 1111, New Post Office Building, 12th and Pennsylvania Ave., N.W., Washington, D.C. 20461, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

George B. Breznay,

Director, Office of Hearings and Appeals.

December 29, 1982.

[FR Doc. 83-201 Filed 1-4-83; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPP-30000/5B; PH-FRL 2275-3]

Chloroform and Maleic Hydrazide; Determination Concluding the Rebuttable Presumptions Against Registration and Notice of Availability of Position Documents

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of determination; notice of availability.

SUMMARY: In 1976, chloroform was referred to the Rebuttable Presumption Against Registration (RPAR) process because a National Cancer Institute study reported oncogneic effects in rats and mice. The information currently available indicates minimal human exposures which result in negligible risks. Similarly, maleic hydrazide (MH) was referred to the RPAR process because laboratory studies indicated that MH induced oncogenic, mutagenic and adverse reproductive effets in test animals. A review of available toxicity and exposure data, however, has showed that insufficient evidence exists to justify continuation of the RPAR. This notice constitutes a final determination of the agency and concludes the RPAR proceedings for chloroform and maleic hydrazide.

DATE: Requests for a hearing must be received on or before February 4, 1983, or within thirty (30) days from receipt of this notice, whichever occurs later.

ADDRESSES: Requests for a hearing must be submitted to: Hearing Clerk (A-110), U.S. Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

Copies of the Position Documents for chloroform and maleic hydrazide are available upon request from: Joan Warshawsky (Chloroform), Jerry Moore (Maleic Hydrazide), Special Pesticide Review Division (TS-791), Office of Pesticide Programs, Environmental Protection Agency, Room 711, CM #2 1921 Jefferson Davis Highway, Arlington, Virginia 22202.

FOR FURTHER INFORMATION CONTACT: Joan Warshawsky (703-557-7451) for chloroform and Jerry Moore (703-557-7420) for maleic hydrazide.

SUPPLEMENTARY INFORMATION:

I. Introduction

In April, 1976, the agency issued a "Notice of Presumption Against Continued Registration of Pesticide Product—Chloroform (Trichloromethane)" [Presumption; 41 FR 14588]. The rebuttable presumption against the continued registration (RPAR) of chloroform was based on oncogenic effects in rats and mice that were reported in a 1976 National Cancer Institute (NCI) study.

The Agency issued a "Notice of Presumption Against Continued Registration of Pesticide Product—Maleic Hydrazide" in October 1977. [Presumption; 42 FR 56920]. The rebuttable presumption against the continued registration of maleic hydrazide was based on oncogenic, mutagenic and adverse reproductive effects in test animals.

Subsequent to publication of the RPARs, the agency obtained additional information relative to the risks and benefits associated with the pesticidal uses of chloroform and maleic hydrazide which indicate that continuation of the RPAR process is unwarranted. This

notice contains a summary of the agency's findings and presents the agency's final regulatory decision regarding chloroform and maleic hydrazide.

This notice is divided into four units. Unit I is this introduction. Unit II, "Legal Background," is a discussion of the legal support for the agency's regulatory decision regarding chloroform and maleic hydrazide. Unit III, "Scientific Rationale Conclusions," presents a summary of the scientific bases for the agency's regulatory conclusions regarding chloroform and maleic hydrazide. Unit IV, "Procedural Matters," is a brief discussion of the procedures the agency will utilize to implement the regulatory actions that are announced in this notice.

II. Legal Background

In order to obtain a registration for a pesticide under the Federal Insecticide, Fungicide, and Rodenticide Act, as amended ("FIFRA"), an applicant for registration must demonstrate that the pesticide satisfies the statutory standard for registration. That standard requires, among other things, that the pesticide perform its intended function without causing "unreasonable adverse effects on the environment," FIFRA section 3(c)(5). The phrase "unreasonable adverse effects on the environment" is defined as "any unreasonable risk to man or the environment, taking into account the economic, social and environmental costs and benefits of the use of any pesticide," FIFRA, section 2(bb). This standard requires a finding that the benefits of each use of the pesticide exceed the risks of such use, when the pesticide is used in accordance with commonly recognized practice and in compliance with the terms and conditions of registration.

The burden of proving that a pesticide satisfies the registration standard is on the proponents of registration and continues as long as the registration remains in effect. Under section 6 of FIFRA, the Administrator may cancel the registration of a pesticide or modify the terms and conditions of registration whenever it is determined that the pesticide causes unreasonable adverse effects on the environment. The agency created the RPAR process to facilitate the identification of pesticide uses which may not satisfy the statutory standard for registration and to provide an informal procedure to gather and evaluate information about the risks and benefits of these uses.

The regulations governing the RPAR process are set forth in 40 CFR 162.11. Among other things, this section provides that a rebuttable presumption shall arise if a pesticide meets or exceeds any of the risk criteria set out in the regulations. The agency announces that an RPAR has arisen by publishing a notice of determination in the **Federal Register**. After an RPAR is issued, registrants and other interested persons are invited to review the data upon which the presumption is based and to submit data and information to rebut the presumption of risk by showing that the agency's initial determination of risk was in error, or by showing that use of the pesticide is not likely to result in any significant exposure to human beings or the environment with regard to the adverse effects in question. In addition to submitting evidence to rebut the risk presumption, respondents may submit evidence as to whether the economic, social and environmental benefits of the use of the pesticide outweigh the risks of use.

In determining whether the use of a pesticide poses risks which are greater than the benefits, the agency considers possible changes to the terms and conditions of registration which can reduce risks, and the impacts of such modifications on the benefits of the use. If the agency determines that such changes sufficiently reduce risks to the level where the benefits outweigh the risks, it may conclude the RPAR process. The compound may then be returned to the normal registration process on the condition that such changes are implemented by the registrant. It is agency practice to announce this type of regulatory action by publication of a notice of determination in the **Federal Register**. In that notice, the agency would state and explain the rationale for its regulatory position.

III. Determinations and Initiation of Regulatory Action

The agency has considered information regarding the effects on human health, the environment, and the economy relative to the pesticidal use of chloroform and maleic hydrazide. The assessment of these effects are presented in the Presumptions, published in the **Federal Register**, and in the chloroform Position Document 2 (PD 2) and maleic hydrazide Decision Document. These documents are hereby adopted as the agency's statements of reasons for concluding the RPARs on chloroform and maleic hydrazide. Copies of these documents are available upon request as stated previously in this Notice.

A. Determination of Risks and Unreasonable Adverse Effects

1. *Chloroform.* Based upon the scientific information discussed in PD 2, the agency has concluded that chloroform, administered orally in high doses, induces oncogenic effects in rats and mice. Therefore, chloroform is considered potentially oncogenic to humans. However, the agency believes applicator exposure has been reduced to a minimum as a result of product label amendments instituted through the agency's Label Improvement Program (LIP). In addition, the agency negotiated with the registrant to remove chloroform from two animal health products. In 1981, the agency approved the registrants' petition to delete chloroform from those products. As a result, applicator exposure that could have resulted from using those products was eliminated. Further, dietary contamination is expected to be negligible due to chloroform's high degree of volatility and the relatively small volume applied annually. The agency believes that if chloroform is applied according to product label directions, it will not concentrate, persist, or accrue to levels in man or the environment that would result in any significant chronic adverse effects.

2. *Maleic hydrazide.* Subsequent to the publication of the notice of RPAR, the agency reevaluated the original toxicological data, rebuttal comments and new studies. The review of these data did not conclusively establish either the presence or the absence of adverse effects from maleic hydrazide. In addition to examining the risks of maleic hydrazide, the agency assessed the potential oncogenic risks from hydrazide, a contaminant which occurs at low levels in MH products. Using worst case exposure assumptions, the agency determined that the levels of hydrazine in MH products are toxicologically insignificant with respect to oncogenic risk. Based on FIFRA section 3(c)(8), as amended in 1978, which requires that initiation of formal action (such as an RPAR) be based on a validated test or other significant evidence raising prudent concerns of unreasonable human or environmental risks, the agency has concluded that there is an inadequate basis for continuing the RPAR.

B. Determination of Benefits

1. *Chloroform.* Chloroform is registered only to fumigate stored, raw, bulk grain. It comprises approximately 0.4 percent of all grain fumigants used annually in the United States. The

agency estimates that less than 12 percent of all grain produced is fumigated. Therefore, chloroform is applied to relatively small volumes of grain. Due primarily to the relatively small volume applied, and to the lack of certain economic data, the agency has not derived an assessment of monetary impact from the use of chloroform as a grain fumigant. However, there are a number of intangible benefits associated with its use. Some of the benefits include: pesticidal effectiveness; relatively low human toxicity compared with some other fumigants; ease of application; short persistence and rapid dissipation; and remedial (as needed) application as opposed to unnecessary treatment as a prestorage protectant. These factors are discussed in greater detail in PD 2.

2. *Maleic hydrazide.* Maleic hydrazide, potassium maleic hydrazide (K–MH) and diethanolamine maleic hydrazide (DEA–MH) are registered for sucker control on tobacco and as an antisprouting agent for onions and potatoes. In addition, K–MH and DEA–MH are used for growth control of commercial lawn and grass. The benefits of MH were not formally evaluated because the evaluation of risks showed that there are no prudent concerns of risk at this time.

C. Initiation of Regulatory Action

1. *Chloroform.* Based upon the determinations summarized above and discussed in greater detail in the Presumption and Position Document 2, the agency has decided to return chloroform to the normal registration process. However, since chloroform induces oncogenic effects in test animals species and is considered a potential human carcinogen, the registrant is required to submit data to establish a tolerance(s) of permissible residues on raw agricultural commodities. The agency believes that the general public should be protected from dietary contamination that could result from misuse of the compound. Because chloroform is currently exempt from a tolerance, the agency believes that establishment of a tolerance(s) will provide a means by which the general public can be protected from undue dietary contamination that might result from fumigation of stored grain.

The conclusions regarding the pesticidal use of chloroform and the subsequent regulation (requiring the establishment of tolerances) are relevant only to the grain fumigant use. Any proposed registrations for additional uses must be accompanied by all appropriate data necessary to obtain registration for new uses. The agency will carefully evaluate the exposures that may result from any new uses of chloroform.

2. *Maleic hydrazide.* Based on the determinations summarized above and in the Decision Document, the agency has decided to return MH, DEA–MH and K–MH to the normal registration process. However, because the studies to evaluate the risk of MH were inadequate, the agency has required additional studies be submitted by registrants for K–MH and DEA–MH. Because registrants of DEA–MH decided not to conduct these studies, their products have been suspended under section 3(c)(2)(B) of FIFRA. Finally, the registrants of technical MH have been required and have voluntarily agreed to limit the hydrazine impurities in technical MH to 15 ppm. This level will result in less than 1 ppm of hydrazine in the formulated K–MH products and will not result in any unreasonable adverse effects.

IV. Procedural Matters

This notice announces the agency's decision to terminate the chloroform and maleic hydrazide RPARs. In doing so, the compounds will be returned to the normal registration process with the stipulation that (1) chloroform registrants must submit data to establish a tolerance(s) of persmissible residue on the raw agricultural commodities which are fumigated with chloroform and (2) registrants of technical MH must be provide confidential statements of formula to document that the hydrazine in their products does not exceed 15 ppm. It should be noted that the suspension of DEA–MH, an action taken independently of this notice, will remain in effect until and unless a registrant commits to provide the required studies for that chemical.

A. Procedures for Amending the Terms and Conditions of Registration

1. *Chloroform.* To make the changes required to maintain registration, chloroform registrants within a 30-day period must submit the necessary data to support a petition to establish a tolerance(s) of acceptable residues on the raw commodities that are fumigated. Or, within a 30-day period, chloroform registrants must make known their intentions regarding submission of data to establish a tolerance(s). It is suggested that chloroform registrants confer with agency chemists and toxicologists to assure the suitability of testing protocols and subsequent data. The registrant(s) intention to submit data must be directed to: William Miller, Product Manager (PM) 15, Registration Division (TS–767C), Office of Pesticide Programs, Rm. 211, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202. (703–557–2600)

2. *Maleic hydrazide.* Registrants of technical MH are required to submit a confidential statement of formula to certify that the hydrazine in their products does not exceed 15 ppm. They have already done so and thereby met this condition of registration.

B. Procedure for Requesting a Hearing

Registrants adversely affected by the regulatory actions decribed above may request a hearing on such actions within 30 days of receipt of this notice, or within 30 days from publication of this notice in the **Federal Register**, whichever occurs later. Any other person adversely affected by the regulatory actions described above may request a hearing within 30 days of publication of this notice in the **Federal Register.**

All registrants and other affected parties who request a hearing must file the request in accordance with the procedures established by FIFRA and the agency's Rules of Practice Governing Hearings (40 CFR part 164). These procedures require among other things that (1) all requests must identify the specific registration(s) by registration number(s) and the specific use(s) for which a hearing is requested, (2) all requests must be accompanied by objections to the regulatory action set out in Unit III.C. of this notice that are specific for each use of the identified pesticide products for which a hearing is requested, and (3) all requests must be received by the Hearing Clerk within the applicable 30-day period. Failure to comply with these requirements will result in denial of the request for a hearing. Requests for a hearing must be submitted to: Hearing Clerk (A–110), U.S. Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

C. Consequence of Filing or Failing To File a Hearing Request

1. *Consequence of filing a timely and effective hearing request.* If a hearing on any action initiated by this notice is requested in a timely and effective manner, the hearing will be governed by the agency's Rules of Practice for hearings under FIFRA section 6 (40 CFR Part 164). In the event of a hearing, each action which is the subject of the hearing will not become effective except pursuant to an order of the Administrator at the conclusion of the hearing.

2. *Consequences of Failure to File in a Timely and Effective Manner.* If a registrant does not request a hearing and fails to fulfill the requirements set

out in Unit IV.A. of this notice, that use will be cancelled.

Dated: November 22, 1982.

Edwin L. Johnson,

Director, Office of Pesticide Programs.

[FR Doc. 83-87 Filed 1-4-83; 8:45 am]

BILLING CODE 6560-50-M

[OLEC-FRL 2168-6]

Findings Under the Steel Industry Compliance Extension Act: Jones and Laughlin Steel Corp.

AGENCY: Environmental Protection Agency.

ACTION: Notice of Findings Under the Steel Industry Compliance Extension Act.

SUMMARY: The Administrator refuses to consent to the entry of a Federal judicial decree under the Steel Industry Compliance Extension Act extending pollution control obligations of Jones & Laughlin Steel Corporation. The Administrator's decision is based upon a finding that the company is in violation of Federal judicial decrees and such violations are not *de minimis* in nature.

EFFECTIVE DATE: December 29, 1982.

ADDRESSES: Documents submitted by Jones & Laughlin Steel Corporation with its application under the Steel Industry Compliance Extension Act and information otherwise available to the Administrator in connection with that application may be inspected at the following location between 9:00 am and 4:00 pm weekdays: U.S. Environmental Protection Agency, Central Docket Section: West Tower, 401 M Street, SW., Washington, D.C. 20460, Docket No. EN 82-10.

FOR FURTHER INFORMATION CONTACT: Stuart Silverman, Attorney (EN-329), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460, (202) 382-2859.

SUPPLEMENTARY INFORMATION:

Background

On July 17, 1982, President Reagan signed into law the Steel Industry Compliance Extension Act (SICEA), Pub. L. No. 97-23, popularly known as "Steel Stretchout". This legislation amended Section 113 of the Clean Air Act (CAA), 42 U.S.C. 7413, and was the result of recommendations made to Congress by the Steel Tripartite Committee to improve the steel industry's competitive position.[1]

SICEA provides the Administrator of the Environmental Protection Agency (EPA) with discretionary authority to enter into consent decrees postponing compliance with applicable emission limitations under the CAA for a maximum of three years until December 31, 1985, for qualifying iron- and steel-producing companies. A company could qualify for compliance extensions provided it agreed to use the money which it saved by deferring pollution control expenditures for capital investments which improved the efficiency and productivity of steelmaking facilities.

Thus, Congress provided that each company which took advantage of Steel Stretchout would actually spend twice the value of the deferred pollution controls. Each company would still meet its environmental obligations (albeit later than initially required) and it would invest at least an equal additional sum in plant modernization.

To qualify, SICEA sets forth specific criteria which reflect a delicate balance of competing interests—freeing up needed capital for modernization while assuring continued progress in meeting clean air goals. Compliance extensions are not available on a blanket basis. The Administrator must review requests for extensions case-by-case, the applicant assumes the burden of demonstrating that it qualifies. Specifically, SICEA requires the Administrator to find:

— that requested compliance extensions are necessary to allow investments in iron- and steel-producing operations for productivity and efficiency improvements,

— that funds which would have been expended for compliance in the absence of SICEA relief will, if such relief is granted, be expended by July 16, 1983, for qualifying modernizations,

— that the applicant is in compliance with existing Federal consent decrees or that violations are *de minimis* in nature,

— that the applicant will have sufficient funds to both complete modernization and by December 31, 1985, comply with applicable emission limitations, and

— that postponement of compliance will not result in degradation of air quality below current levels.

For violating facilities not covered by existing consent decrees or granted stretchout, SICEA also requires the applicant to commit in a Federal consent decree to bring these facilities into compliance with clean air standards by December 31, 1982. Finally, the decree embodying compliance programs for stretched and non-stretched sources must contain interim pollution control measures, monitoring requirements, and stipulated penalties for failure to meet schedule deadlines.

Application of Jones & Laughlin Steel Corporation

On November 9, 1981, Jones & Laughlin Steel Corporation (J&L) submitted its application under Steel Stretchout. The company filed suppplementary materials on December 21, 1981, March 16, September 9, September 23, and November 18, 1982. J&L requested postponement of compliance obligations at five steel-making plants and proposed capital investments for modernization of approximately $320 million.

As indicated above, to grant stretchout relief, the Administrator must find, among other things, that the applicant is in compliance with all of its Federal consent decrees, or that any violations are *de minimis* in nature. Section 113(e)(1)(E), 42 U.S.C. 7413(e)(1)(E).

J&L is a party to three Federal consent decrees covering pollution abatement programs for its steelmaking plants in Pennsylvania, Ohio and Indiana.[2] The Administrator has determined that the company is not in compliance with the Pennsylvania and Ohio decrees. Further, she finds that violations are not *de minimis* in nature. Accordingly, J&L's Steel Stretchout application is denied.

Decree Violations—the Pennsylvania Decree

The Pennsylvania consent decree, entered on March 25, 1981, required J&L to place purchase orders for pushing controls at its Aliquippa A-1 coke battery by September 2, 1980. Commencement and completion of installation of controls were due by March 15, 1981, and Ferburary 15, 1982, respectively. Compliance was required by March 15, 1982. The company has not placed purchase orders and has violated

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[1] Created by President Carter in January 1979, the Steel Tripartite Committee was comprised of representatives from industry management, labor, government and environmental groups. Its mission was to assess the unique problems of the American steel industry and make recommendations for its revitalization. To make available needed capital for plant modernization, the Committee proposed that steel companies be given three additional years to comply with CAA requirements (with safeguards for the protection of public health) provided the companies committed to capital investments for productivity improvements.

[2] *United States of America* v. *Jones & Laughlin Steel Corporation and the LTV Corporation, et al.*, U.S. District Court for the Western District of Pennsylvania, Civil Action No. 79-1194; *United States of America* v. *Youngstown Sheet and Tube Company, et al.*, U.S. District Court for the Northern District of Ohio, Civil Action Nos. C77-144-Y and C81-12; *United States of America* v. *Youngstown Sheet and Tube Company, et al.*, U.S. District Court for the Northern District of Indiana, Civil Action No. H-79-65.

remaining schedule requirements for A–1 battery pushing controls, including final compliance with the applicable emission standard. These violations are continuing. The Administrator finds the violations not *de minimis* in nature.

The Pennsylvania decree imposed two separate requirements for compliance with the emissions standard for coke oven gas desulfurization at the company's Pittsburgh works. J&L was obligated to demonstrate compliance with this standard by September 1, 1980. Futher, the decree required continuous operation of the existing desulfurizer in compliance with the desulfurization standard on and after March 25, 1981. Both of these emission limitation requirements have not been met. the Administrator finds these violations not *de minimis* in nature.

The Ohio Decree

The Ohio decree, entered April 30, 1981, imposed control requirements for J&L's Campbell Coke Works. Specifically, for coke battery No. 9, the company was obligated to submit engineering plans and issue purchase orders for combustion stack controls by February 15 and March 1, 1981, respectively. Further, initiation and completion of construction for controls were required by November 30, 1981, and September 30, 1982, respectively. These schedule deadlines have been violated and the violations are continuing. The Administrator finds these violations not *de minimis* in nature.

Similarly, for pushing controls at Campbell coke batteries Nos. 7 and 9, J&L was obligated to submit engineering plans and issue purchase orders by March 1, and July 1, 1981, respectively. The Ohio decree also required the company to complete foundation work and installation of controls by April 1 and December 1, 1982. These control schedule requirements have been violated and the violations are continuing. The Administrator finds these violations not *de minimis* in nature.

In its November 18, 1982, submittal, J&L offered to cease coke production at batteries Nos. 7 and 9, thereby curing decree violations at the Campbell batteries. This offer does not make the current violations of the decree *de minimis*. In the November 18 submission, J&L did not indicate definite plans to close the batteries. Rather, the company stated that it ". . . proposes to discontinue the operation of the Cambell coke plant no later than December 31, 1982 . . ." (p. 2). In the next paragraph, J&L states "Now that Jones & Laughlin is willing to resolve this issue in favor of EPA, it respectfully submits that EPA should be able to approve Jones & Laughlin's Steel Stretchout Act application." (p. 3) Thus, there is no definitive statement that the batteries will cease operation, but rather a proposal connected with the grant of the pending Steel Stretchout application. Batteries Nos. 7 and 9 are continuing to operate in violation of the foregoing schedule deadlines as of the effective date of these findings. The company's November 18 conditional offer to cease production at these two batteries at some future time does not make the violations at the Campbell batteries *de minimis*.

The De Minimis Requirement

To consent to an extension of compliance schedules, the Administrator must find that the applicant is in compliance with existing Federal decrees or that violations of such decrees are *de minimis* in nature.

The Administrator has adopted an interpretation of *de minimis* based on the plain meaning of the phrase—small, trivial, of little concern. She has evaluated each of JUL's decree violations separately to determine if they are *de minimis*. The Administrator is required to deny stretchout relief if she finds even one violation which is not *de minimis*.[3]

As noted earlier, the Administrator has determined that J&L is in violation of numerous schedule requirements at four operating steelmaking facilities—including commencement and submission of engineering plans, issuance of purchase orders, commencement and completion of construction for controls as well as compliance with three separate final emission limitation requirements.

These violations, considered individually, are not trivial or matters of small concern. For this reason, the Administrator finds each violation not *de minimis* in nature. SICEA's legislative history evidences a predominant concern that companies maintain compliance with existing decrees and that stretchout not be granted to companies which did not comply at the expense of those which met their environmental obligations. J&L's continuing failure to comply with interim schedule requirements which predate enactment of SICEA runs counter to Congressional expectations that sources would incur pollution control expenditures required by decrees.[4] Moreover, violation of an emission standard after a compliance deadline was viewed by Congress as grounds to disqualify a stretchout applicant.[5] J&L has violated three separate emission standard deadlines. Finding J&L's decree violations not *de minimis* is in no way contrary to legislative intent.[6]

Additional Considerations

Force Majeure Claim

In materials submitted in support of its stretchout application, J&L contended that, assuming it has not met schedule deadlines, based on "force majeure"

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[3] In material submitted by the company, J&L asserted that under the *de minimis* criterion, an applicant's compliance record should be judged on the basis of whether it is in "substantial compliance" with all obligations under existing decrees rather than the more circumscribed review of each decree violations. the company's contention, however, lacks support. SICEA strikes a balance between the steel industry's need for compliance extensions to pursue modernization against continued progress in cleaner air. Applicants for stretchout were to be carefully scrutinized to insure that all statutory conditions, including the *de minimis* criterion, were met. "The bill does not authorize the granting of extensions on a blanket basis. Each request for an extension with respect to a specific emission control requirement and facility is to be considered individually." S. Rep. No. 133, 97th Cong., 1st Sess. (1981) at 1. Further, Congress contemplated that a decree violation at one source would preclude stretchout even if all other emission sources are in compliance with decree requirements:

"The owner of a *source* which is in violation of an emission limitation after a compliance deadline . . . is not eligible for a compliance extension . . . for any *source* which would otherwise be eligible until the violating *source* is brought into compliance . . ." *Id.* at 4 (emphasis added)

[4] H.R. Rep. No. 121, 97th Cong., 1st Sess. (1981), at 9, 10.

[5] S. Rep. No. 133, 97th Cong., 1st Sess. (1981) at 3, 4. The magnitude and duration of violation for final compliance with the pushing standard at Aliquippa A–1 battery is of serious concern. Under the Pennsylvania decree, the company was obligated to demonstrate final compliance with the pushing standard at A–1 battery by March 15, 1982. More than eight months after the final compliance deadline, J&L is continuing to operate A–1 battery uncontrolled for pushing emissions.

Violations of the standard for coke oven gas desulfurization at the Pittsburgh Works on September 1, 1980, and March 25, 1981, are particularly egregious. When controls are functioning properly, the area where the Pittsburgh Works is located is monitored attainment for the sulfur oxide primary health standard. However, when the system is out of service (its current status), violations directly contribute by at least 40 percent to exceedances of the sulfur oxide primary health standard for the area.

[6] See, *Steel Tripartite Committee Proposal: Hearings on H.R. 1817, H.R. 2024, H.R. 2219, H.R. 2055, H.R. 2286 Before the Subcomm. on Health and the Environment of the House Comm. on Energy and Commerce*, 97th Cong., 1st Sess. (1981) at 40, 65, 90; *Steel Industry Compliance Extension Act of 1981: Hearings on S. 63 Before the Senate Comm. on Environment and Public Works*, 97th Cong., 1st Sess. (1981) at 5, 9, 12, 24; *Reort of the Steel Tripartite Committee: Hearings Before the Senate Comm. on Environment and Public Works*, 97th Cong., 1st Sess. (1960) at 27. Also see, 127, Cong. Rec. H3750 (daily ed. June 26, 1981); *Id.* at H2447 (daily ed. May 28, 1981).

considerations, it is in compliance with decree deadlines.

The company is apparently relying on the "force majeure" provisions of the decrees. These provisions do allow for relief from schedule deadlines in limited circumstances. Remedial relief, however, is available only after substantive and procedural prerequisites are met. Specifically, the "force majeure" clauses impose upon the company the burden of proving the merits of its request for relief—that delays are due to circumstances beyond its control. If EPA and the company do not agree on the merits, the decrees specifically require J&L to petition the court for resolution. Importantly, where the parties do not agree, unless the court rules otherwise, the original control schedules remain judicially enforceable.

On September 2, 1980, J&L submitted to EPA a request for deferral of the schedule for Aliquippa A–1 battery pushing controls. Relying upon "force majeure" provisions in the Pennsylvania decree, the company contended that an economic downturn in the steel industry resulted in its financial inability to comply with schedule deadlines.[7]

In a letter dated August 21, 1980, one week prior to the company's deferral request for A–1 battery, the government informed J&L that the "force majeure" clauses of the Federal decrees were not intended to apply to financial hardships from economic downturns. The government has maintained this position. Moreover, on several occasions, the government informed J&L that the original control deadlines remained in full force and effect.[8]

Although the issue of the company's entitlement to relief from schedule deadlines has apparently been in dispute since August 1980, J&L has not petitioned the court for resolution of this matter as contemplated and required by the Pennsylvania decree. Further, J&L has not availed itself of remedies potentially available by filing a motion under Rule 60(b) of the Federal Rules of Civil Procedure seeking relief from the court's judgment. Hence, the original control schedule in the decree for Aliquippa A–1 battery remains a judicially enforceable obligation of the company.[9] This schedule is the relevant obligation for consideration of the company's eligibility for stretchout under the *de minimis* criterion.

Late Maturing Deadlines

Finally, in its submissions for stretchout, the company contended that assuming violations of decree schedules for A–1 battery pushing controls, such violations are "late maturing" obligations and therefore *de minimis*. A similar argument was made for violations of desulfurization at the Pittsburgh Works as well as for schedules at Campbell batteries Nos. 7 and 9. These facilities, among others, were the subject of the company's request for extensions in its stretchout application.

J&L attempts to rely on the "late maturing date" theory which EPA applied in earlier preliminary findings for a stretchout applicant.[10]

The "late maturing date" theory reconciles two objectives under SICEA. Congress intended to free up needed capital for plant modernization providing the stretchout applicant had complied with existing decrees. If a company was required to continue to meet decree deadlines which fell due *after* passage of SICEA and which were the subject of its stretchout request until relief was granted, on pain of denial of stretchout, there would be virtually nothing left to stretch, and no additional funds would be available for modernization. If violations of such obligations could not be found to be *de minimis* for SICEA purposes, a company would be caught in a "Catch 22": in order to remain eligible for any relief under SICEA, as time passed while its stretchout application was pending, a company would have to deny itself increasing increments of relief. Thus, to effectuate SICEA's statutory scheme, where deadlines which fell due early in the schedule have been met, violated deadlines which fell due *after* SICEA enactment and subject to a request for stretchout are viewed as "late maturing" and *de minimis* for SICEA purposes. Application of the "late maturing date' theory is appropriate solely where a SICEA applicant complies with all interim deadlines which fall due early in the compliance schedule prior to SICEA enactment.

J&L's reliance on the "late maturing date" concept is misplaced. With regard to Aliquippa A-1 battery pushing controls, the company has violated interim schedule deadlines which fell due as early as September 2, 1980, predating SICEA enactment by nine months. For batteries Nos. 7 and 9 at the Campbell Works, early interim deadlines were violated a number of months prior to SICEA's passage. For each of the control projects, these early violations have necessarily caused violations of remaining deadlines in the schedule which fell due in late 1981 and 1982. J & L has inappropriately applied the "late maturing date" concept selectively to these latter schedule deadlines. Importantly, the company ignores violated deadlines of these schedules which fell due *prior* to SICEA enactment and *prior* to the company's stretchout application.

J & L's aplication of the "late maturing date" concept for desulfurization at the Pittsburgh Works is similarly inappropriate. The Pennsylvania decree obligated the company to meet two separate requirements for compliance with the sulfur oxide standard. The company was to demonstrate compliance on September 1, 1980. Further, on March 25, 1981 and continuing thereafter, J & L was obligated to operate the control system in compliance with the standard. The company did not comply with either of these requirements. A State permit was issued to J & L on May 18, 1981, to repair desulfurization controls. The company argued that since the permit set a compliance date of October 1, 1982, this date should govern. J & L contended that the October 1 date is after SICEA enactment and subsequent to its application. It is therefore "late maturing". J & Ls position, however, is not persuasive. The State permit did not modify the September 1, 1980 and March 25, 1981, compliance requirements in the decree which were not met. These two dates, both predating SICEA enactment, are the relevant obligations for consideration of the company's eligibility for stretchout under the *de minimis* criterion.

J & L's adaptation of the "late maturing date" concept is beyond Agency intentions and contrary to SICEA's legislative history. Congress did not intend to grant stretchout to companies which failed to comply with decree obligations *prior* to SICEA enactment.

Reservation of Rights

Findings by the Administrator expressed herein do not necessarily address all violations by J & L of existing Federal decrees and should not be construed as limiting any causes of

[7] The company is on record as having requested compliance deferrals based on financial "force majeure" considerations for Aliquippa A–1 pushing controls in addition to other control strategies not pertinent ot the Administrator's findings herein.

[8] Assuming, *arguendo*, that the "force majeure" clauses have applicability, J&L failed to meet its burden of persuasion. Financial analyses in 1980 and 1981 did not support the company's claims of financial inability. (*J&L Financial Study*, Confidential Appendix I, J&L Steel Stretchout Docket No. EN 82–10)

[9] See, *Delaware Valley Citizens' Council for Clean Air v. Commonwealth of Pennsylvania*, 674 F. 2d. 976 (3d Cir. 1982)

[10] See, *Notice of Findings Preliminary to Lodging of Amended Consent Decree*, 47 FR 35855, *et seq.* (August 17, 1982)

action or remedies available to the government in any future administrative or judicial proceedings.

Dated: December 29, 1982.

John W. Hernandez,

Acting Administrator.

[FR Doc. 83-181 Filed 1-4-83; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-140026; BH-FRL 2278-7]

Consumer Product Safety Commission; Disclosure of Confidential Business Information

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Consumer Product Safety Commission (CPSC) has requested EPA to provide it with access to certain information reported under current and prospective rules promulgated under section 8(a) of the Toxic Substances Control Act (TSCA), including the Preliminary Assessment Information rule published in the **Federal Register** of June 22, 1982 (47 FR 26992), and the Asbestos Reporting Requirements rule published in the **Federal Register** of July 30, 1982 (47 FR 33198). The EPA will provide CPSC with access to information reported under section 8(a) on chemical substances which may have consumer use applications. The CPSC has stated that it requires access to this information in connection with the performance of its duties under the Consumer Product Safety Act (CPSA). Some of the information reported under section 8(a) may be claimed as confidential.

DATE: Access to confidential business information will be provided to CPSC no sooner than January 17, 1983.

FOR FURTHER INFORMATION CONTACT: Douglas G. Bannerman, Acting Director, Industry Assistance Office (TS-799), Environmental Protection Agency, Rm. E-511, 401 M Street, SW., Washington, D.C. 20460, Toll Free: (800-424-9065). In Washington: (554-1404). Outside the USA: (Operator—202-554-1404).

SUPPLEMENTARY INFORMATION: The Consumer Product Safety Commission administers, among other Federal laws, the Consumer Product Safety Act, as amended, 15 U.S.C. 2051 et seq. The CPSC is charged under that law with protecting the public against unreasonable risks of injury associated with consumer products; assisting consumers in evaluating the comparative safety of consumer products; developing uniform safety standards for consumer products; and promoting research and investigation into the causes and prevention of product-related deaths, illnesses, and injuries. The CPSC has requested that designated CPSC employees, in connection with their official duties under the CPSA, be granted access to certain information submitted to EPA under current and prospective reporting rules promulgated under authority of section 8(a) of TSCA, 15 U.S.C. 2607(a).

The EPA issued in the **Federal Register** of June 22, 1982 (47 FR 26992), a final Preliminary Assessment Information rule under section 8(a) of TSCA requiring chemical manufacturers and certain producers and importers to submit information on approximately 250 chemicals. The information reported includes data on quantities of chemicals manufactured, amounts directed to certain classes of uses and potential exposures and environmental releases associated with the processing of the chemicals. This information can be used by EPA in setting priorities for the testing of chemicals and in assessing chemical risks.

A final rule on Asbestos Reporting Requirements was published in the **Federal Register** of July 30, 1982 (47 FR 33198). The rule requires asbestos manufacturers, importers, and processors to report such information as quantities of asbestos used in making products, employee exposure data, and waste disposal and pollution control equipment data. The EPA will consider this information in calculating the extent of exposure from asbestos and in determining whether and where exposures present an unreasonable risk.

The CPSC has requested access to information reported to EPA under these and any future section 8(a) rules on chemical substances which may have consumer use applications. Some of the information reported to EPA under section 8(a) may be claimed confidential. The EPA will provide CPSC with access to this confidential business information in accordance with section 14(a)(1) of TSCA and 40 CFR 2.209(c), which applies to information submitted under TSCA through 40 CFR 2.306(h).

As required by 40 CFR 2.209(c), this notice is published to inform submitters that confidential information reported under section 8(a) rules will be provided to CPSC no sooner than ten days after publication of this notice. Designated CPSC employees will be cleared for access to confidential business information in accordance with the provisions of the TSCA Confidential Business Information Security Manual and will be required to sign a confidentiality agreement.

Under an agreement between EPA and CPSC, confidential business information will be reviewed by CPSC employees at EPA only, and no such information will be permitted to be removed from EPA's premises. The CPSC will not notified that this confidential business information was acquired by EPA under authority to TSCA and that any knowing disclosure of the information may subject the officers and employees of CPSC to the penalties in section 14(d) of the Act.

Dated: December 22, 1982.

Don R. Clay,

Director, Office of Toxic Substances.

[FR Doc. 83-187 Filed 1-4-83; 8:45 am]

BILLING CODE 6560-50-M

[OPP-50588; PH-FRL 2278-1]

Pesticides; Issuance of Experimental Use Permits

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has granted experimental use permits to the following applicants. These permits are in accordance with, and subject to, the provisions of 40 CFR Part 172, which defines EPA procedures with respect to the use of pesticides for experimental purposes.

FOR FURTHER INFORMATION CONTACT: The product manager cited in each experimental use permit at the address below: Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 1921 Jefferson Davis Highway, Arlington, VA 22202.

SUPPLEMENTARY INFORMATION: EPA has issued the following experimental use permits:

275-EUP-35. Issuance. Abbott Laboratories, 1400 Sheridan Rd., North Chicago, IL 60064. This experimental use permit allows the use of 66.7 pounds of the plant growth regulator gibberellic acid on Valencia oranges to evaluate the prevention of rind crease. A total of 500 acres are involved; the program is authorized only in the State of California. The experimental use permit is effective from May 1, 1983 to November 30, 1985. A permanent tolerance for residues of the active ingredient in or on citrus fruits has been established (40 CFR 180.224). (Robert Taylor, PM 25, Rm. 245, CM#2, (703-557-1800))

7969-EUP-18. Issuance. BASF Wyandotte Corporation, 100 Cherry Hill Road, P.O. Box 181, Parsippany, NJ 07054. This experimental use permit allows the use of 14,560 pounds of the

fungicide N-cyclohexyl-N-methoxy-2,5-dimethyl-3-furancarboxamide on cottonseed to evaluate the control of *Rhizoctonia solani*. A total of 7,500 tons of seed are involved; the program is authorized only in the States of Arizona, California, Mississippi, and Texas. The experimental use permit is effective from December 6, 1982 to December 6, 1983. (Henry Jacoby, PM 21, Rm. 229, CM#2, (703–557–1900)).

1471–EUP–75. Extension. Elanco Products Company, 740 South Alabama St., Indianapolis, IN 46285. This experimental use permit allows the use of 9,900 pounds of the fungicide fenarimol on apples and grapes to evaluate the control of scab and cedar rust of apples and powdery mildew of apples and grapes. A total of 6,188 acres are involved; 5,188 acres of apples to be treated and 1,000 acres of grapes to be treated. The program is authorized only in the States of California, Indiana, Michigan, New York, North Carolina, Ohio, Oregon, Pennsylvania, Virginia, and Washington for apples and in California, Michigan, New York, Ohio, Oregon, and Washington, for grapes. The experimental use permit is effective from March 19, 1983 to March 19, 1985. Temporary tolerances for residues of the active ingredient in or on apples have been established. (Henry Jacoby, PM 21, Rm. 229, CM#2, (703–557–1900))

47361–EUP–1. Issuance. Mandops, Inc., 1551 Forum Place, West Palm Beach, FL 33401. This experimental use permit allows the use of a total of 140 pounds in nine formulations of the plant growth regulator 2-chloroethyl trimethyl ammonium chloride on barley, corn, dry beans, oats, potatoes, soybeans, and wheat to evaluate yield increase and the control of lodging in corn, dry beans, small grains, and soybeans. The program is authorized only in the States of Alabama, Idaho, Illinois, Iowa, Kansas, Louisiana, Michigan, Minnesota, Missouri, Nebraska, New Jersey, New York, North Dakota, Ohio, Oklahoma, Oregon, South Dakota, Virginia, and Wisconsin. The experimental use permit is effective from November 9, 1982 to November 9, 1983. This permit is issued with the limitation that all crops are destroyed or used for research purposes only. (Richard Mountfort, PM 23, Rm. 237, CM#2, (703–557–1830))

Persons wishing to review these experimental use permits are referred to the designated product managers. Inquiries concerning these permits should be directed to the persons cited above. It is suggested that interested persons call before visiting the EPA Headquarters Office, so that the appropriate file may be made available for inspection purposes from 8:00 a.m. to 4:00 p.m., Monday through Friday, excluding legal holidays.

(Sec. 5, 92 Stat. 819, as amended, (7 U.S.C. 136))

Dated: December 23, 1982.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 83-188 Filed 1-1-83; 8:45 am]

BILLING CODE 6560-50-M

[OPP-50586; PH-FRL 2278-2]

Pesticides; Issuance of Experimental Use Permits

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has granted experimental use permits to the following applicants. These permits are in accordance with, and subject to, the provisions of 40 CFR Part 172, which defines EPA procedures with respect to the use of pesticides for experimental purposes.

FOR FURTHER INFORMATION CONTACT: The product manager cited in each experimental use permit at the address below: Registration Division (TS–767C), Office of Pesticide Programs, Environmental Protection Agency, 1921 Jefferson Davis Highway, Arlington, VA 22202.

SUPPLEMENTARY INFORMATION: EPA has issued the following experimental use permits:

239–EUP–75. Extension. Chevron Chemical Company, 940 Hensley St., Richmond, CA 94804. This experimental use permit allows the use of the remaining supply of approximately 276 pounds (340 pounds originally authorized) of the harvest aid paraquat dichloride on dry beans to evaluate the desiccation of bean plants and broadleaf weeds and grasses. A total of 680 acres are involved; the program is authorized only in the States of California, Idaho, Oregon, Utah, and Washington. The experimental use permit is effective from February 18, 1983 to February 18, 1985. A temporary tolerance for residues of the active ingredient in or on dry beans has been established. (Robert Taylor, PM 25, Rm. 245, CM#2, (703–557–1800)).

677–EUP–22. Issuance. Diamond Shamrock Corporation, 1100 Superior Ave., Cleveland, OH 44114. This experimental use permit allows the use of 9,152 pounds of the fungicide 2,4,5,6-tetrachloro-isophthalonitrile on apples to evaluate the control of apple scab. A total of 700 acres are involved; the program is authorized only in the States of Illinois, Indiana, Kentucky, Michigan, Missouri, New York, North Carolina, Ohio, Oregon, Pennsylvania, Virginia, and Washington. The experimental use permit is effective from January 1, 1983 to July 1, 1983. A temporary tolerance for residues of the active ingredient in or on apples has been established. (Henry Jacoby, PM 21, Rm. 227, CM#2, (703–557–1900)).

1471–EUP–65. Extension. Elanco Products Company, 740 South Alabama St., Indianapolis, IN 46285. This experimental use permit allows the use of 320 pounds of the herbicide fluridone on drainage ditches to evalute the control of aquatic weeds. A total of 100 acres are involved. (Richard Mountfort, PM 23, Rm. 237, CM#2, (703–557–1830)).

1471–EUP–66. Extension. Elanco Products Company, 740 South Alabama St., Indianapolis, IN 46285. This experimental use permit allows the use of 450 pounds of the herbicide fluridone on drainage ditches to evalute the control of aquatic weeds. A total of 150 acres are involved. This program and the one above are authorized only in the State of Florida. The permits are effective from November 22, 1982 to November 22, 1983. Both permits are issued with the limitation that the herbicide will not be applied to waters that will be used for drinking, domestic purposes, swimming, fishing, watering livestock, or irrigation of crops used for food or feed. The permits will use the same active ingredient but different formulations. (Richard Mountfort, PM 23, Rm. 237, CM#2, (703–557–1830)).

10182–EUP–30. Issuance. ICI Americas Inc., Wilmington, DE 19897. This experimental use permit allows the use of 1,000 pounds of the herbicide 5-[2-chloro-4-(trifluoromethyl)phenoxy]-*N*-(methylsulfonyl)-2-nitrobenzamide on soybeans to evaluate the control of broadleaf weeds. A total of 1,000 acres are involved; 400 acres treated the first year of the program and 600 acres treated the second year of the program. The program is authorized in the States of Alabama, Arkansas, Delaware, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maryland, Michigan, Minnesota, Mississippi, Missouri, Nebraska, New Jersey, New York, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, Virginia, West Virginia, and Wisconsin. The experimental use permit is effective from November 12, 1982 to November 12, 1984. This permit is issued with the limitation that all food or feed derived from the crops are destroyed or

used for research purposes only. (Richard Mountfort, PM 23, Rm. 237, CM#2, (703–557–1830)).

3125–EUP–158. Issuance. Mobay Chemical Corporation, 1025 Vermont Ave., NW., Washington, DC 20005. This experimental use permit allows the use of 5,000 pounds of the fungicide 6-methyl-2, 3-quinoxalinedithiol cyclic S,S-dithiocarbonate [6-methlyl-1,3-dithiolo[4,5-b] quinoxalin-2-one on almonds to evaluate the control of mites. A total of 5,000 acres are involved; the program is authorized only in the State of California. The experimental use permit is effective from October 21, 1982 to October 21, 1983. Temporary tolerances for residues of the active ingredient in or on almond meats and hulls have been established. (Jay Ellenberger, PM 12, Rm. 202, CM#2, (703–557–2386)).

Persons wishing to review these experimental use permits are referred to the designated product managers. Inquiries concerning these permits should be directed to the persons cited above. It is suggested that interested persons call before visiting the EPA Headquarters Office, so that the appropriate file may be made available for inspection purposes from 8:00 a.m. to 4:00 p.m., Monday through Friday, excuding legal holidays.

(Sec. 5, 92 Stat. 819, as amended, (7 U.S.C. 136))

Dated: December 23, 1982.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 83-189 Filed 1-4-83; 8:45 am]

BILLING CODE 6560-50-M

[OPP-180617; PH-FRL 2278-3]

Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has granted specific exemptions for the control of various pests in the States listed below. Details of a quarantine exemption granted by EPA to the United States Department of Agriculture are also given. Also listed are two crisis exemptions initiated by California and Texas.

DATES: See each specific, quarantine, and crisis exemption for its effective dates.

FOR FURTHER INFORMATION CONTACT: See each specific, quarantine, and crisis exemption for the name of the contact person. The following information applies to all contact people: Registration Division (TS–767C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 716, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703–557–1192).

SUPPLEMENTARY INFORMATION: EPA has granted specific exemptions to the:

1. Arkansas State Plant Board for the use of diethatylethyl on spinach to control weeds; November 11, 1982 to May 31, 1983. Arkansas had initiated a crisis exemption for this use. (Jack E. Housenger)

2. California Department of Food and Agriculture for the use of dicloran on fresh market tomatoes to control gray mold; November 22, 1982 to August 31, 1983. California had initiated a crisis exemption for this use. (Libby Welch)

3. California Department of Food and Agriculture for the use of paraquat on kiwi fruit to control weeds and grasses; January 1, 1983 to December 31, 1983. (Jim Tompkins)

4. Florida Department of Agriculture and Consumer Services for the use of heptachlor on ornamental plants and nonbearing citrus nursey stock to control the West Indian sugarcane rootstalk borer weevil (*Diaprepes abbreviatus*); November 29, 1982 to November 1, 1983. (Gene Asbury);

5. Florida Department of Agriculture and Consumer Services for the use of methamidiphos on Chinese cabbage, endive, escarole, and parsley to control leafminers; November 9, 1982 to June 1, 1983. (Jack E. Housenger)

6. Hawaii Department of Agriculture for the use of thiabendazole on papayas to control post-harvest fungal diseases; October 1, 1982 to October 1, 1983. Hawaii had initiated a crisis exemption for this use. (Gene Asbury)

7. Office of the Governor of Puerto Rico for the use of oxyfluorfen on dry bulb onions to control various weeds; November 9, 1982 to April 30, 1983. EPA completed a rebuttable presumption against registration (RPAR) on this chemical; the final determination was published in the **Federal Register** of June 23, 1982 (47 FR 27118). (Libby Welch)

8. Texas Department of Agriculture for the use of *N*-cyclopropyl-1,3,5-triazine-2,4,6-triamine in poultry houses to control flies; November 22, 1982 to December 11, 1983. (Jim Tompkins)

9. Washington Department of Agriculture for the use of fenamiphos on raspberries to control root lesion nematodes; November 11, 1982 to April 1, 1983. (Gene Asbury)

10. U.S. Department of Agriculture, Animal and Plant Health Inspection Service (USDA/APHIS), for the use of toxaphene on beef cattle to control scabies and ticks within the United States according to the USDA/APHIS program; December 1, 1982 to November 30, 1983. EPA completed an RPAR on this chemical; the final determination was published in the **Federal Register** of November 29, 1982 (47 FR 53784). (Gebe Asbury)

A quarantine exemption was granted to the USDA/APHIS for the use of naled on inanimate objects to control the Oriental fruit fly in California; December 3, 1982 to December 3, 1983.. (Jack E. Housenger)

Crisis exemptions were initiated by the:

1. California Department of Food and Agriculture on November 9, 1982, for the use of permethrin on fresh market tomatoes to control pinworms, leafminers, and *Heliothis* spp. Since it was anticipated that this program would be needed for more than 15 days, California has requested a specific exemption to continue it. The need for this program is expectd to last until July 28, 1983. (Libby Welch)

2. Texas Department of Agriculture on November 29, 1982, for the use of permethrin on spinach to control the cabbage looper. Since it was anticipated that this program would be needed for more than 15 days, Texas is expected to request a specific exemption to continue it. (Libby Welch)

(Sec. 18, as amended, 92 Stat. 819 (7 U.S.C. 136))

Dated: December 27, 1982.

James M. Conlon,

Acting Director, Office of Pesticide Programs.

[FR Doc. 83-183 Filed 1-4-83; 8:45 am]

BILLING CODE 6560-50-M

[PH-FRL-2278-4; PP 2G2593/T400]

Fenarimol; Extension of Temporary Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has extended temporary tolerances for residues of the fungicide fenarimol in or on certain raw agricultural commodities.

DATE: These temporary tolerances expire March 19, 1985.

FOR FURTHER INFORMATION CONTACT: Henry Jacoby, Product Manager (PM) 21, Registration Division (TS–767C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 227, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703–557–1900).

SUPPLEMENTARY INFORMATION: EPA issued a notice, that was published in the **Federal Register** of June 30, 1982 (47 FR 28454), announcing the renewal of

temporary tolerances for residues of the fungicide fenarimol [a-(2-chlorophenyl)-a-(4-chlorophenyl)-5-pyrimidinemethanol] in or on the raw agricultural commodities apples at 0.10 part per million (ppm) and grapes at 0.05 ppm as a result of preharvest applications. The apples and grapes will be for the fresh fruit market only. These tolerances were issued in response to pesticide petition PP 2G2593, submitted by Elanco Products Company, 740 S. Alabama St., Indianapolis, IN 46285.

These temporary tolerances have been extended to permit the continued marketing of the raw agricultural commodities named above when treated in accordance with the provisions of experimental use permit 1471-EUP-75, which is being extended under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, (92 Stat. 819; 7 U.S.C. 136).

The scientific data reported and other relevant material were evaluated, and it was determined that the extension of these temporary tolerances will protect the public health. Therefore, the temporary tolerances have been extended on the condition that the pesticide be used in accordance with the experimental use permit and with the following provisions:

1. The total amount of the active ingredient to be used must not exceed the quantity authorized by the experimental use permit.

2. Elanco Products Co. must immediately notify the EPA of any findings from the experimental use that have a bearing on safety. The company must also keep records of production, distribution, and performance and on request make the records available to any authorized officer or employee of the EPA or the Food and Drug Administration.

These tolerances expire March 19, 1985. Residues not in excess of this amount remaining in or on the raw agricultural commodities after this expiration date will not be considered actionable if the pesticide is legally applied during the term of, and in accordance with, the provisions of the experimental use permit and temporary tolerances. These tolerances may be revoked if the experimental use permit is revoked or if any experience or scientific data with this pesticide indicate that such revocation is necessary to protect the public health.

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

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-534, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

(Sec. 408 (j), 68 Stat. 516, (21 U.S.C. 346a(j)))

Dated: December 23, 1982.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 83-184 Filed 1-4-83; 8:45 am]

BILLING CODE 6560-50-M

[PH-FRL-2275-4; OPP-50585]

Issuance of Experimental Use Permits

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has granted experimental use permits to the following applicants. These permits are in accordance with, and subject to, the provisions of 40 CFR Part 172, which defines EPA procedures with respect to the use of pesticieds for experimental purposes.

FOR FURTHER INFORMATION CONTACT: The product manager cited in each experimental use permit at the address below: Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 1921 Jefferson Davis Highway, Arlington, VA 22202.

SUPPLEMENTARY INFORMATION: EPA has issued the following experimental use permits:

43142-EUP-2. Renewal. BFC Chemicals, Inc., 4311 Lancaster Pike, P.O. Box 2867, Wilmington, DE 19805. This experimental use permit allows the use of 765 pounds of the insecticide amitraz on a maximum of 8,560 dairy cattle to evaluate the control of ticks. The program is authorized only in the States of Oklahoma and Utah and the Territory of Puerto Rico. The permit was previously effective from August 10, 1981 to August 10, 1982. The permit is not effective from October 7, 1982 to October 7, 1983. Temporary tolerances for residues of the active ingredient in or on the milk, meat, fat, and meat byproducts of cattle have been established. (Jay Ellenberger, PM 12, Rm. 202, CM#2, (703-557-2386))

10182-EUP-28. Amendment. ICI Americas Inc., Concord Pike and New Murphy Rd., Wilmington, DE 19897. Notice published in the **Federal Register** of August 11, 1982 (47 FR 34853) pertaining to the issuance of an experimental use permit, No. 10182-EUP-28, to ICI Americas Inc. At the request of the company, the permit has been amended to allow 2,050 additional acres, 1,250 additional pounds of the active ingredient, and extension of the expiration date. This experimental use permit now allows the use of 2,400 pounds of the herbicide (±)-butyl 2-[4-[[5-(trifluoromethyl)-2-pyridinyl]oxy]phenoxy] propanoate on cotton and soybeans to evaluate the control of weeds. A total of 3,200 acres are involved; 1,200 acres treated the first year of the program and 2,000 acres treated the second year of the program. (Richard Mountfort, PM 23, Rm. 237, CM#2, (703-557-1830))

10182-EUP-29. Issuance. ICI Americas Inc., Concord Pike and New Murphy Rd., Wilmington, DE 19897. This experimental use permit allows the use of 3,750 pounds of the herbicide (±)-butyl 2-[4-[[5-(trifluoromethyl)-2-pyridinyl]oxy]phenoxy] propanoate on cotton and soybeans to evaluate the control of weeds. A total of 10,000 acres, 5,000 acres treated both years of the program, are involved. This program and the one above are authorized in the States of Alabama, Arizona, Arkansas, California, Delaware, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maryland, Michigan, Minnesota, Mississippi, Missouri, Nebraska, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, Virginia, West Virginia, and Wisconsin. Both permits are effective from October 6, 1982 to September 30, 1984. Temporary tolerances for residues of the active ingredient in or on cottonseed; eggs; milk; soybeans; and the meat, fat, and meat byproducts of cattle, goats, hogs, horses, poultry, and sheep have been established. The permits will use the same active ingredient but different formulations. (Richard Mountfort, PM 23, Rm. 237, CM#2, (703-557-1830))

35977-EUP-1. Issuance. MAAG Agrochemicals Research and Development, HLR North Kings Highway, P.O. Box X, Vero Beach, FL 32960. This experimental use permit allows the use of 0.16 pound of the insect growth regulator ethyl[2-(p-phenoxyphenoxy) ethyl]carbamate on stored seed peanuts to evaluate the control of various insects. A total of 4 bins are involved; the program is authorized only in the State of Florida. The experimental use permit is effective from October 1, 1982 to October 1, 1983.

(Franklin Gee, PM 17, Rm. 207, CM#2, (703-557-2690))

201-EUP-73. Issuance. Shell Oil Company, Suite 200, 1025 Connecticut Ave., NW., Washington, D.C. 20036. This experimental use permit allows the use of 541 pounds of the insecticide cyano-(3-phenoxyphenyl)methyl 4-chloro-alpha-(1-methylethyl) benzeneacetate on cherries, grapefruits, lemons, and oranges to evaluate the control of various insects. A total of 250 acres are involved; the program is authorized only in the States of Arizona, Arkansas, California, Colorado, Florida, Kansas, Michigan, Montana, Nebraska, New York, North Dakota, Oklahoma, Oregon, Pennsylvania, Utah, Wisconsin, and Texas. The experimental use permit is effective from September 15, 1982 to September 15, 1983. (Franklin Gee, PM 17, Rm. 207, CM#2, (703-557-2690))

46946-EUP. Issuance. TH Agriculture and Nutrition Company, Inc., P.O. Box 2700, Kansas City, KS 66110. This experimental use permit allows the use of 225.06 pounds of the insecticide N-[[(4-chlorophenyl) amino]carbony1]-2,6-difluorobenzamide on cotton to evaluate the control of the boll weevil. A total of 730 acres are involved; the program is authorized only in the States of Alabama, Arkansas, Louisiana, and Mississippi. The experimental use permit is effective from July 30, 1982 to July 30, 1983. A permanent tolerance for residues of the active ingredient in or on cottonseed has been established (40 CFR 180.377). (Franklin Gee, PM 17, Rm. 207, CM#2, (703-557-2690))

Persons wishing to review these experimental use permits are referred to the designated product managers. Inquiries concerning these permits should be directed to the persons cited above. It is suggested that interested persons call before visiting the EPA Headquarters Office, so that the appropriate file may be made available for inspection purposes from 8:00 a.m. to 4:00 p.m. Monday through Friday, excluding legal holidays.

(Sec. 5, 92 Stat. 819, as amended, (7 U.S.C. 136))

Dated: December 8, 1982.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 83-15 Filed 1-4-83; 8:45 am]

BILLING CODE 6560-50-M

[PP 5G1627/T399; PH-FRL 2278-5]

Paraquat; Extension of Temporary Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has extended a temporary tolerance for residues of the harvest aid paraquat dichloride in or on the raw agricultural commodity dry beans.

DATE: This temporary tolerance expires February 18, 1985.

FOR FURTHER INFORMATION CONTACT: Robert Taylor, Product Manager (PM) 25, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 245, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703-557-1800).

SUPPLEMENTARY INFORMATION: EPA issued a notice, that was published in the **Federal Register** of August 19, 1976 (41 FR 35096), announcing the renewal of a temporary tolerance for residues of the harvest aid paraquat dichloride in or on the raw agricultural commodity dry beans at 0.5 part per million (ppm).

This temporary tolerance was issued in response to pesticide petition (PP 5G1627), submitted by Chevron Chemical Company, Ortho Agricultural Chemicals Division, 940 Hensley St., Richmond, CA 94804.

The temporary tolerance has been extended to permit the continued marketing of the raw agricultural commodity named above when treated in accordance with the provisions of experimental use permit 239-EUP-75, which is being extended under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, (92 Stat. 819; 7 U.S.C. 136).

The scientific data reported and other relevant material were evaluated, and it was determined that the extension of the temporary tolerance will protect the public health. Therefore, the temporary tolerance has been extended on the condition that the pesticide be used in accordance with the experimental use permit and with the following provisions:

1. The total amount of the active ingredient to be used must not exceed the quantity authorized by the experimental use permit.

2. Chevron Chemical Co. must immediately notify the EPA of any findings from the experimental use that have a bearing on safety. The company must also keep records of production, distribution, and performance and on request make the records available to any authorized officer or employee of the EPA or the Food and Drug Administration.

This tolerance expires February 18, 1985. Residues not in excess of this amount remaining in or on the raw agricultural commodity after this expiration date will not be considered actionable if the pesticide is legally applied during the term of, and in accordance with, the provisions of the experimental use permit and temporary tolerance. The tolerance may be revoked if the experimental use permit is revoked or if any scientific data or experience with this pesticide indicates that such revocation is necessary to protect the public health.

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

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-534, 94 Stat. 1164, 5 U.S.C 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981, (46 FR 24950).

(Sec. 408(j), 68 Stat. 516, (21 U.S.C. 346a(j)))

Dated: December 23, 1982.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 83-185 Filed 1-4-83; 8:45 am]

BILLING CODE 6560-50-M

[8AB-FRL 2279-4]

Science Advisory Board—Open Meeting; Environmental Engineering Committee

Under Pub. L. 92-463, notice is hereby given that the Agency has expressed a desire to have an immediate one-day meeting of the Environmental Engineering Committee (EEC) of the Science Advisory Board to be held in Room 3-242, Sid Richardson Hall (Building 3), Lyndon B. Johnson School of Public Affairs, University of Texas, Austin, Texas, on January 17, 1983. The meeting will be begin at 8:30 am and last until approximately 5:00 pm.

The purpose of the meeting will be to review technical support data pertaining to proposed revisions to the Agency's secondary treatment regulations (40 CFR Part 133), and will address the following issues:

a. Whether the carbonaceous biochemical oxygen demand ($CBOD_5$) test should be substituted for the BOD_5 test as an appropriate measure of effluent quality from secondary treatment facilities.

b. The technical bases for adjusting trickling filter performance standards during cold-weather.

c. Whether newly-designed trickling filters can be expected to meet current effluent limitations during warm-weather periods.

The meeting is open to the public. Any member of the public wishing to participate or obtain further information about the meeting should contact Harry C. Torno, Executive Secretary, at (202) 382–2552, or Dr. Terry F. Yosie, Acting Staff Director, Science Advisory Board, at (202) 382–4126.

Terry F. Yosie,

Acting Staff Director, Science Advisory Board.

December 29, 1982.

[FR Doc. 83–331 Filed 1–4–83; 8:45 am]

BILLING CODE 6560–50–M

[SAB–FRL 2279–5]

Science Advisory Board—Open Meeting; High-Level Radioactive Waste Disposal Subcommittee

Under Pub. L. 92–463, notice is hereby given that the Agency has expressed a desire to have an immediate one-day meeting of the High-Level Radioactive Waste Disposal Subcommittee of the Science Advisory Board to be held in The Regency Ballroom E and F, Hyatt Regency Crystal City Hotel, 2799 Jefferson Davis Highway, Arlington, Virginia, on January 18, 1983. The meeting will begin at 9:00 am and last until approximately 3:30 pm.

The purpose of the meeting will be to organize the Subcommittee's review of the scientific and technical basis of the Agency's proposed rules for the management and disposal of high-level radioactive wastes. The members of the Subcommittee are as follows:

Dr. Herman Collier (Chairman), President, Moravian College, Bethlehem, Pennsylvania
Dr. Bruce B. Boecker, Assistant Director, Inhaltion Toxicology Research Institute, Albuquerque, New Mexico
Dr. Robert Budnitz, President, Future Resources Associates, Berkeley, California
Dr. Floyd Culler, President, Electric Power Research Institute, Palo Alto, California
Dr. Stanley N. Davis, Department of Hydrology and Water Resources, University of Arizona, Tucson, Arizona
Dr. Bruno Giletti, Department of Geological Sciences, Brown University, Providence, Rhode Island
Dr. Steven Kaye, Director, Health and Safety Research Division, Oak Ridge National Laboratory, Oak Ridge, Tennessee
Dr. Konrad Krauskopf, Department of Applied Earth Sciences, Stanford University, Stanford, California
Dr. Alan S. Manne, Department of Operations Research, Terman Engineering Center, Stanford University, Stanford, California
Dr. John Neel, Department of Human Genetics, The University of Michigan Medical School, Ann Arbor, Michigan
Dr. David Okrent, School of Engineering and Applied Science, UCLA, Los Angeles, California
Dr. Frank Parker, Department of Environmental and Waste Resources Engineering, Vanderbilt University, Nashville, Tennessee

Other members may be appointed, if needed.

EPA'S Office of Radiation Programs has proposed that the Subcommittee review and provide advice on the following issues, and will discuss these proposals with the subcommittee.

1. The scientific and technical rationale behind the choice of a 10,000 year period as the basis for the assessment of disposal facility performance.

2. The technical basis for selection of the proposed performance requirements, including the risk-assessment methodology, uncertainties in the data and in the analytical methods, and the estimation of premature cancer deaths.

3. The scientific appropriateness of concentrating on disposal in geologic media.

4. The validity of the conclusion that, under the proposed rules, the risks to future generations will be no greater than the risks from equivalent amounts of naturally occurring uranium ore bodies.

5. The adequacy of the economic analysis.

6. The ability of the analytical methods/models used in the analysis to predict potential releases from the disposal facility and their resultant effects on human health. Included would be an evaluation of the model's ability to deal with uncertainty, and the confidence, in a statistical sense, one can have that the model predictions were adequate to support selection of projected performance requirements.

The agenda for the meeting will include a briefing on the background leading up to the development of the proposed rules, a discussion of the issues to be reviewed by the Subcommittee and discussions on organizing the Subcommittee to conduct the review.

The meeting is open to the public. Any member of the public wishing to attend or obtain further information about the meeting should contact Harry C. Torno, Executive Secretary, at (202) 382–2552, or Terry F. Yosie, Acting Staff Director, Science Advisory Board, at (202) 382–4126. Public comment will be accepted at subsequent meetings of the Subcommittee during the technical review.

Terry F. Yosie,

Acting Staff Director, Science Advisory Board.

December 29, 1982.

[FR Doc. 83–330 Filed 1–4–83; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL MARITIME COMMISSION

Agreements Filed

The Federal Maritime Commission hereby gives notice that the following agreements have been filed with the Commission for approval pursuant to section 15 of the Shipping Act, 1916, as amended (39 Stat. 733, 75 Stat. 763, 46 U.S.C. 814).

Interested parties may inspect and obtain a copy of each of the agreements and the justifications offered therefor at the Washington Office of the Federal Maritime Commission, 1100 L Streeet, N.W., Room 10327; or may inspect the agreements at the Field Offices located at New York, N.Y.; New Orleans, Louisiana; San Francisco, California; Chicago, Illinois; and San Juan, Puerto Rico. Interested parties may submit comments on each agreement, including requests for hearing, to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, within 20 days after the date of the **Federal Register** in which this notice appears. Comments should include facts and arguments concerning the approval, modification, or disapproval of the proposed agreement. Comments shall discuss with particularity allegations that the agreement is unjustly discriminatory or unfair as between carriers, shippers, exporters, importers, or ports, or between exporters from the United States and their foreign competitors, or operates to the detriment of the commerce of the United States, or is contrary to the public interest, or is in violation of the Act.

A copy of any comments should also be forwarded to the party filing the agreements and the statements should indicate that this has been done.

Agreement No.: 7540–36.

Filing party: Nathan J. Bayer, Esq., Freehill, Hogan & Mahar, 80 Pine Street, New York, N.Y. 10005.

Summary: Agreement No. 7540–36 modifies the basic agreement of the United States Atlantic & Gulf/Southeastern Carribbean Conference to clarify existing authority concerning alternate port service.

Agreement No.: 7680–46

Filing party: Seymour H. Kliger, Esq., Brauner Baron Rosenzweig Kligler Sparber & Bauman, 120 Broadway, New York, N.Y. 10271.

Summary: Agreement No. 7680-46 would amend the scope of the American West African Freight Conference Agreement to permit the conference to collectively establish rates for point-to-point, point-to-port and port-to-point intermodal services in the conference trade. In addition, any member line would be permitted to effectuate intermodal rates or routings at variance from the conference's in accordance with the terms and conditions set forth in the agreement.

Agreement No.: 10376-3.

Filing party: Mr. R. J. Finnan, Chief Tariff Publishing Officer, Lykes Bros. Steamship Co., Inc., 300 Poydras Street, New Orleans, Louisiana 70130.

Summary: Agreement No. 10376-3 extends the term of the Lykes-COSCO Discussion and Sailing Agreement through April 15, 1986.

Dated: December 29, 1982.

By Order of the Federal Maritime Commission.

Francis C. Hurney,

Secretary.

[FR Doc. 83-147 Filed 1-4-83; 8:45 am]

BILLING CODE 6730-01-M

Independent Ocean Freight Forwarder License; Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as independent ocean freight forwarders pursuant to section 44(a) of Shipping Act, 1916 (75 Stat. 522 and 46 U.S.C. 841(c)).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to communicate with the Director, Bureau of Certification and Licensing, Federal Maritime Commission, Washington, D.C. 20573.

Hap Dong Express, Inc., 1265 Broadway, Suite 703, New York, NY 10001. Officers: Tae Hee Kim, Stockholder/President/Director, Grace Myung Won Kang, Vice President/Director, Won Hyun Paek, Secretary/Treasurer/Director

Air/Compak of Melbourne, Inc., 2805 W. Nasa Blvd., Melbourne, FL 32901. Officer: Thomas N. Davis, President/Sole Stockholder

F.F.F. Fast Freight Forwarding, Inc., P.O. Box 848, 64-A Woodbridge Terrace, Woodbridge, NJ 07095. Officers: Hani E. Barghash, President/Sole Stockholder, Guitta H. Barghash, Secretary

James G. Wiley Co. of San Francisco, 230 California Street, Suite 201, San Francisco, CA 94111. Officers: James G. Wiley, President, William R. Fielding, Vice President, Louise M. Whittier, Vice President/Secretary/Treasurer

Condor Forwarding Services, Inc., c/o 350 Thorens Avenue, Garden City Park, NY 11040. Officers: Felix Grinacoff, President, Hector Grinacoff, Vice President, Edward Grinacoff, Treasurer

Miram Martinez, Calle Julian Blanco, #38, Santa Rita, Rio Piedras, PR 00925

Dated: December 30, 1982.

By the Federal Maritime Commission.

Francis C. Hurney,

Secretary.

[FR Doc. 83-149 Filed 1-4-83; 8:45 am]

BILLING CODE 6730-01-M

Items Submitted for OMB Review

The Federal Maritime Commission hereby gives notice that the following items have been submitted to OMB for extension of clearance pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501, et seq.). Interested parties may obtain a copy of the items and the justifications submitted from Ronald D. Murphy, Agency Clearance officer, Federal Maritime Commission, 1100 L Street, N.W., Room 9305, Washington, D.C. 20573, telephone number (202) 523-5326.

Comments may be submitted to the Agency Clearance Officer and Wayne Leiss, Desk Officer, Office of Management and Budget, New Executive Office Building, 726 Jackson Place, N.W., Room 3228, Washington, D.C. 20503, telephone number (202) 395-7313. All comments should be submitted within 15 days after the date of the **Federal Register** in which this notice appears.

Summary of Items Submitted for OMB Review

46 CFR Part 512—Financial Reports of Common Carriers by Water in the Domestic Offshore Trades (General Order 11) and Related Forms FMC-377 and FMC-378.

General Order 11 establishes methodologies that the Commission will utilize in evaluating the reasonableness of rates in the domestic offshore trades filed by vessel operating common carriers subject to the Intercoastal Shipping Act, 1933. It also provides for the acquisition of data essential to this evaluation. Related Forms FMC-377 and FMC-378 also facilitate the acquisition of data under General Order 11.

The Commission estimates the following respondent burdens: General Order 11—43 respondents at 13.3 manhours annually, Form FMC-377—27 respondents at 1,425 manhours annually, Form FMC-378—16 respondents at 2,722 manhours annually.

Total estimated annual cost to the Federal Government is $54,500.

46 CFR Part 514—Financial Exhibits and Schedules—Non-Vessel Operating Common Carriers in the Domestic Offshore Trades (General Order 42) and Related Form FMC-379.

General Order 42 establishes the methods for evaluating proposed rate changes in the domestic offshore trades submitted by non-vessel operating common carriers subject to the provisions of the Intercoastal Shipping Act, 1933. It also provides for acquisition of data which is to be submitted only in certain formal proceedings. Related Form FMC-379 also facilitates the acquisition of data under General Order 42.

The Commission estimates that approximately 90 non-vessel operating common carriers in the U.S. domestic offshore trade will incur an annual recordkeeping burden of 900 manhours under General Order 42, and approximately 1 respondent per year at 33 manhours for related Form FMC-379.

Total estimated annual cost to the Federal Government is $200.

46 CFR Part 544—Financial Responsibility for Water Pollution (Outer Continental Shelf) (General Order 41) and Related Forms FMC-11 (OCS), FMC-160, and FMC-192.

General Order 41 is the Federal Maritime Commission's regulations to implement Pub. L. 95-372, section 305(a)(1). It helps to determine the financial responsibility of vessel owners and operators carrying oil from offshore facilities above the Outer Continental Shelf. Related Forms FMC-11 (OCS), FMC-160, and FMC-192 also assist in this determination.

The Commission estimates the following respondent universes and burdens:

General Order 41—33 respondents at 33 manhours annually.

FMC-11 (OCS)—16 respondents at 4 manhours annually.

FMC-160—75 respondents at 19 manhours annually.

FMC-192—10 respondents at 5 manhours annually.

Total estimated annual Federal Government cost is $1,510.

Francis C. Hurney,

Secretary.

[FR Doc. 83-148 Filed 1-4-83; 8:45 am]

BILLING CODE 6730-01-M

[Independent Ocean Freight Forwarder License No. 1715]

Laurie B. Pazmino d.b.a. Intercontinental Bridge Services; Order of Revocation

Section 44(c), Shipping Act, 1916, provides that no independent ocean freight forwarder license shall remain in force unless a valid bond is in effect and on file with the Commission. Rule 510.15(d) of Federal Maritime Commission General Order 4 further provides that a license shall be automatically revoked for failure of a licensee to maintain a valid bond on file.

The bond issued in favor of Laurie B. Pazmino dba Intercontinental Bridge Services, P.O. Box 74305, 162 North Edgemont, Los Angeles CA 90004 was cancelled effective December 8, 1982.

By letter dated November 9, 1982, Laurie B. Pazmino dba Intercontinental Bridge Services was advised by the Federal Maritime Commission that Independent Ocean Freight Forwarder License No 1715 would be automatically revoked unless a valid surety bond was filed with the Commission.

Laurie B. Pazmino dba Intercontinental Bridge Services has failed to furnish a valid bond.

By virtue of authority vested in me by the Federal Maritime Commission as set forth in Manual of Orders, Commission Order No. 1 (Revised), § 10.01(f) dated November 12, 1981;

Notice is hereby given, that Independent Ocean Freight Forwarder License No. 1715 be and is hereby revoked effective December 8, 1982.

It is ordered, that Independent Ocean Freight Forwarder License No. 1715 issued to Laurie B. Pazmino dba Intercontinental Bridge Services be returned to the Commission for cancellation.

It is further ordered, that a copy of this Order be published in the **Federal Register** and served upon Laurie B. Pazmino dba Intercontinental Bridge Services.

Albert J. Klingel, Jr.,

Director, Bureau of Certification and Licensing.

[FR Doc. 83-150 Filed 1-4-83; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Acquisition of Bank Shares by a Bank Holding Company

The company listed in this notice has applied for the Board's approval under section 3(a)(3) of the Bank Holding Company Act (12 U.S.C. 1842(a)(3)) to acquire voting shares or assets of a bank. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors, or at the Federal Reserve Bank indicated. With respect to the application, interested persons may express their views in writing to the address indicated. 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.

A. **Board of Governors of the Federal Reserve System** (William W. Wiles, Secretary) Washington, D.C. 20551:

1. *InterFirst Corporation*, Dallas, Texas; to acquire 100 percent of the voting shares or asets of InterFirst D/FW Freeport, N.A., Irving, Texas. This application may be inspected at the offices of the Board of Governors or the Federal Reserve Bank of Dallas. Comments on this application must be received not later than January 28, 1983.

Board of Governors of the Federal Reserve System, December 29, 1982.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 83-154 Filed 1-4-83; 8:45 am]

BILLING CODE 6210-01-M

Bank Holding Companies; Proposed de Novo Nonbank Activities

The organizations identified in this notice have applied, pursuant to section 4(c)(8)) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.4(b)(1) of the Board's Regulation Y (12 CFR 115.4(b)(1)), for permission to engage de novo, directly or indirectly, solely in the activities indicated, which have been determined by the Board of Governors to be closely related to banking.

With respect to these applications, interested persons may express their views on the questions whether consummation of the proposal can "reasonably be expected to product 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 interest, or unsound banking practices." Any comment that requests a hearing must include 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 that proposal.

The applications may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank indicated. Comments and requests for hearing should identify clearly the specific application to which they relate, and should be submitted in writing and received by the appropriate Federal Reserve Bank not later than the date indicated.

A. **Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *The Maybaco Company, and Equitable Bancorporation*, Baltimore, Maryland (insurance activities; Delaware): To engage through its subsidiary, known as Equiban Life Insurance Company, in underwriting, as reinsurer, credit life insurance in connection with extensions of credit by Equitable Bancorporation's subsidiaries located in Delaware. These activities will be conducted from an office in Baltimore, Maryland, serving the State of Delaware. Comments on this application must be received not later than January 24, 1983.

B. **Federal Reserve Bank of Cleveland** (Lee S. Adams, Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *Pittsburgh National Corporation*, Pittsburgh, Pennsylvania (financing; Pennsylvania): To engage, through its subsidiary, The Kissell Company, in making or acquiring and servicing for its own accounts and or the accounts of others, loans and other extensions of credit. These activities would be conducted at an office in Pittsburgh, Pennsylvania, which is located in south west portion of the State of Pennsylvania and would serve: Allegheny, Westmoreland, Indiana, Armstrong, Butler, Beaver, Washington, Greene, Fayette, Somerset, Cambria, Lawrence, and Mercer, all in Pennsylvania. Comments on this application must be received not later than January 24, 1983.

Board of Governors of the Federal Reserve System, December 29, 1982.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 83-155 Filed 1-4-83; 8:45 am]

BILLING CODE 6210-01-M

Formation of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3(a)(1) of the Bank

Holding Company Act (12 U.S.C. 1842(a)(1)) to become bank holding companies by acquiring voting shares or assets of a bank. 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 may be inspected at the offices of the Board of Governors, or at the Federal Reserve Bank indicated for that application. With respect to each application, interested persons may express their views in writing to the address indicated for that application. 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.

A. **Federal Reserve Bank of Cleveland** (Lee S. Adams, Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *First Bancshares, Inc.*, Bellevue, Ohio; to become a bank holding company by acquiring 100 percent of the voting shares of The First National Bank of Bellevue, Bellevue, Ohio. Comments on this application must be received not later than January 28, 1983.

B. **Federal Reserve Bank of Minneapolis** (Bruce J. Hedblom, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Mahnomen Bancshares, Inc.*, Mahnomen, Minnesota; to become a bank holding company by acquiring 100 percent of the voting shares of First National Bank in Mahnomen, Mahnomen, Minnesota. Comments on this application must be received not later than January 28, 1983.

C. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *First National Utica Company*, Utica, Nebraska; to become a bank holding company by acquiring 100 percent of the voting shares of The First National Bank of Utica, Utica, Nebraska. Comments on this application must be received not later than January 28, 1983.

Board of Governors of the Federal Reserve System, December 29, 1982.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 83-153 Filed 1-4-83; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

Statement of Organization, Functions, and Delegations of Authority

Part F. of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services, Health Care Financing Administration (HCFA) (**Federal Register**, Vol. 46, No. 223, pp. 56911–56934, dated Thursday, November 19, 1981) is amended to reflect the Secretary's approval of the following:

- Transferring the audit liaison function from the Bureau of Quality Control, Office of the Associate Administrator for Operations, to the Office of Executive Operations.
- Changing the name of the Bureau of Program Policy, Office of the Associate Administrator for Policy, to the Bureau of Eligibility, Reimbursement and Coverage.
- Transferring the health standards and certification policy functions from the Office of Standards and Certification in the Health Standards and Quality Bureau, Office of the Associate Administrator for Operations, to the Bureau of Eligibility, Reimbursement and Coverage, Office of the Associate Administrator for Policy (previously the Bureau of Program Policy—reference above).
- Transferring the Division of Congressional Affairs out of the Office of Legislation and Congressional Affairs, Office of Legislation and Policy, Office of the Associate Administrator for Policy (OAAP), to the Office of Legislation and Policy, OAAP. Changing the name of the Division of Congressional Affairs to the Congressional Affairs Staff, and changing the name of the Office of Legislation and Congressional Affairs to the Office of Legislation.
- Transferring the functional responsibility related to certain Medicaid statistical activities from the Office of Research and Demonstrations, Office of the Associate Administrator for Policy, to the Bureau of Data Management and Strategy, Office of the Associate Administrator for Management and Support Services.
- Restructuring the functions associated with contractor and State agency financial management within the Office of Program Administration, Bureau of Program Operations, Office of the Associate Administrator for Operations.
- Transferring Medicare provider direct reimbursement functions and staff from the Bureau of Support Services, Office of the Associate Administrator for Management and Support Services (OAAMSS), to an organizational location reporting directly to the AAMSS.
- Transferring the Division of Performance Evaluation from the Office of Standards and Performance Evaluation, Bureau of Program Operations, Office of the Associate Administrator for Operations (OAAO), to the Office of Quality Control Programs, Bureau of Quality Control, OAAO.

1. Section FP.20., the Office of the Associate Administrator for Operations (FP), is amended by deleting the last sentence in section FP.20.B.4. in its entirety and by deleting the last three sentences in section FP.20.B.4.b. in their entirety. In both instances, the single sentence deletion in B.4. and the three sentence deletion in B.4.b. begin as follows: "Acts as HCFA control point for GAO and HHS Audit Agency reports. . ."

2. Section FE.20., the Office of Executive Operations (FE), is amended by inserting the following two sentences immediately prior to the last sentence of section FE.20.A. The new sentences will start after the word "memoranda" on line 22 of this section. The new sentences are "Acts as the HCFA control point for GAO and HHS Audit Agency reports. Implements and maintains a follow-up system to assure Agency compliance with audit findings and recommendations, as required."

3. Section FQ.20., the Office of the Associate Administrator for Policy (FQ), is amended by the following actions:

a. Change the organizational title of section FQ.20.A. from Bureau of Program Policy to Bureau of Eligibility, Reimbursement and Coverage. The code (FQA) assigned to the Bureau remains the same.

b. Delete section FQ.20.C.1.d., Division of Congressional Affairs, in its entirety.

c. Change the organizational title of section FQ.20.C.1. from the Office of Legislation and Congressional Affairs to the Office of Legislation. The code (FQCA) will become (FQCC).

d. Delete the functional statement for the Office of Legislation and Congressional Affairs, section FQ.20.C.1. (now the Office of Legislation—reference No. 3.c. above) in it entirety and replace it with the following functional statement. The code (FQCA) will become (FQCC).

1. *Office of Legislation (FQCC).* Directs the legislative planning and operations activities of HCFA. Develops and evaluates recommendations

concerning legislative proposals for changes in health care financing. Develops the long-range HCFA legislative plans. Analyzes and makes recommendations to the Administrator and the Department on related health legislative proposals, including those which may require coordination with programs conducted by other HCFA components or which relate to methods other than health insurance for providing economic security through social insurance. Prepares technical specifications for legislation and coordinates congressional testimony and briefing materials for all of HCFA. Serves as a principal advisor on HCFA's relations with the legislative branch of the Government on substantive program issues. Provides technical assistance to members of Congress and their staffs at legislative mark-up sessions, prepares bill reports on health care financing legislation and provides legislative research and reference services to all of HCFA. Through the Director, Office of Legislation and Policy, coordinates its activities with the Office of the Assistant Secretary for Legislation.

e. Change the administrative codes of the three remaining divisions within section FQ.20.C.1., Office of Legislation (reference c above) as follows:

- Section FQ.20.C.1.a., Division of Coverage and Benefits, from code (FQCA1) to (FQCC1).
- Section FQ.20.C.1.b., Division of Health Systems, from code (FQCA2) to (FQCC2).
- Section FQ.20.C.1.c, Division of Administration and Reimbursement, from code (FQCA3) to (FQCC3).

f. Add the following new organization component entitled "Congressional Affairs Staff" (FQC–1), including functional statement and administrative code, at the end of section FQ.20.C., Office of Legislation and Policy (FQC), but before the newly titled Office of Legislation (FQCC) (reference No. 3 above). Consequently, the Congressional Affairs staff will become number 1. under section FQ.20.C., the Office of Legislation will become number 2. and the Office of Policy Analysis will become number 3.

1. *Congressional Affairs Staff (FQC–1).* Answers constituents' inquiries about HCFA's programs, policies and initiatives. Responds to congressional requests and inquiries on HCFA's programs and organization. Refers congressional requests to appropriate HCFA components and coordinates responses to those requests. Provides HCFA staff with timely information on both congressional actions and interests and concerns of outside interest groups and organizations. Maintains an active liaison with congressional offices in order to anticipate their requests and their reactions to HCFA policies, programs and initiatives. Confers with congressional offices to provide them with requested information on HCFA initiatives and actions and coordinates meetings between congressional offices and HCFA staff. Conducts seminars and briefings for congressional staff on organizational and operational issues. Maintains relationships with selected interest groups and organizations. Serves as HCFA's point of contact with the Department's Congressional Liaison Office; coordinates and consults with that office on issues of significant interest and coordinates congressional inquiries with the appropriate HCFA Regional Office.

g. Delete the functional statement for section FQ.20.A.4., Office of Coverage Policy, in its entirety and replace it with the following functional statement. The current administrative code (FQA4) will be changed to (FQA7).

4. *Office of Coverage Policy (FQA7).* Develops, evaluates and reviews national policies and standards concerning the coverage and utilization effectiveness of items and services under the HCFA programs provided by hospitals, long-term care facilities, home health agencies, alternative health care organizations, physicians, health practioners, clinics, laboratories and other health care providers and suppliers. Serves as the principal organization within HCFA for evaluating the medical aspects of Medicare and Medicaid coverage issues and for health quality and safety standards. Directs, manages, plans and coordinates the development and evaluation of coverage policies and data analysis systems for HCFA's End-Stage Renal Disease (ESRD) program. Determines, in conjunction with other interested HCFA components, ESRD information requirements and analyzes information necessary to support ESRD coverage policy decisions. Relying on data inputs from other HCFA and Department sources, assumes the lead in preparation of the Annual Report to Congress on the ESRD program. Develops, evaluates and reviews national coverage issues concerning the amount, duration, scope, reasonableness and necessity for medical and related services. Develops, evaluates and reviews health and safety standards for providers and suppliers of health services under Medicare, Medicaid and other Federal programs. Conducts a review of coverage aspects of State plans under the Medicaid program. Develops policies defining services which are reimbursable under the Early and Periodic Screening, Diagnosis and Treatment (EPSDT) program and interprets these policies by responding to inquiries from State agencies, regional offices, congressional staffs, professional societies and the general public. Updates and supplements those portions of current EPSDT regulations pertaining to the definition of screening and treatment services and revises the State Medicaid Manual to reflect policy changes relative to EPSDT screening and treatment services. Develops, evaluates and reviews national policies concerning the coverage of new and unusual items and services and those medical items and services which are excluded from coverage. Develops, evaluates and reviews regulations, guidelines and instructions required for the dissemination of program policies to program contractors, State agencies and the health care field. Identifies, studies and makes recommendations for modifying HCFA program coverage policies and health and safety standards to reflect changes in beneficiary health care needs, program objectives and the health care delivery system. Conducts ongoing analyses of innovative treatment patterns, referral patterns and activities that improve health care outcomes. Analyzes and recommends legislative or other remedies to improve coverage, health and safety standards and utilization effectiveness. Coordinates with other organizations, including the Public Health Service, which share responsibilities for health quality and standards. Maintains ongoing liaison with professional groups, standards setting organizations and members of the general public on issues relative to the area of responsibility.

h. Change the administrative codes of the two current divisions within section FQ.20.A.4., Office of Coverage Policy, as follows:

- Section FQ.20.A.4.a., Division of Provider Services Coverage Policy, from code (FQA41) to code (FQA71).
- Section FQ.20.A.4.b., Division of Medical Services Coverage Policy, from code (FQA42) to code (FQA72).

i. Add the new section FQ.20.A.4.c., Division of Provider and Supplier Standards, including functional statement and administrative code, to the Office of Coverage Policy, section FQ.20.A.4. The new division is to be entered after the Division of Medical Services Coverage Policy (FQA72) but before the Office of Reimbursement Policy (FQA5). The new addition is as follows:

c. *Division of Provider and Supplier Standards (FQA73).* Develops, evaluates

and reviews health and safety standards and other related policies for providers and suppliers of health services under Medicare, Medicaid and other Federal programs. Reviews the effectiveness of existing standards. Develops standards for new types of facilities or services recognizing advances in medical practice and technology. Monitors selected health care and health related provisions of the Social Security Act pertinent to HCFA's mission and coordinates these functions with the Office of the Associate Administrator for Operations. Conducts liaison with professional groups and standards setting organizations and is the HCFA center for health quality and safety standards, policies and procedures.

4. Section FP.20., the Office of the Associate Administrator for Operations (FP), is amended by deleting the functional statements and administrative codes for section FP.20.C.4., Office of Standards and Certification (FPE4), and all of associated divisions, i.e., a. Division of Hospital Services (FPE41), b. Division of Laboratory and Ambulatory Services (FPE42), c. Division of Long-Term Care (FPE43), d. Division of Program Analysis and Training (FPE44) and e. Division of Field Operations (FPE45) in their entirety and replacing them with the following:

4. *Office of Survey and Certification (FPE5).* Develops and establishes procedures and oversees the implementation and enforcement of health and safety standards for providers and suppliers of health services under Medicare, Medicaid and other Federal programs. Administers and monitors the nationwide Medicare and Medicaid provider and supplier certification program. Develops procedures/guidelines for regional certification responsibilities under Medicare and Medicaid. Monitors and validates the application of health and safety standards and the adherence to Medicare and Medicaid policies by State survey agencies and other approved accrediting bodies. Monitors and evaluates regional performance of oversight responsibilities in survey and certification. Reviews the validity and effectiveness of existing standards. Develops and analyzes national data on the administration of the Medicare and Medicaid standards and certification program and develops methods for improvement. Conducts training, informational and other initiatives for improving the performance of State survey agencies and the providers and suppliers under the Medicare and Medicaid program.

a. *Division of Data and Program Analysis (FPE56).* Designs, tests and manages the centralized Medicare/Medicaid Automated Certification System (MMACS) to provide program related and health management information on all providers and suppliers participating in the Medicare and Medicaid programs. Develops data input and output requirements, specifications for modification of computer processing activities. Provides technical assistance and training to central and regional office personnel involved in operation of MMACS equipment, forms and utilization of data output. Develops new approaches for standards and certification on the basis of needs identified through MMACS data, regional office direct surveys, comments from State survey agencies and other program areas. Tests improvements in the State agencies certification process including modification of reporting procedures, utilization of personnel and use of financial incentives. Develops criteria for setting surveyor qualifications and methods for reviewing the performance of survey personnel. Collects and analyzes data derived from MMACS for use by regional offices and State agencies in pinpointing specific certification problems and for development of criteria and procedures to assess the quality of care being recorded by Medicare and Medicaid providers. Examines and revises, in coordination with other standards and certification divisions, the survey report forms, guidelines and instructions to ensure consistency of application and interpretation by both surveyors and providers.

b. *Division of Survey Procedures and Training (FPE57).* Develops and coordinates administrative and fiscal procedures and guidelines for State survey and certification agencies. Monitors and evaluates State agency operations and certification functions through the comprehensive program review of State agency activities. Develops procedures for evaluating the effectiveness of regional office oversight of State survey agency performance. Makes periodic onsite reviews of the Division of Health Standards and Quality in regional offices and of State agencies. Assists regional offices by arranging for supplemental personnel to participate in direct sample surveys of provider institutions and by participating in program and administrative reviews conducted by communications to State agencies and regional offices relating to provider certification and State agency management. Develops and conducts a survey and certification training program for regional and State agency personnel. Promotes provider/supplier personnel training programs based on analysis of deficiency patterns, study results and suggestions from provider groups. Develops and/or updates existing training materials and techniques for surveyor and provider personnel. Provides technical assistance to educational institutions, professional organizations and State agencies in developing training activities.

c. *Division of Institutional and Ambulatory Services (FPE58).* Directs and coordinates activities that implement, enforce and monitor health quality and safety standards and other health care procedures for all providers and suppliers under Medicare, Medicaid and other Federal programs. Coordinates and applies regulations, procedures and guidelines for the improvement of standards enforcement and validation processes. Reviews and analyzes existing standards to determine their initial and continued effectiveness and impact on utilization, quality and cost of provider and supplier services and initiates new or revised instructions or standards, as necessary. Develops, reviews and maintains guidelines and instructions for interpretation, implementation and enforcement of health quality and safety standards by the regional offices and State survey agencies. Prepares provider/supplier participation materials and instructions. Develops survey and certification forms and procedures utilized by State survey agencies in the survey and certification process. Monitors the enforcement of health quality and safety standards and compliance with established policy by State survey agencies and other public and private organizations participating in the Medicare/Medicaid program. Directs and coordinates division functions with the Bureau of Program Operations and the Bureau of Eligibility, Reimbursement and Coverage. Conducts liaison with professional groups and standards setting organizations. Serves as the focal point for responding to regional office, State agency, congressional, organizational and individual inquiries relating to application of health and safety requirements and certification procedures for participating providers and suppliers.

5. Section FQ.10., Office of the Associate Administrator for Policy (FQ), is amended by changing the organization title of section FQ.10.A. from the Bureau of Program Policy

(FQA) to the Bureau of Eligibility, Reimbursement and Coverage (FQA). The administrative code (FQA) will remain the same.

6. Section FH.20., Office of the Associate Administrator for Management and Support Services (FH), is amended by the following actions within section FH.20.D., Bureau of Data Management and Strategy (FHE):

a. Section FH.20.D.1.b., Division of Medicaid Cost Estimates (FHE12), is amended by the following actions:

• Eliminate the first three words in the third sentence which appear on lines 8 and 9 of the section, i.e., "Conducts studies measuring . . ." and replace them with the following six words, "Develops descriptive information detailing and projecting . . .". The remainder of the sentence continues as stated "The effect of changes . . .".

• Add the following sentence immediately prior to the next to last sentence of the section. The new sentence will start after the word "costs" on line 19 and will become the third to last sentence of the section. The new sentence is "Develops and publishes routine descriptive Medicaid statistical information."

• Eliminate the last three words of the seventh sentence which appears on line 22 of the section, i.e., "and administrative costs" in their entirety. The seventh sentence will now stop after the word "benefits" on line 21 of the section.

• Eliminate the last sentence, which is located on lines 22 through 25 of the section, in its entirety and replace it with the following, "Provides actuarial and statistical consultation to other HCFA components, States or outside organizations."

b. Section FH.20.D.2., Office of Statistics and Data Management (FHE2), is amended by deleting the words "data entry" on lines 14 and 15, respectively. The revised sentence will now read "Manages and updates HCFA statistical data bases and provides programming and coding services to other HCFA components."

c. Section FH.20.D.2.a., Division of Data Production (FHE21), is amended by adding the following sentence immediately after the second sentence of the section. The new sentence will start after the acronym "HCFA" on line 7 and become the third sentence of the section. The new sentence is "Develops descriptive Medicare statistical information for publication."

d. Section FH.20.D.2.d., Division of Information Analysis (FHE24), is amended by adding the following sentence immediately after the first sentence of the section. The new sentence will start after the word "files" on line 12 of the section and will become the second sentence of the section. The new sentence is "Prepares text and publishes descriptive Medicare statistical information and combined Medicare/Medicaid reports."

7. Section FQ.20.B., Office of Research and Demonstrations (FQB), is amended by the following actions:

a. Delete the last sentence of section FQ.20.B.1., Office of Demonstrations and Evaluation (FQBA), and replace it with the following sentence, "Provides technical advice and consultation to other Federal and external organizations on potential experimental projects and publishes research analytic program statistical information and results based on analyses of experimental findings." The sentence to be replaced starts on line 23 of the section.

b. Delete the last sentence of section FQ.20.B.2., Office of Research (FQBB), and replace it with the following sentence, "Makes available research analytic program information to assist in the formation of reimbursement and other policy questions and publishes results and analyses of these findings." The sentence to be replaced starts on line 21 of the section.

c. Delete the last sentence of section FQ.20.B.2.b., Division of Beneficiary Studies (FQBB2), and replace it with the following sentence, "Provides research analytic program statistical information and assistance upon request for legislative planning and policymaking as well as to other Federal programs requiring data on the Medicare and Medicaid populations." The sentence to be replaced starts on line 25 of the section.

8. Section FP.20., the Office of the Associate Administrator for Operations (FP), is amended by deleting section FP.20.A.3.d., Division of Budget (FPA34), including administrative code and functional statement, in its entirety and replacing it with the following new divisional title, administrative code and functional statement.

d. *Division of Contractor Financial Management (FPA36).* Formulates and approves the national budget for Medicare contractor administrative costs. Directs the Medicare contractor budget process and the cash management letter-of-credit system. Sets requirements and procedures for contractors and regional offices to prepare and submit periodic budget estimates and reports. Analyzes and evaluates budget estimates submitted by contractors for ADP systems proposals. Participates in experimental contract Request for Proposal (RFP) preparation and proposal evaluation. Participates in negotiotions and approval of all related price adjustments. Reviews periodic contractor expenditure reports to evaluate budget execution and determinations of the allowability of costs. Designs, maintains and, as necessary, prepares specifications to revise the automated Contractor Administrative Cost Information System (CACIS). Analyzes contractor administrative cost data and trends. Directs and prepares instructions to guide regional offices in conducting reviews of specific financial management areas and reviews regional office performance to assure consistency in implementation of instructions. Develops, implements and monitors cash management letter-of-credit procedures for contractors and servicing banks.

9. Section FP.20., the Office of the Associate Administrator for Operations (FP), is amended by deleting section FP.20.A.3.e., Division of Financial Operations (FPA35), including administrative code an functional statement, in its entirety and replacing it with the following new divisional title, administrative code and functional statement.

e. *Division of State Agency Financial Management (FPA37).* Establishes policies and procedures by which Medicaid State agencies and regional offices submit periodic budget estimates and reports. Analyzes budget estimates and formulates the national Medicaid budget. Administers the State grants process for administrative and program payments. Approves all State claims for Federal reimbursement under title XIX. Reviews periodic State agency expenditure reports to evaluate budget execution and determine the allowability of costs. Reviews regional office disallowances of State claims for Medicaid reimbursements. Serves as focal point within the Bureau of Program Operations for defense of disallowance decisions before the Grant Appeals Board (GAB), analyzes and disseminates GAB decisions and monitors their implementation. Sets and interprets fiscal requirements and procedures for use by States and regional offices. Sets HCFA instructions for regional staff concerning the financial review of the Medicaid program and reviews regional office performance to assure consistency in implementation of instructions. Interprets cost reimbursement principles and policies related to operational accounting issues. Reviews and recommends approval/disapproval of funding of State agency ADP systems proposals. Determines compliance with

accepted accounting principles and procedures. Directs and coordinates the fiscal aspects of the title XIX program compliance activities.

10. Section FH.20., the Office of the Associate Administrator for Management and Support Services, is amended by the following actions:

a. Delete the second sentence of section FH.20.B., Bureau of Support Services (FHB), in its entirety. The sentence to be deleted reads as follows: "Provides reimbursement services to providers that choose to receive Medicare payments directly from HCFA."

b. Delete all functional statements and administrative codes for section FH.20. B.6., Office of Direct Reimbursement (FHB6), including all components; i.e., a. Technical Support Staff (FHB6–1), b. Division of Provider Reimbursement (FHB62), c. Division of Claims Processing (FHB63) and d. Division of Health Sevice Studies (FHB64).

c. Add the following new organization components including functional statements and administrative codes at the end of the section FH.20.D.3., the Office of Information Planning and Development (FHE3), but before section FP.10., the Office of the Associate Administrator for Operations.

E. *Office of Direct Reimbursement (FHF).* Directs HCFA's function of reimbursing those Medicare providers who are reimbursed directly by the Federal government. Plans and designs operations systems and develops methods and procedures for the review, disallowance or authorization of Medicare claims submitted by these providers. Determines the methods and procedures for interim reimbursement and establishes interim reimbursement rates. Receives and analyzes Medicare cost reports submitted by these providers to validate aggregate and program costs to determine final Medicare program payments. Participates with Departmental components in a wide range of experimental health care delivery projects. Performs claims adjudication, cost reimbursement and data collection for demonstration projects. Provides a setting for testing proposed policies and procedures which impact on fiscal intermediary operations and provides the capacity for serving specialized providers.

a. *Technical Support Staff (FHF–1).* Coordinates all assignments, projects and activities involving more than one of the Office's divisions. Provides direction and assistance to assure performance of assigned responsibilities. Serves as a liaison point for communicating with providers of services and with outside organizations whose activities interrelate with the Office of Direct Reimbursement (ODR). Carries out a comprehensive internal quality assurance program. Negotiates and awards individual Medicare or joint Medicare/Medicaid audit contracts with CPA firms with respect to direct-dealing providers. Coordinates ODR activities with respect to cost report appeals from providers and beneficiary appeals involving direct-dealing facilities.

b. *Division of Provider Reimbursement (FHF2).* Develops procedures for and establishes interim reimbursement rates for direct-dealing providers. Determines final provider reimbursement. Assesses provider accounting structures and reporting capability to determine reimbursement formulas, arranges for audits and determines final program liability. Plans, directs and coordinates studies of the administrative and fiscal arrangements of municipal hospitals and health care cooperatives to determine the need for and to develop special policies, procedures and audits.

c. *Division of Claims Processing (FHF3).* Plans, directs, coordinates and performs the examination, review, authorization of payment or disallowance of Medicare bills submitted by direct-dealing providers. Designs systems and develops methods and procedures for processing these bills. Collaborates with other HCFA components, as necessary, on problems involving health care reimbursement systems. Determines payment methods, procedures and policies. Programs and maintains electronic operations for provider payment. Determines the amount, method and frequency of utilization adjustments. Participates with HCFA components and other governmental and nongovernmental organizations on projects to develop unified and innovative health care reimbursement mechanisms.

d. *Division of Health Service Studies (FHF4).* Serves as fiscal intermediary for experiments and demonstrations conducted under legislative authorities in the Social Security Act, Public Health Service Act and related legislation. Provides a wide range of duties related to the development, implementation and ongoing operation of the demonstrations. Provides technical advice and assistance, prior to the start of the demonstrations and throughout the period of the experiment, to other bureaus and agencies in developing service definitions, reimbursement protocols, contracts and reporting mechanisms. Designs and establishes information systems for compiling demonstration payment and service data for evaluator use. Develops cost reporting and billing systems. Acts as liaison between governmental agencies, service contractors, evaluation contractors and Medicare carriers and intermediaries participating in demonstration activities.

11. Section FH.10., the Office of the Associate Administrator for Management and Support Services (FH), (Organization), is amended by adding the following new organization component and administrative code. The new component will follow D. the Bureau of Data Management and Strategy (FHE). The new component will read:

E. *The Office of Direct Reimbursement (FHF).*

12. Section FP.20.A., Bureau of Program Operations (FPA), is amended by the following actions:

a. Delete the functional statement for the Bureau of Program Operations (FPA), section FP.20.A., in its entirety and replace it with the following functional statement. The organization title and administrative code remain the same.

A. *Bureau of Program Operations (FPA).* Provides direction and technical guidance for the nationwide administration of HCFA's health care financing programs. Develops, negotiates, executes and manages contracts with Medicare contractors and coordinates review of State plan amendments. Manages Medicare/Medicaid financial management systems and national budgets for State and Medicare contractors. Establishes national policies and procedures for the procurement of claims processing and related services from the private sector. Defines the relative responsibilities of all parties in health care financing operations and designs the operational systems which link these parties. Directs the establishment of standards for contractors and State agencies. Collects, disseminates and analyzes operational data regarding contractor and State agency performance including operational performance in reimbursement and recovery and intermediary reconsideration performance. Directs the processing of Part A beneficiary appeals and beneficiary overpayments. Promotes improved program management through implementing a corrective action strategy and serves as a clearinghouse of best management techniques. Manages HCFA's conference program with State and contractor groups for consultation and information exchange purposes and provides programmatic training for HCFA staff and training

assistance to State contractor staffs for implementing management improvements.

b. Delete the functional statement for the Office of Standards and Performance Evaluation (FPA5), section FP.20.A.5., in its entirety and replace it with the following functional statement. The organization title and administrative code remain the same.

5. Office of Standards and Performance Evaluation (FPA5). Establishes quantitative standards and qualative requirements for contractors, State agencies and fiscal agents participating in the Medicare and Medicaid programs or in experimental arrangements. Coordinates responses to interested organizations prior to formal issuance of new standards and requirements. Develops, implements and maintains the Contractor Inspection and Evaluation Program (CIEP). Designs and coordinates with other HCFA components a system of reports that generate Medicare contractor and Medicaid State agency and fiscal agent data of an administrative and program nature. Prepares reports explaining the nature of the statistical information obtained from the established reporting mechanisms. Establishes general specifications for an automated administrative information system for both Medicare and Medicaid. Reviews and evaluates contractor, State agency and State fiscal agent performance in carrying out HCFA reimbursement policy including determining the correct amount of provider, physician and supplier overepayments. Assists contractors, State agencies and fiscal agents in negotiations related to the acceptability of the technique for determining the amount of overpayment and the method of recovery. When compromises are not appropriate and overpayments are uncollectable, prepares cases and, in general, assists the General Accounting Office, the Office of the General Counsel and the Department of Justice in filing suit. Prepares manual instructions concerning the proper determination and recovery of overpayments. Designs, implements and maintains a Medicare/Medicaid overpayment tracking system. Directs the processing of all Medicare (Part A) and Medicaid beneficiary appeals and beneficiary overpayments. Plans, directs and coordinates the processing of claims submitted for reconsiderations and hearings. Reviews Office of Hearings and Appeals, Social Security Administration decisions.

c. Delete the functional statement for the Division of Performance Evaluation (FPA53), section FP.20.A.5.c., in its entirety. This division is being transferred to the Bureau of Quality Control. The organization title remains the same. The administrative code is changed from (FPA53) to (FPC23). The new functional statement for the Division of Performance Evaluation, to be located at section FP.20.B.C., reads as follows:

C. *Division of Performance Evaluation (FPC23).* Develops a program for evaluating Medicare contractors and Medicaid State agencies and fiscal agents in their performance against established standards and qualitative requirements. Develops, implements and maintains the Annual Contractor Evaluation Program (ACEP) for the inspection and evaluation of contractors and the State Assessment Program for the evaluation of State agencies and fiscal agents. Provides technical direction and guidance to regional offices in their overall evaluation of the performance of contractors, State agencies and fiscal agents. Reviews Contractor Inspection and Evaluation Program reports, ACEP reports and State Assessment reports to determine the operational effectiveness of contractors, State agencies or fiscal agents. Identifies significant operational problems and/or issues of national concern with respect to contractors and State agencies. Coordinates appropriate Bureau action and works with other HCFA components to take necessary corrective action. Prepares comparative rankings of contractor and State agency performance. Prepares recommendations for the Associate Administrator for Operations concerning limitations, withholding of Federal funds, terminations or nonrenewal of Medicare contractors or any sanctions or adverse actions against Medicaid State agencies or fiscal agents arising as a result of these reviews. Coordinates the review of regional office evaluations of contractor and State agency compliance with Central Office policies and procedures.

13. Section FP.20.B., Bureau of Quality Control (FPC), is amended by the following actions:

a. Delete the functional statement for the Bureau of Quality Control (FPC), section FP.20.B., in its entirety and replace it with the following functional statement. The organization title and administrative code remain the same.

B. *Bureau of Quality Control (FPC).* Manages statistical-based quality control and penalty programs in the areas of end-of-line bill review, eligibility review, third party liability, Part A quality assurance and utilization control and develops similar additional quality control programs which measure the financial integrity of Medicare and Medicaid. Following coordination with pertinent HCFA components, notifies carriers, fiscal intermediaries and State agencies of findings resulting from quality control programs. Makes recommendations to the Associate Administrator for Operations regarding financial penalties authorized and determined appropriate under regulations. Assists State Medicaid contractors and Medicare contractors in improving the management of federally required quality control programs. Develops, operates and manages a program for the performance evaluation of Medicare contractors and Medicaid State agencies and fiscal agents. Reviews program expenditure information to detect patterns of erroneous expenditures. Reviews selected providers to identify patterns of improper expenditures and assures that corrective action is taken by responsible HCFA components. Develops and conducts an internal HCFA audit program evaluating the effectiveness of HCFA operating policies and procedures with a focus on those which may be resulting in erroneous expenditures. Plans and conducts comprehensive validations of payments made to providers participating in HCFA programs. Participates with other HCFA components in the development of regulations, policies, and procedures for program administration.

b. Delete the functional statement for the Office of Quality Control Programs (FPC2), section FP.20.B.2., in its entirety and replace it with the following functional statement. The organization title and administrative code remain the same.

2. *Office of Quality Control Programs (FPC2).* Designs and performs systematic reviews of HCFA carriers, intermediaries, State agencies, HCFA's Office of Direct Reimbursement and other related entities to evaluate performance of individual fiscal agents and to identify systemic program management problems. Applies established standards in evaluating the performance of HCFA agents. Develops and applies standards and guidelines for State Medicaid quality control programs, State utilization control programs, Part A Quality Assurance Program, Part B end-of-line review, third party liability and other quality control and assessment programs. Evaluates performance trend data and other indicators of priority problems in order to design and implement new quality control/assessment programs which assure proper dissemination and

oversight of Federal funds by carriers, intermediaries, State agencies and other HCFA-related organizations. Initiates recommendations for financial penalties and disallowances on the basis of formal review results. Evaluates regional performance in operating quality control-assessment programs. Participates with other HCFA components in developing regulations, policies and procedures for improved program administration. Provides consultation and technical guidance to carriers, fiscal intermediaries, State agencies and regional ofices, as necessary.

Dated: December 28, 1982.

Richard S. Schweiker,

Secretary.

[FR Doc. 83-242 Filed 1-4-83; 8:45 am]

BILLING CODE 4120-03-M

National Institutes of Health

Biometry and Epidemiology Contract Review Committee; Meeting

Pursuant to Public Law 92-463, notice is hereby given of the meeting of the Biometry and Epidemiology Contract Review Committee, National Cancer Institute, January 27, 1983, Building 31C, Conference Room 9, National Institutes of Health, Bethesda, Maryland 20205. This meeting will be open to the public on January 27, from 9:30 a.m. to 10:00 a.m., to review administrative details. Attendance by the public will be limited to space available

In accordance with provisions set forth in Sections 552b(c) (4) and 552b(c)(6), Title 5, U.S. Code and Section 10(d) of Pub. L. 92-463, the meeting will be closed to the public on January 27, from 10:00 a.m. to adjournment, for the review, discussion and evaluation of individual contract proposals. These proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the proposals, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mrs. Winifred Lumsden, the Committee Management Officer, National Cancer Institute, Building 31, Room 10A06, National Institutes of Health, Bethesda, Maryland 20205 (301/496-5708) will provide summaries of the meeting and rosters of committee members, upon request.

Dr. Wilna A. Woods, Executive Secretary, Biometry and Epidemiology Contract Review Committee, National Cancer Institute, Westwood Building, Room 822, National Institutes of Health, Bethesda, Maryland 20205 (301/496-7153) will furnish substantive program information.

Dated: December 16, 1982.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 83-152 Filed 1-4-83; 8:45 am]

BILLING CODE 4140-01-M

Blood Diseases and Resources Advisory Committee; Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Blood Diseases and Resources Advisory Committee, National Heart, Lung, and Blood Institute, January 17-18, 1983, National Institutes of Health, Building 31, Conference Room 8, Bethesda, Maryland 20205.

The entire meeting will be open to the public from 9:00 AM-5:00 PM, January 17, 1983, and from 8:30 AM-4:30 PM, January 18, 1983, to discuss the status of the Blood Diseases and Resources program needs and opportunities. Attendance by the public will be limited to space available.

Ms. Terry Bellicha, Chief, Public Inquiries and Reports Branch, National Heart, Lung, and Blood Institute, Building 31, Room 4A21A, National Institutes of Health, Bethesda, Maryland 20205, phone (301) 496-4236, will provide summaries of the meeting and rosters of the committee members.

Dr. Fann Harding, Special Assistant to the Director, Division of Blood Diseases and Resources, National Heart, Lung, and Blood Institute, Federal Building, Room 5A-08, National Institutes of Health, Bethesda, Maryland 20205, phone (301) 496-1817, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program No. 13.839, Blood Diseases and Resources Research, National Institutes of Health)

Dated: December 1, 1982.

Betty J. Beveridge,

NIH Committee Management Officer.

[FR Doc. 83-151 Filed 1-4-83; 8:45 am]

BILLING CODE 4140-01-M

Social Security Administration

Primary Resettlement of Cuban Entrants in the United States; Announcement of the Availability of Grant Funds

Closing Date: None. Due to the continuing and urgent need to resettle Cuban entrants, applications will be considered for possible funding as soon as they are received. The Director invites applications for the primary resettlement of Cuban entrants whom the United States Attorney General has decided can be released from various federal detention sites.

Authorization: Authority for this activity is contained in Section 501(c) of the Refugee Education Assistance Act of 1980 (Pub. L. 96-422). No Catalog of Federal Domestic Assistance number has been assigned.

Available Funds: It is expected that up to $120,000 will be available for these new grants in fiscal year 1983. The Director estimates that these funds could support 100 awards at $1,200 each. However, the Office of Refugee Resettlement is not bound to award a specific number of grants unless that number is otherwise specified by statute or regulation.

The Federal Government will provide for the transportation of the entrant from the place of detention to the place of resettlement.

SUMMARY: The U.S. Department of Health and Human Services, Office of Refugee Resettlement announces the availability of federal funds for grants to support the resettlement of Cuban entrants currently under Immigration and Naturalization Service (INS) detention at various federal sites; most detainees are held at the maximum security United States Penitentiary, Atlanta. Each application will be judged on its merits.

SUPPLEMENTARY INFORMATION:

I. Background

The Honorable Marvin Shoob, United States District Court Judge, Northern District of Georgia has ordered the Office of Refugee Resettlement (ORR) to prepare and implement a plan for the resettlement of some Cuban detainees held at various federal detention sites; most entrants are detained at the maximum security United States Penitentiary, Atlanta.

These detainees are persons who were placed in detention directly from the "Mariel Boatlift" and the Cuban refugee camps, or who were previously placed in the community and for various reasons have had their parole revoked by officials of the Immigration and Naturalization Service (INS). They have now been determined to be releasable into the community by the Commissioner of INS when suitable sponsorship can be arranged.

In July 1981, the Attorney General established a "Status Review Plan" which provides for periodic review of the releasability of each Cuban entrant held at the various detention sites including the United States Penitentiary,

Atlanta. Since the establishment of this review plan, over 1300 detainees have been released under the plan.

Those persons considered releasable have normally been placed in residential programs which provide a structured living experience which includes intensive counseling and social services. These programs are provided by organizations which are grantees of ORR. Other Cuban detainees approved for release have been provided family reunification services through the voluntary agencies if the family sponsorships could provide proper support.

Judge Shoob has determined that certain releasable detainees are not being quickly resettled from detention. He has ordered that the Office of Refugee Resettlement supplement traditional placement options with an individual non-relative sponsorship program.

The Director of ORR wishes to emphasize that the agency will not consider a releasable detainee for this sponsorship program unless other current placement options have been exhausted.

Only those Cuban detainees releasable without conditions who have been waiting placement for a period longer than 60 days, and for whom no organizational or institutional placement is available, will be considered for the program described in this announcement.

II. Purpose and Scope

The purpose of these awards is to provide resettlement services for single, adult, Cuban entrants, with no minor children, averaging 20–35 years of age. The entrants to be served under this program are the members of the class Fernandez-Roque v. Smith et al. They are presently held in INS detection at various federal sites; most are detained at the United States Penitentiary, Atlanta and have been approved for release and resettlement by the Attorney General, United States Department of Justice.

The detainees generally have low levels of education, inconsistent or sporadic employment histories and have previously exhibited behavior, in some instances criminal, which may hinder their successful integration into the community unless intensive social services and a structured living experience are provided.

These entrants are considered difficult to resettle in that they present a variety of chronic and special needs which, although different in degree for each entrant, are such that they require intensive acculturation, English language training, employment and adjustment counseling services.

Services provided through these resettlement grants should have the specific goal of assisting the entrant to gain self-sufficiency through services leading to permanent employment and social adaptation and integration into the community. Individual sponsors are expected to assist the entrant in receiving their services for a period of 12 months. This period of support begins at the time the entrant is resettled with the individual sponsor.

Program Services are described in the "Application Contents," Section IV.

III. Definition of Entrant

The definition of a Cuban entrant is found in P.L. 96–422 (Section 502(e)) which defines a Cuban or Haitian entrant as:

1. Any individual granted parole status as a Cuban/Haitian Entrant (Status Pending) or granted any other special status subsequently established under the immigration law for nationals of Cuba or Haiti, regardless of the status of the individual at the time assistance or services are provided; and

2. Any other national of Cuba or Haiti

(A) Who—

(i) Was paroled into the United States and has not acquired any other status under the Immigration and Nationality Act;

(ii) Is the subject of exclusion or deportation proceedings under the Immigration and Nationality Act; or

(iii) Has an application for asylum pending with the Immigration and Naturalization Service; and

(B) With respect to whom a final nonappealable, and legally enforceable order of exclusion or deportation has not been entered.

IV. Application Contents

The applicant is required to provide a detailed description of how he/she will meet the program requirements described in this notice.

Applications will be evaluated by ORR. Selection will be based upon evaluative criteria (See Section IX, Criteria for Evaluating Applications). Each application will be judged independently; applications will be reviewed and evaluated as they are received.

Final selection of potential sponsors will be determined after a personal interview of the applicant by ORR staff.

The Director of ORR emphasizes that acceptance as a potential sponsor does not guarantee that a detainee will be sponsored to a particular individual. ORR reserves the right to match individual detainees and sponsors based upon ORR's judgment of a detainee's needs, of the sponsor's ability to meet those needs, and of the number of Cuban entrants needing individual sponsors.

(A) *Eligibility Requirements:*

Potential applicants for this resettlement program must meet the following eligibility requirements:

(1) Be 21 years of age or older;

(2) Be self-supporting and a non-public assistance recipient;

(3) Be a United States citizen or possess resident alien status; and

(4) Be able to communicate in English and Spanish.

(B) *Application:* The ORR Sponsorship Application Form will be the primary basis for evaluating an individual's capacity and ability to serve the special needs of this population.

Applicants must provide the following information in detail on the ORR Sponsorship Application Form:

Section I. Identifying Data

(1) Name.
(2) Address.
(3) Telephone number.
(4) Data of Birth.
(5) Sex.
(6) Citizenship or Immigration Status.
(7) Employer and dates of employment.
(8) Source(s) and amount(s) of income.
(9) Language ability, both Spanish and English.

Section II. Reason for Application

You must describe those reasons which have prompted your application for sponsorship.

Section III. Personal Assessment

You must describe your personal skills, abilities and experiences which will enhance the sponsorship process.

Section IV. Description of Client Needs

You must provide an assessment of the personal needs of entrants who have been held in long-term confinement.

Section V. Program/Service Components

(1) *Care and Maintenance*

Describe, in detail, how you will provide or arrange for the basic needs of the entrant in the following areas: (The entrant should not be allowed to develop a long-term economic dependency on the sponsor.)

(a) Food, or food allowance, to provide for three meals per day;

(b) Weekly spending money;

(c) Personal items (i.e., toothpaste, soap, shaving articles, etc.);

(d) Clothing which is appropriate for the area of resettlement and for employment;

(e) Transportation for employment and recreation; and

(f) Housing.

(1) If the entrant is to temporarily live in the sponsor's home, the applicant must identify or describe:

(a) The home (i.e., single family home, multi-family home, apartment building) and the location of the neighborhood (i.e., rural, suburban, inner-city, business or residential area);

(b) Sleeping arrangements for the entrant (will the entrant have his own room or will he share a room with others?);

(c) All individuals, including non-relatives, who are living in the home;

(d) A plan for eventual independent living.

(2) If you will provide an apartment or room, outside your home, you must describe:

(a) How you will ensure the living space will be available upon the arrival of the entrant;

(b) A plan to ensure monthly or weekly payment of rent; and

(c) How you will ensure that the apartment or room has sufficient furnishings including bed, dresser, table, chairs and necessary household utensils. All living arrangements must conform to minimum local health, safety and zoning standards.

(2) *Medical Care*

You must describe how you will ensure that:

(a) The entrant will be immediately enrolled in a local medical assistance progam such as medicaid, or if medicaid is unavailable, be provided coverage by private health insurance; and

(b) Routine and emergency medical care will be available as needed.

(3) *Adjustment Counseling Services*

You must describe how you will provide adjustment counseling services for the entrant. This description must identify how this service will be provided and if payment will be required, how you will pay for it.

(4) *Local Social Services*

You will be evaluated as to how you will provide the following services:

(a) English language training;

(b) Acculturation/orientation; and

(c) Recreation.

You must describe:

(1) Those services listed above which will be available to the entrant and identify the community resource which will provide the services; and

(2) If payment will be required, how you will pay for it;

(5) *Employment or Employment Training*

The primary goal of this sponsorship program is to help the entrant become self-supporting. You must show how you will assist the entrant in finding and keeping a full-time permanent job or how you will enroll the entrant in a training program which will result in full-time permanent employment.

(C) Additional Information

(1) You must submit three personal character references with the ORR Sponsorship Application Form. These letters can be from anyone in the community who has knowledge of you and your ability to provide a sponsorship (i.e., clergyman, employer, credit reference, physician, community leader, etc.).

(2) You must submit with the ORR Sponsorship Application Form documentation of citizenship or resident alien status (a copy of your birth certificate, the number and date of your naturalization papers or the Alien Registration Number on your "green card").

(3) Cuban/Haitian entrants are not eligible to act as sponsors under this program.

(4) ORR will subject each application to a police records check.

(5) All applicants will be screened according to evaluative criteria described in Section IX. All applicants receiving a score of 65 or higher will be considered for a personal interview with ORR staff, depending on ORR's need for sponsors. Final selection by the Director of ORR will be made after this interview.

V. Eligible Grantees

Participation under this announcement is limited to individuals. Public or private organizations and agencies interested in participating in a similar program are invited to submit applications under a separate ORR announcement. For information, contact individuals listed in Section VII (Application and Approval).

VI. OMB A-95

Applications submitted in response to this notice are not subject to review by State and area-wide clearinghouses under the procedures detailed in Part 1 of Office of Management and Budget (OMB) Circular Number A-95.

VII. Application and Approval

Applications will be evaluated on the basis of weighted criteria which are described in Section IX.

For programmatic information, please contact Deni Blackburn or Kenneth Leutbecker at 1-800-424-9304 or (202) 245-0979. For an application kit and budgetary information, please contact Robert L. Robins, (202) 472-4440, or write to Grants Management Branch, Office of Refugee Resettlement, Room 1229, 330 C Street, SW., Washington, D.C. 20201.

VIII. Applicable Regulations

None.

IX. Criteria for Evaluating Applications

Applications will be evaluated on the following basis:

(A) Realistic personal reasons which prompted the sponsorship application as described in the *Reason for Application* (IV, B, Section II) (10 points).

(B) A realistic evaluation of personal skills, abilities and strengths as described in the *Personal Assessment* (IV, B, Section III) (15 points).

(C) A clear understanding by the sponsor of the needs of Cuban entrants as stated in the *Description of Client Needs* (IV, B, Section IV) (15 points).

(D) The ability to provide needed services as described in (IV, B, Section V, Nos. 1, 2, and 3) including:

(a) Care and maintenance;

(b) Medical care;

(c) Adjustment counseling;

(d) English language training, acculturation/orientation and recreation services (30 points).

(E) An understanding of the importance of helping the entrant become self-supporting as reflected in the *Employment or Training Section* (IV, B, Section V, #5) (10 points).

(F) Individual capability and ability to provide the necessary sponsorship services as described in the letters of reference (20 points).

All applicants receiving a score of 65 or higher will be considered for a personal interview depending upon ORR's need for sponsors. All applicants receiving a score of 64 or below will be notified in writing by ORR that they will not be considered as sponsors.

X. Record and Reports

(A) *Records*

Grantees will be required to maintain individual records covering:

(1) How grant monies were spent;

(2) What social services were provided to the entrant;

(3) Attempts to arrange for social services;

(4) Contacts made with ORR; and

(5) Contacts with the police.

(B) *Reports*

ORR will provide the sponsor with quarterly reporting forms. These reports will be due 30 days after the last calendar day of each quarter. In 1983, the due dates are April 30, July 30 and

October 30. All records and reports must be in English.

(C) *Weekly Reporting Requirements*

Each grantee will be required to report on a weekly basis (either by telephone or in writing, whichever is easier for the grantee) information about:

(1) The present location of the entrant, including address and telephone number;

(2) Services being provided to the entrant;

(3) Who is providing the services;

(4) Whether the entrant is working; and

(5) Whether the entrant, during the reporting period, has had contact with any law enforcement agencies and reason for contact.

XI. Grant Support

(A) The grant award is intended to assist the entrant for a period of one year.

(B) The grant payments will be made on a quarterly basis.

(C) Grant awards will not exceed $1200. Payments, in the amount of $300, will be made quarterly but only if the sponsor has met all grant requirements. See Section X B, & C.

(D) Persons sponsored under this program would be eligible for benefits in those States participating in the Cuban/Haitian Entrant Program; however, the Director of the Office of Refugee Resettlement assumes that sponsors would make every effort to support the entrant so that it would be unnecessary that welfare benefits be used. Social services for individuals sponsored under this program would generally be available only in those States receiving funds from the Office of Refugee Resettlement under the Cuban/Haitian Entrant Program.

All States but Oregon, Washington, Colorado, Alaska, Hawaii, Iowa, Kansas, Minnesota, Montana, Nevada, Nebraska, New Mexico, North Dakota, South Dakota, Oklahoma, Puerto Rico, Vermont and Wyoming participate in the Cuban/Haitian Entrant Program.

In the participating States, Cuban entrants are eligible for cash and medical assistance for a period of 18 months from the date of parole. In States with general assistance programs, assistance is provided for an additional 18 months if the entrant meets local eligibility criteria. The Director of ORR strongly encourages each sponsor to make every effort to assist the entrant in becoming self-supporting.

XII. Grant Termination

Under certain conditions, the Government could suspend or terminate support from a sponsorship grant if,

—The entrant is returned to Federal custody or is incarcerated in a state or local facility,

—The entrant does not maintain close contact with the sponsor or,

—The sponsor fails to furnish all required reports and services, the Government can immediately stop all further grant payments.

XIII. Additional Conditions

To help ensure the success of a sponsorship, the Director may add special conditions to a grant before or at the time of award.

Dated: December 30, 1982.

James J. Gigante,

Acting Director, Office of Refugee Resettlement, Social Security Administration, U.S. Department of Health and Human Services.

[FR Doc. 83-241 Filed 1-4-83; 8:45 am]

BILLING CODE 4190-11-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Alabama; Requesting Comments on Intent to Rank Tracts and Modified Tract Ranking Factors in the Southern Appalachian Federal Coal Production Region

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent.

SUMMARY: This notice is to advise the public that the Regional Coal Team (RCT) for the Southern Applachian Federal Coal Production Region, Alabama Subregion, will meet to (1) discuss the team's recommendation on the Federal coal leasing levels for the subregion, (2) review and discuss the tract profile data for each of the identified potential lease tracts, (3) discuss the issues that may be addressed in the second round regional lease sale Environmental Impact Statement (EIS), (4) review and discuss the comments on the potential lease tracts and on the ranking factors, and (5) rank the potential lease tracts.

Comments on the tracts that have been identified and factors that will be used by the RCT in the ranking process are requested.

DATES: Public comments on the tracts and the ranking factors must be received by close of business, February 4, 1983. The RCT will meet on February 9, 1983 at 8:30 a.m. This meeting will extend into the evening, if necessary.

ADDRESSES: Comments on the potential lease tracts and the ranking factors should be addressed to Robert L. Todd, Manager, Tuscaloosa Office, Bureau of Land Management, 518 19th Avenue, Tuscaloosa, Alabama 35401, or Jeff Williams, Chief, Branch of Energy and Minerals, Eastern States Office, Bureau of Land Management, 350 South Pickett Street, Alexandria, Virginia 22304. The regional coal team meeting will be held at the Stagecoach Inn, 4810 Skyland Boulevard East, Tuscaloosa, Alabama, 35405.

FOR FURTHER INFORMATION CONTACT: Robert L. Todd Manager, Tuscaloosa Office, (205) 759-5441 or Jeff Williams, Chief, Branch of Energy and Minerals, Eastern States Office (703) 235-3630.

SUPPLEMENTARY INFORMATION:

Leasing Level and EIS Scoping

On October 8, 1982, a notice appeared in the **Federal Register** (47 FR 44621) announcing the intent of the RCT to meet on November 9, 1982 to develop leasing level alternatives for the second round of regional coal leasing in Alabama. Public comment was requested. Pursuant to its responsibilities under 43 CFR 3400.4(b) (47 FR 33114, July 30, 1982), the RCT will review the comments received on the leasing level alternatives. The team will discuss its recommendation to the Secretary of the Interior on a Federal coal leasing level for the subregion and will discuss the range of issues ("scoping") that may be addressed in the regional lease sale EIS. The Secretary, after consultation with the Governor of Alabama, will establish the final leasing level which will be used by the regional coal team when it makes a final selection of possible tracts to be evaluated in the regional lease sale EIS.

Tract Ranking

As many as sixteen potential lease tracts have been identified in the Alabama Subregion of the Southern Appalachian Federal Coal Production Region. These potential lease tracts have been delineated, are being Analyzed on a site-specific basis, and will be ranked and considered for lease sale in mid-1984. Complete description of, and other material on, the potential lease tracts are available for public review at the Tuscaloosa Office, Bureau of Land Management, 518 19th Avenue, Tuscaloosa, Alabama, 35401. The team will rank the tracts on the basis of high, medium, and low desirability for leasing using three categories. These categories are impacts on the natural environment, coal economics, and social and economic impacts that could result if the tracts are leased and mined. These

major categories are further subdivided as follows:

Environmental: (1) Number of wells affected by mining, (2) surface and ground water effects, (3) estimation of percent total basin mined-Federal and private, (4) muncipal reservoirs affected (Lakes Tuscaloosa, Harris, Nicol), (5) wetlands-bottomland and hardwoods, (6) loss of terrestrial productivity, (7) wildlife impacts, (8) acres disturbed, (9) aquatic life.

Coal economics: (1) By-pass/suitability for smal business of public body set asides/existing applications for emergency leases, (2) industry interest, (3) surface of underground mining, (4) deep mine recovery factor, (5) tract potential for development classification: (a) Coal resources, (b) coal quality, (c) transportation, (d) minability, (e) marketability, (f) overall class.

Socio-economics: (1) Royalty to State, (2) severance tax, (3) personal income (payroll), (4) road deterioration, (5) housing impacts, (6) coal trespass (legal complications), (7) surface owner opinion/consent.

For use in the ranking process, the RCT will determine the emphasis to be placed on, and the degree of importance of, each of the categories and subcategories.

In ranking the tracts, the RCT will use tract profile data (tract delineation summary report, social-economic profile, site-specific environmental analysis report, and summary matrices). The team will also use information obtained as a result of consultations with Federal and State agencies, the views of the public as voiced at the RCT meeting held on November 9 in Birmingham, Alabama, comments received in response to this notice, and other considerations such as guidance provided by the Department of the Interior and the Bureau of Land Management.

The boundaries of the tracts may be modified by the Regional Coal Team based on the analyses contained in the tract profile reports. The teams may also defer the ranking of any potential lease tract if it is determined that insufficient tract information is available.

The public is invited to comment on these potential lease tracts and on the factors listed above that will be considered by the RCT in ranking the tracts.

The comments should be addressed to Robert L. Todd, Manager, Tuscaloosa Office, Bureau of Land Management, at the address provided above. Comments must be received by Mr. Todd by close of business February 4, 1983. At the February meeting, the RCT will review the comments received in response to this notice before the team ranks the identified potential lease tracts and makes a preliminary selection from those tracts for analysis in the EIS and second round lease sale in mid-1984.

Dated: December 30, 1982.

G. Curtis Jones, Jr.,

Director.

[FR Doc. 83-208 Filed 1-4-83; 8:45 am]

BILLING CODE 4310-84-M

[NM 54955 TX]

New Mexico; Legal Notice

December 27, 1982.

United States Department of the Interior, Bureau of Land Management, Santa Fe, New Mexico 87501. Pursuant to coal exploration license application NM 54955 TX, members of the public are invited to participate with City Public Service Board of San Antonio, on a pro rata cost sharing basis, in a program for the exploration of coal deposits owned by the United States of America. The lands are located within Camp Swift Military Reservation in Bastrop County, Texas and are described by Army Corps of Engineers Real Estate Tract numbers as follows:

A-21	D-151	G-320
A-22	D-152	G-321
A-31	D-153	G-322
A-37	D-165	G-323
D-131	D-166	G-324
D-133	D-171	G-325
D-137	G-104	G-326
D-139	G193 (Parts 1 &	G-327
D-140	2)	G-328
D-141	G-314	G-329
D-142	G-315	G-330
D-145	G-316	G-331
D-146	G-317	G-322 (Parts 1 &
D-146A	G-318	2)
D-147	G-319	G-350

Any party electing to participate in this exploration program shall notify in writing, both the State Director, Bureau of Land Management, P.O. Box 1449, Santa Fe, New Mexico 87501 and The City Public Service Board of San Antonio, Eugene Duke, Lignite Development, P.O. Box 1771, San Antonio, Texas 78296. Such written notice must be received no later than 30 calendar days after publication of this notice in the **Federal Register.**

This proposed exploration program is for the purpose of determining the quality of the lignite and groundwater in the area and is fully described and will be conducted pursuant to an exploration plan to be approved by the Minerals Management Service and the Bureau of Land Management. A copy of the exploration plan as submitted by the City Public Service Board of San Antonio may be examined at the Bureau of Land Management State Office, Room 3031, Joseph M. Montoya Federal Building and U.S. Post Office, South Federal Place, Santa Fe, New Mexico, the Minerals Management Service, 505 Marquette Avenue, NW, Suite 815, Albuquerque, New Mexico 87102 and the Minerals Management Service, 6136 East 32nd Place, Tulsa, Oklahoma 74135.

Charles W. Luscher,

State Director.

[FR Doc. 83-144 Filed 1-4-83; 8:45 am]

BILLING CODE 4310-84-M

[U-47297]

Salt Lake District, Utah; Postponement of Sale of Public Land

AGENCY: Bureau of Land Management, Salt Lake District, Interior.

ACTION: Notice.

SUMMARY: Notice is hereby given that the sale of public land in Rich County, Utah that was published as a Notice of Realty Action on October 28, 1982 in 47 FR 47939 to be held on January 10, 1983 is postponed until further notice.

Frank W. Snell,

District Manager.

[FR Doc. 83-145 Filed 1-4-83; 8:45 am]

BILLING CODE 4310-84-M

National Park Service

Cuyahoga Valley National Recreation Area Advisory Commission; Meeting

Notice is hereby given, in accordance with the Federal Advisory Committee Act, 86 Stat. 770, 5 U.S.C. App. 1, as amended by the Act of September 13, 1976, 90 Stat. 1247, that a meeting of the Cuyahoga Valley National Recreation Area Advisory Commission will be held beginning 8:30 a.m. (EST), on Thursday, January 27, 1983, at the Happy Days Visitor Center located on West Streetsboro Road, 1 mile west of Route 8 in Peninsula, Ohio.

The Commission was established by the Act of December 27, 1974, 88 Stat. 1788, 16 U.S.C. 460ff-4, to meet and consult with the Secretary of the Interior on matters relating to the administration and development of the Cuyahoga Valley National Recreation Area.

The members of the Commission are as follows:

Mrs. Tommie Patty (Chairperson), Mr. John Craig, Mr. Norman A. Godwin, Mrs. William Hutchison, Mr. James S. Jackson, Mrs. George Klein, Mr. Stanley Mottershead, Mr. C. W. Eliot Paine, Mr. Melvin J. Rebholz, Mr. F. Eugene Smith, Ms. R. Robbie Stillman, Mr. Barry K. Sugden, and Dr. Robert W. Teater.

Matters to be discussed at this meeting include:

1. Status of Historic Leasing and Preservation and its potential for Cuyahoga Valley National Recreation Area;

2. Report on our interpretive programing including Special Populations and Environmental Education;

3. Report on our Automated Data Processing system;

4. Land Protection Plan.

The meeting will be open to the public. It is expected that about 100 persons, in addition to members of the Commission, will be able to attend this meeting. Interested persons may submit written statements. Such statements should be submitted to the official listed below prior to the meeting.

Further information concerning this meeting may be obtained from Lewis S. Albert, Superintendent, Cuyahoga Valley National Recreation Area, P.O. Box 158, Peninsula, Ohio 44264, telephone (216) 650–4414. Minutes of the meeting will be available for public inspection 3 weeks after the meeting, at the office of Cuyahoga Valley National Recreation Area, located at 501 West Streetsboro Road (State Route 303), 2 miles east of Peninsula, Ohio.

Dated: December 22, 1982.

James L. Ryan,

Acting Regional Director, Midwest Region.

[FR Doc. 83-77 Filed 1-4-83; 8:45 am]

BILLING CODE 4310-70-M

Office of Surface Mining Reclamation and Enforcement

Complete Petition for Designation of Lands as Unsuitable for Surface Coal Mining Operations: Wyoming

AGENCY: Office of Surface mining Reclamation and Enforcement, Interior.

ACTION: Notice of a Complete Petition for Designation of Lands as Unsuitable for Surface Coal Mining Operations and Request for Comments.

SUMMARY: Notice is given that the Office of Surface Mining (OSM) has determined as complete a petition to designate certain Federal lands in the Red Rim coal lease tract as unsuitable for surface coal mining operations, pursuant to Section 522 of the Surface Mining control and Reclamation Act of 1977 (30 U.S.C. 1272). Interested persons are requested to submit relevant information and comment on the issues raised in the petition.

DATE: Information on which to base analyses of the issues raised by the petitioner is being sought from all interested parties. In order to be considered in a timely manner, comments should be received by February 4, 1983.

ADDRESS: Comments should be sent to: Office of Surface Mining, Western Technical Center, Attn: Charles Albrecht, Brooks Towers, 2d floor, 1020–15th Street, Denver, Colorado 80202.

FOR FURTHER INFORMATION CONTACT: Charles Albrecht at the address listed above. Telephone: (303)837–5656 or FTS 327–5656.

SUPPLEMENTARY INFORMATION: Under Section 522 of the Surface Mining Control and Reclamation Act of 1977 (Act) and its implementing regulations, persons with interests which are or may be adversely affected by surface coal mining operations may petition OSM to have an area of Federal land designated as unsuitable for all or certain types of mining. The petition alleges that:

1. Mining will affect "fragile lands" which are valuable habitat for pronghorn antelope. As defined in 30 CFR 762.5, fragile lands include those containing valuable habitats for wildlife. see Section 522(a)(3)(B) of the Act and 30 CFR 762.11(b)(2).

2. Reclamation of the lands is not technologically and economically feasible pursuant to Section 522(a)(2) of the Act and 30 CFR 762.11(a)

A petition was submitted to the Wyoming Department of Environmental Quality (DEQ) on May 10, 1982. The Petition was amended to included Federal lands and September 27, 1982. The petition has been forwarded to OSM and was determined to be a complete petition to designate federal lands unsuitable on December 27, 1982. The petition will be processed in accordance with the procedures as set forth in 30 CFR Part 769. In addition, the State of Wyoming Department of Environmental Quality is processing the petition with regard to corresponding non-Federal lands.

The following describes the petitioner and the land involved:

Petitioner: National Wildlife Federation and Wyoming Wildlife Federation.

State: Wyoming.

Counties: Carbon and Sweetwater.

The Federal lands petition area (10,320 acres) is described as:

T. 19 N., R. 90 W.,
Sec. 4, W½,NE¼;
Sec. 6, E½NE¼, SW¼NE¼, W½SE ¼;
Sec. 8, NE¼, E½NW¼, E½SW¼, SW¼SW¼, N½, SE¼;
Sec. 18;
Sec. 30, W½, NE¼, NW¼SE¼.
T. 19 N., R. 91 W.,
Sec. 24;
Sec. 26, E½E½.
T. 20 N., 89 W.,
Sec. 4, W½;
Sec. 6;
Sec. 8; W½, NE¼;
Sec. 18.
T. 20 N., R. 90 W.,
Sec. 12; E½, SW¼, E½NW¼, SW¼NW¼;
Sec. 14; E½, SW¼, E½NW¼;
Sec. 22; E½, SW¼;
Sec. 24;
Sec. 26;
Sec. 28; SE¼, E½NE¼, SE¼SW¼;
Sec. 32; E½SE¼, SW¼SE¼;
Sec. 34.
T. 21 N., R. 89 W.,
Sec. 24; S½;
Sec. 26; E½, SW¼, SE¼NW¼;
Sec. 34; SE¼, E½NE¼, E½SW¼, SW¼SW¼.

In addition to the Federal lands, 10,160 acres of non-Federal lands are included in the petition. Wyoming DEQ will process the petition for these lands under Section 35–11–425 of the Wyoming Environmental Quality Act.

A review of the Federal land area's suitability for mining will be undertaken by OSM. Factual information such as coal resource data of Federal lands will be supplied by the Bureau of Land Management (formally the Minerals Management Service). In addition, the Bureau of Land Management, as the surface managing agency, will make recommendations on the petition. A decision on the petition will be made by September 26, 1983.

Copies of the petition may be obtained upon request from OSM at the address listed above. The public record on the petition is available for public review during normal working hours at the OSM office listed above and at the three following locations:

Bureau of Land Management, 1300 North 3d Street, Rawlins, Wyoming 82301, Telephone: (307) 324–7171

Office of the County Clerk, Carbon County Courthouse, Fifth and Spruce Street, Rawlins, Wyoming 82301, Telephone: (307) 328–2668

State of Wyoming, Department of Environmental Quality, Equal State Bank Building, 401 West 19th Street, Cheyenne, Wyoming 82002, Telephone: (307) 777–7756

After reviewing and analyzing available information, OSM will issue a draft evaluation document which will be available for public review. This will be followed by a public hearing held near the area covered by the petition. The time and place of the hearing will be announced at a later date.

After completion of the analyses and public hearing, the Department of the Interior may designate the arera or a portion thereof as unsuitable for all or certain types of surface coal mining operations. The Department may also

decline to designate all or part of the area as unsuitable.

Dated: December 29, 1982.

J. Steven Gribs,

Director, Office of Surface Mining.

[FR Doc. 83-168 Filed 1-4-83; 8:45 am]

BILLING CODE 4310-05-M

INTERNATIONAL TRADE COMMISSION

[332-131]

Additional Period for Public Comment on Chapters of the Tariff Schedules of the United States Converted Into the Nomenclature Structure of the Harmonized System

AGENCY: International Trade Commission.

ACTION: Setting of additional period for public comment from interested parties, pursuant to Commission investigation No. 332-131, under the authority of section 332(g) of the Tariff Act of 1930, as amended, and initiated upon the request of the President of the United States, on chapters 1-8, 16, 20, 22-29, 36, 37, 44-55, 61-63, 68-71, 74-76, 78-81, and 84-92, inclusive, of the Tariff Schedules of the United States (TSUS) converted into the nomenclature structure of the Harmonized Commodity Description and Coding System (Harmonized System) and previously released for public comment by the Commission.

SUMMARY: The United States International Trade Commission (hereinafter "the Commission") has previously released for public comment and conducted hearings concerning the above chapters of the TSUS converted into the nomenclature structure of the Harmonized System. This notice announces the opening of an additional period for public comment on such chapters.

Written Submissions

Persons wishing to submit written comments with respect to one or more of the chapters should do so at the earliest possible date, but no later than the close of business (5:15 p.m.) April 22, 1983. The signed original and 14 copies of all written comments must be filed with the Secretary of the Commission at his office in Washington, D.C. and should conform with § 201.8 of the Commission's Rules of Practice and Procedure (19 CFR 201.8). Any person desiring confidential treatment as to commerical or financial information must submit that information on separate sheets of paper, each clearly marked "Confidential Business Information" at the top. All submissions requesting confidential treatment must conform with the requirements of § 201.6 of the Commission's Rules (19 CFR 201.6). All nonconfidential written submissions will be made available to interested persons.

Hearing

An additional opportunity to present oral testimony as to the above chapters will be afforded during the hearing covering the final volumes of chapters of the converted tariff schedule. Details concerning the hearing will be provided in a subsequent notice. Provisionally adopted texts of all chapters of the Harmonized System and of explanatory notes thereto have previously been released and may be used in the preparation of comments and testimony as to those chapters of the converted tariff schedule not yet published by the Commission.

Copies of Documents

Copies of the chapters which are the subject of this notice are available for public inspection at the offices of the Commission, 701 E Street, NW., Washington, DC 20436. The Secretary will also send copies of chapters to interested parties upon request; telephone (202) 523-5178.

FOR FURTHER INFORMATION CONTACT: Mr. Eugene A. Rosengarden, Director, or Mr. Holm Kappler, Deputy Director, Office of Tariff Affairs, U.S. International Trade Commission, 701 E Street, NW., Washington, DC 20436; telephone (202) 523-0370 or 0362.

SUPPLEMENTARY INFORMATION: In its public notices of January 29, 1982 (47 FR 5369 of February 4, 1982) and August 16, 1982 (47 FR 37317 of August 25, 1982), the Commission identified 56 chapters of the TSUS converted into the nomenclature structure of the Harmonized System. Hearings were conducted on the first group of chapters on March 29 and 30, 1982, and on the second group on November 1, 1982. The final set of converted chapters will be published for public comment and hearing in January 1983. Further details concerning the conversion and the structure of the Harmonized System were set forth in the Commission's notice of the institution of the investigation of September 16, 1981 (46 FR 47897 of September 30, 1981), at the request of the President of the United States.

In preparing the converted U.S. tariff schedules, the Commission is seeking and taking into consideration the views of any interested person, of any trade or industry organization and of interested government agencies. Submissions should be directed at evaluating the draft conversion in light of the President's guidelines, in particular whether the conversion—

(a) Avoids, to the extent practicable and consonant with sound nomenclature principles, changes in rates of duty on individual products;

(b) Simplifies the U.S. tariff structure to the extent possible without rate changes significant for U.S. industry, workers, or trade; and

(c) Alleviates administrative burdens on the Customs Service.

The Commission will utilize the post-MTN rates of duty on individual products when analyzing impacts of any proposed changes.

Submissions should also address the probable effect of U.S. adoption of the converted tariff schedules on U.S. industries, workers, and trade. Submissions aimed primarily at seeking increases or reductions in existing tariff rates are not relevant and will not be entertained by the Commission.

Issued: December 28, 1982.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 83-214 Filed 1-4-83; 8:45 am]

BILLING CODE 7020-02-M

[332-151]

Assessment of the MTN on Selected Benzenoid Chemicals

AGENCY: International Trade Commission.

ACTION: In accordance with the provisions of section 332(b) of the Tariff Act of 1930 (19 U.S.C. 1332(b)), the Commission has instituted investigation No. 332-151 for the purpose of gathering and presenting information to assess the impact on domestic producers of and trade in selected benzenoid chemicals as a result of the implementation of duty modifications, including the elimination of the American selling price, following conclusion of the 1979 Multilateral Trade Negotiations (MTN) and passage of the Trade Agreements Act of 1979 (see 93 Stat. 205). This analysis will also examine the apparent changes in U.S. and foreign countries' competitiveness in benzenoid chemicals following the MTN negotiations.

EFFECTIVE DATE: December 23, 1982.

FOR FURTHER INFORMATION CONTACT: Mr. Edmund D. Cappuccilli, Energy and Chemicals Division, U.S. International Trade Commission, Washington, D.C. 20436 (telephone 202-523-0490).

WRITTEN SUBMISSIONS: While there is no public hearing scheduled for this study, written submissions from interested parties are invited. Commercial or financial information which a party desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked "Confidential Business Information" at the top. All submissions requesting confidential treatment must conform with the requirements of § 201.6 of the Commission's *Rules of Practice and Procedure* (19 CFR 201.6). All written submissions, except for confidential business information, will be made available for inspection by interested persons. To be ensured of consideration by the Commission, written statements should be received by the close of business on June 30, 1983. All submissions should be addressed to the Secretary, United States International Trade Commission, 701 E Street NW., Washington, D.C. 20436.

Issued: December 29, 1982.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 83-215 Filed 1-4-83; 8:45 am]

BILLING CODE 7020-02-M

[Investigations Nos. 701-TA-155, 157, 158, 159, 160, and 162 (Final)]

Certain Carbon Steel Products From Spain

Determinations

On the basis of the record[1] developed in the subject investigations, the Commission determines, pursuant to section 705(b)(1) of the Tariff Act of 1930 (19 U.S.C. 1671d(b)(1)), that an industry in the United States is materially injured by reason of imports of the following products which have been found by the Department of Commerce to be subsidized by the Government of Spain:

Hot-rolled carbon steel plate (investigation No. 701-TA-155 (Final)); [2 3]

Cold-rolled carbon steel sheet (investigation No. 701-TA-157 (Final)); [4]

Galvanized carbon steel sheet (investigation No. 701-TA-158 (Final)); [5 6]

Carbon steel structural shapes (investigation No. 701-TA-159 (Final)); [7 8]

Hot-rolled carbon steel bar (investigation No. 701-TA-160 (Final)); [9 10] and

Cold-formed carbon steel bar (investigation No. 701-TA-162 (Final)). [11 10]

Background

The Commission instituted these investigations effective August 25, 1982, following preliminary determinations by the Department of Commerce that there was a reasonable basis to believe or suspect that subsidies were being provided to manufacturers, producers, or exporters of the subject carbon steel products in Spain.

Notice of the institution of the Commission's investigations and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, D.C., and by publishing the notice in the **Federal Register** on September 15, 1982 (47 FR 40725). The hearing was held in Washington, D.C. on November 9, 1982, and all persons who requested the opportunity were permitted to appear in person or by counsel.

Views of the Commission

I. Introduction

These views set forth the reasons supporting the determinations of the Commission in these six final countervailing duty investigations. Chairman Eckes, Commissioner Stern and Commissioner Haggart join in the discussion of the appropriate domestic industries and the conditions of those industries. The joint views of Chairman Eckes and Commissioner Haggart are set forth following the section on the condition of the domestic industries. The separate views of Commissioner Stern follow.

Definition of the Domestic Industries

The domestic industry against which the impact of the imports under investigation is to be gauged is defined in section 771(4)(A) of the Tariff Act of 1930 as "the domestic producers as a whole of a like product or those producers whose collective output of the like product constitutes a major proportion of the total domestic production of that product." [12] "Like product" is defined in section 771(10) as "a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation. . . ." [13]

These investigations concern subsidized imports from Spain of six different types of steel products. These six types are: (1) Hot-rolled carbon steel plate; (2) cold-rolled carbon steel sheet; (3) galvanized carbon steel sheet; (4) carbon steel structural shapes; (5) hot-rolled carbon steel bar; and (6) cold-formed carbon steel bar. These same products were among the nine products which were the subject of the recent preliminary investigations involving certain steel products from Belgium, Brazil, France, Italy, Luxembourg, the Netherlands, Romania, the United Kingdom, and West Germany. In those cases the Commission [14] found that each of the different product categories under investigation constituted a separate like product and noted:

> Each [product category] has physical characteristics of size, shape, or composition that are unlike those of the others. Moreover, they have varying uses, and products of one type generally do not compete with products of another type. As noted in the Commission determination in the 1980 steel products antidumping investigations, "Although raw steel constitutes much of the value of each of the . . . product groups under investigation, competition in the U.S. market between domestically producted steel products and the alleged LTFV [and subsidized] imports occurs in each of the . . . separate and distinct product groups." In these investigations the domestic producers have been able to

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[1] The record is defined in § 207.2(i) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(i), 47 FR 6190, Feburary 10, 1982).

[2] For purposes of this investigation, hot-rolled carbon steel plate is provided for in items 607.8615, 607.9400, 608.0710, and 608.1100 of the Tariff Schedules of the United States Annotated (TSUSA).

[3] Commissioner Stern determines that there is no material injury but that there is threat of material injury to an industry in the United States by reason of subsidized imports of hot-rolled carbon steel plate from Spain. Accordingly, pursuant to section 705(b)(4)(B) of the Tariff Act (19 U.S.C. 1671d(b)(4)(B)), Commissioner Stern further determines that she would have found material injury but for any suspension of liquidation of entries of this merchandise.

[4] For purposes of this investigation, cold-rolled carbon steel sheet is provided for in items 607.8320 and 607.8344 of the TSUSA.

[5] For purposes of this investigation, galvanized carbon steel sheet is provided for in items 608.0710, 608.0730, 608.1100, and 608.1300 of the TSUSA.

[6] Commissioner Stern dissenting.

[7] For purposes of this investigation, carbon steel structural shapes are provided for in items 609.8005, 609.8015, 609.8035, 609.8041, and 609.8045 of the TSUSA.

[8] In its final countervailing duty determination (47 FR 51438, November 15, 1982) the Department of Commerce found, pursuant to section 705(a)(2) of the Tariff Act (19 U.S.C. 1671d(a)(2)), that critical circumstances exist with respect to imports of subsidized carbon steel structural shapes from Spain. Accordingly, pursuant to section 705(b)(4)(A) of the act (19 U.S.C. 1671d(b)(4)(A)), the Commission determines, Commissioner Stern dissenting, that material injury was not be reason of massive imports of the subsidized merchandise over a relatively short period.

[9] For purposes of this investigation, hot-rolled carbon steel bar is provided for in items 606.8310, 606.8330, and 606.8350 of the TSUSA.

[10] Commissioner Stern dissenting.

[11] For purposes of this investigation, cold-formed carbon steel bar is provided for in items 606.8805 and 606.8815 of the TSUSA.

[12] 19 U.S.C. 1677(4)(A).

[13] 19 U.S.C. 1677(10).

[14] Commissioner Haggart was not a member of the Commission at that time.

identify production and profitability data in terms of each of the groups, allowing the Commission to examine the impact of imports on each group separately.[15]

The Commission recognized that within each of the nine product categories there may have been slightly different characteristics and uses for articles having different specifications, but the record contained no information to warrant making any meaningful distinctions among them. In the absence of "clear dividing lines among the products in each group," each was treated in its entirety as a separate like product.[16] Thus, the Commission determined that there was a separate industry corresponding to each of the product groups.

In these six final investigations we have determined that the same analysis should apply. The record developed in these final investigations regarding the same imported products from Spain contains no additional information that would suggest a revision of the definitions. Moreover, no party has objected to these industry definitions. Thus, we determine that there are six domestic industries corresponding to the six product groups.

Condition of the Domestic Industries

1. *Hot-rolled carbon steel plate.* The U.S. industry producing hot-rolled carbon steel plate has been in decline during most of the period under investigation. Production and capacity have fallen since 1979. Production fell from 6.6 million tons in 1979 to 5.9 million tons in 1981, a decrease of 11 percent. This decline continued in the first three quarters of 1982 as production was only 2.1 million tons compared with 4.1 million tons in the same period of 1981.[17] Paralleling the decline in production, U.S. producers, shipments of carbon steel plate decreased steadily from 1979 to 1981 and fell rapidly in the first three quarters of 1982.[18] Production capacity shrank from 10.4 million tons in 1979 to 9.6 million tons in 1981. Despite the decline in capacity, the loss of production yielded a continued decline in capacity utilization from 63.9 percent in 1979 to 61.9 percent in 1980 and 61.2 percent in 1981.

Capacity utilization fell greatly in the first three quarters of 1982 to 32.7 percent.[19]

Declining production has adversely affected employment and profitability levels as well. Employment of workers engaged in producing hot-rolled carbon steel plate fell from 20,625 in 1979 to 19,758 in 1980 and 18,378 in 1981, an 11 percent decline over the period. Employment and wages dropped sharply in January–September 1982 by approximately 40 percent from the levels in the corresponding period in 1981.[20]

U.S. producers' operating profits declined from $93 million in 1979, to $34 million in 1980, and increased to $67 million in 1981. However, net sales dropped sharply in the first three quarters of 1982, and producers suffered operating losses totalling $122 million during that period. The ratio of operating profits to net sales decreased irregularly from 3.8 percent in 1979 to 2.6 percent in 1981. During the first nine months of 1982, the ratio of operating losses to net sales was 11.8 percent as compared with a ratio of operating profit to net sales of 3.0 percent during the corresponding period in 1981.

2. *Cold-rolled carbon steel sheet.* Production in this industry fell sharply between 1979 and 1980, from 13.4 million to 10.4 million tons, then increased to 11.3 million tons in 1981. However, a sharp decline occurred in the first three quarters of 1982 as production was only 6.3 million tons compared with 9.2 million tons during the corresponding period in 1981.[21] Shipments declined irregularly from 1979 to 1981, then fell off sharply in the first three quarters of 1982.[22] Capacity remained relatively stable throughout the period, increasing or decreasing only marginally from year to year. Capacity utilization declined from 79.9 percent in 1979 to 70.5 percent in 1981. Capacity utilization reached a low of 52.1 percent in the first three quarters of 1982.[23]

Although fluctuating from year to year, employment generally declined from 1979 to 1981. The number of workers then decreased significantly in the first three quarters of 1982 by 27 percent compared to the identical period in 1981.[24]

The industry has suffered declining profitability since 1979. Net profits were $53 million in 1979, but the industry then experienced losses of $383 million in 1980, $293 million in 1981, and $484 million in the first three quarters of 1982. The ratio of operating profits to net sales was 1.0 percent in 1979. The ratio of operating losses to net sales was 9.2 percent in 1980, 5.9 percent in 1981, and 16.9 percent in the first three quarters of 1982, as compared with 4.3 percent in the first three quarters of 1981.

3. *Galvanized carbon steel sheet.* The galvanized carbon steel industry has experienced a downturn since 1979. Production fell from 4.7 million tons in 1979 to 3.7 million tons in 1980. Although production rose to 4.4 million tons in 1981, a sharp drop in production occurred in the first 9 months of 1982, with only 2.8 million tons being produced, in contrast to the 3.7 million tons produced in the same period in 1981.[25] Shipments have similarly decreased.[26] While capacity for producing galvanized sheet has remained roughly constant since 1979, capacity utilization fell from 70.4 percent in 1979 to 59.4 percent in 1980. After rebounding to 70.7 percent in 1981, capacity utilization fell to 60.9 percent in the first three quarters of 1982.[27] Employment of production and related workers, which had peaked at 16,900 in the first three quarters of 1981, declined to 13,684 by the first three quarters of 1982 as production declined.[28]

From operating profits of $135 million in 1979, the industry declined to losses of $91 million in 1980, and $29 million in 1981. In the first three quarters of 1982, the industry experienced a loss of $190 million compared with a loss of $3 million in the same period in 1981. The ratio of operating profits to net sales was 5.8 percent in 1979. The ratio of operating losses to net sales was 4.8 percent in 1980, 1.2 percent in 1981, and 12.5 percent in the first three quarters of 1982.[29]

4. *Carbon steel structural shapes.* The industry producing carbon steel structural shapes is also experiencing serious difficulty. Production has declined from 4.3 million tons in 1979 to 3.9 million tons in 1981. Production continued to decline to 1.9 million tons in the first three quarters of 1982 compared to 2.9 million tons in the same period of 1981. Trends for U.S. producers' shipments corresponded to the decline in production.[30] Although capacity decreased slightly between 1979 and 1981, capacity utilization decreased steadily from 65.6 percent 1979 to 61.2 percent in 1981. Capacity

[15] Investigations Nos. 701–TA–86 to 144, 701–TA–146, and 701–TA–147 (Preliminary), and Investigations Nos. 731–TA–53 to 86 (Preliminary), USITC Pubs. 1221 and 1226 (1982), at 14–15 (footnote omitted). Specific descriptions of the products, their characteristics and uses, and methods of manufacture may be obtained by reference to the Commission's Views and the Report in those investigations.

[16] *Id.* at 15–16.

[17] Report at A–11.

[18] *Id.* at A–9, A–11.

[19] *Id.* at A–11.

[20] *Id.* at A–14, A–16.

[21] *Id.* at A–11.

[22] *Id.* at A–9, A–11.

[23] *Id.* at A–11.

[24] *Id.* at A–14.

[25] *Id.* at A–11.

[26] *Id.* at A–9, A–11.

[27] *Id.* at A–11.

[28] *Id.* at A–14.

[29] *Id.* at A–21.

[30] *Id.* at A–9, A–11.

utilization then fell sharply in the first three quarters of 1982 to 41.0 percent as compared with 62.2 percent in the same period in 1981.[31]

Average employment of production and related workers declined steadily from 13,444 workers in 1979 to 12,304 in 1981. In the first three quarters of 1982, employment fell approximately 30 percent to 8,327 as compared with 11,848 in the same period in 1981.[32]

Although this industry's net sales increased irregularly between 1979 and 1981 before dropping sharply in the first three quarters of 1982, the industry experienced losses during most of the period. Operating profits were $34 million in 1979. Thereafter, the industry incurred losses of $30 million, $26 million, and $140 million in 1980, 1981, and the first three quarters of 1982, respectively. The ratio of operating profits to net sales was 2.2 percent in 1979. The ratio of operating losses to net sales was 2.0 percent in 1980 and 1.6 percent in 1981. In January-September 1982, the ratio of operating losses to net sales amounted to 16.6 percent as compared with 1.3 percent in the first three quarters of 1981.

5. *Hot-rolled carbon steel bar.* U.S. production of hot-rolled carbon steel bar dropped sharply from 1979 to 1980, from 6.2 million tons to 4.5 million tons, recovered slightly in 1981 reaching 4.8 million tons, then fell again in the first three quarters of 1982 to 2.0 million tons compared with 3.3 million tons in the same period in 1981. Shipments during the period of investigation declined in a similar manner.[33] While production capacity fluctuated somewhat during the period under investigation, capacity utilization fell from 67.6 percent in 1979 to 51.2 percent in 1980, increased slightly to 54 percent in 1981, then declined to 34.4 percent in the first three quarters of 1982.[34]

Employment of production and related workers declined by 26 percent between 1979 and 1980. After increasing marginally in 1981, employment dropped 33 percent in the first three quarters of 1982 compared with the same period in 1981. Employment in the first three quarters of 1982 stood at 10,455, a full 10,000 workers fewer than the 1979 total.[35]

The industry's net sales declined irregularly from 1979 to 1981, then plunged in the first three quarters of 1982. Operating profits were $50 million in 1979, but the industry suffered operating losses of $84 million in 1980, $10 million in 1981, and $214 million in the first three quarters of 1982. The ratio of operating profits to net sales was 2.2 percent in 1979. Thereafter, the ratio of operating losses to net sales was 5.1 percent in 1980 and 0.5 percent in 1981. In the first three quarters of 1982, the ratio of operating losses to net sales reached 25.6 percent as compared with 0.4 percent in the corresponding period in 1981.[36]

6. *Cold-formed carbon steel bar.* The domestic cold-formed carbon steel bar industry has experienced declines in production as well as financial losses during most of the period under investigation. Production decreased irregularly from 1.3 million tons in 1979 to 946 thousand tons in 1980 and 1.0 million tons in 1981.[37] Shipment data essentially mirror the production trends.[38] During the same period, capacity utilization declined by more than 20 percentage points from 66.1 percent in 1979 to 45.4 percent in 1981. During the first nine months of 1982, both production and capacity utilization were lower than in the corresponding period in 1981.

After experiencing an operating profit of $21 million in 1979, the domestic industry sustained operating losses of $4 million for 1980, $2 million for 1981, and $29 million for the first three quarters of 1982. The ratio of operating profit to net sales was 4.0 percent in 1979. The ratio of operating losses to net sales was 0.9 percent in 1980 and 0.4 percent in 1981. In the period January-September 1982, the ratio of operating loss to net sales was 14.6 percent as compared with an operating profit of 4.0 percent in the same period in 1981.[39]

Views of Chairman Eckes and Commissioner Haggart

Before proceeding with our analysis of the relationship between the condition of the domestic industries and the imports subject to these investigations, two issues should be addressed:

1. Whether the Commission, in determining causation, is required to establish a causal link between subsidized imports and injury to the domestic industry or between the net subsidy determined by the Department of Commerce (ITA) and the injury to the domestic industry; and

2. Whether the Commission should "cumulate" imports of a particular product from a country subject to a countervailing duty investigation with imports of the same product from other countries.

A resolution of both of these issues requires examination of the statutory language and the legislative history.[40]

Causation

With respect to the issue of whether any material injury experienced by the domestic industry must be by reason of subsidized imports or the net subsidy calculated by the ITA, the statute is clear as to what the Commission is required to do when making a final determination of material injury. According to section 705(a)(1) of the Tariff Act of 1930 as amended by the Trade Agreements Act of 1979, ("the Act") (19 U.S.C. 1671d (a)(1)):

> Within 75 days after the date of its preliminary determination under section 703(b) * * * [the ITA] shall make a final determination of whether or not a subsidy is being provided with respect to the merchandise.

After the ITA makes an affirmative determination that a subsidy is being provided, section 705(b) of the Act (19 U.S.C. 1671d (b)) directs the Commission to determine whether there is material injury to a domestic industry "by reason of imports" of the merchandise subject to investigation. The statute reads:

> (b) Final Determination by Commission.
> (1) In General—The Commission shall make a final determination of whether—
> (A) An industry in the United States—
> (i) Is materially injured, or
> (ii) Is threatened with material injury, or
> (B) the establishment of an industry in the United States is materially retarded, by reason of imports of the merchandise with respect to which * * * [The ITA] has made an affirmative determination under subsection (a) of this section.

Sections 771(7)(B) and (C) of the Act (19 U.S.C. 1671(7)(B)(C)) set forth the general factors the Commission is required to consider in reaching its determination of material injury by reason of subsidized imports. These sections instruct the Commission to examine the volume of imports, the effect of such imports on prices in the United States of the "like" product, and the impact of imports of such merchandise on domestic producers of the "like" product. More specifically, these sections of the Act set out certain aspects of these general factors which are to be examined in considering the effect of imports. Concerning the volume of imports, the Commission is to determine whether the volume is significant, or whether there is any

[31] *Id.* at A-11.
[32] *Id.* at A-14.
[33] *Id.* at A-10, A-12.
[34] *Id.* at A-12.
[35] *Id.* at A-15.
[36] *Id.* at A-22.
[37] *Id.* at A-12.
[38] *Id.* at A-10, A-12.
[39] *Id.* at A-22.
[40] See Commissioner Haggart's Additional Views on these issues.

significant absolute or relative increase in that volume. With respect to prices, the Commission is to consider whether there has been significant price undercutting by the imported merchandise, and whether such imports have resulted in significant price suppression or depression. In examining the impact of imports on the domestic industry producing the like product, the Commission is directed to consider the impact of imports in terms of declines in output, sales, return on investment, capacity utilization, domestic prices, and other specified factors. Furthermore, the statute instructs the Commission to consider "all relevant economic factors which have a bearing on the state of the industry."

The statute does not direct the Commission to consider the amount of the net subsidy in determining whether there is material injury. At most, the amount of the net subsidy is a factor which the Commission may consider under section 771(7)(B) of the Act. The relationship of the net subsidy to material injury should not be dispositive of the issue of causation. We conclude that once the ITA makes an affirmative determination the Commission must only establish a causal link between the subsidized imports under investigation and any injury to the domestic industry.[41]

The countervailing duties which will be imposed as the result of our determinations are intended to offset the net subsidies found by the ITA. These duties are not intended to remedy the injury we have found the industry to be experiencing; they are intended to ensure that imports compete in the market on a fair basis. In assessing the impact of such imports, an analysis which focuses on the ultimate benefit to the domestic industry resulting from the imposition of duties is not consistent with the purpose of the statute.

Cumulation

This is not the first time that the issue of whether the Commission should cumulate imports from more than one country for purposes of determining material injury has been raised. However, in each prior investigation where the issue has been presented, we have made our determinations on a case-by-case basis and have not cumulated imports from more than one country. In view of the "conditions of trade" [42] which exist in the carbon steel industries which are the subject of investigation, we have adopted a similar approach in these investigations.[43]

There are no specific references to cumulation either in the Trade Agreements Act of 1979 itself or in the accompanying legislative history. The only injury determinations in which the Commission's discretionary authority to cumulate imports from more than one country has been upheld by the courts, or sanctioned by Congress, were antidumping cases under the Antidumping Act of 1921. Although the Commission may have the discretion to cumulate imports in countervailing duty investigations as well as in antidumping investigations, cumulation of imports from several countries is not the basis for our decisions in each of these investigations. However, we note that the Commission may consider imports from all sources as part of the conditions of trade in making its injury analysis with respect to imports from a particular country.

Conditions of trade

It was the intent of Congress that in countervailing duty investigations the assessment of the impact of subsidized imports is to be made with regard to the particular conditions of trade, competition, and development of the relevant industry.[44] The statutory scheme for determining the appropriate "like product", and in turn, the industry against which the Commission assesses the impact of imports, further assures that the focus of our inquiry is on the nature of the imported product that is the subject of these investigations and those characteristics of trade involving both the relevant domestic and imported products.

As set forth above, we have determined those products being produced in the United States which are "like" the imported merchandise. Further, we have considered the economic condition of the respective domestic industries producing those products and have found them to be experiencing material injury. In the following section, we will set forth our views on a case-by-case basis regarding the causal relationship between this injury and the subsidized imports.

Certain conditions of trade with regard to these products are critical in establishing the framework for our analyses. One fundamental characteristic of each of the products under consideration is its inherent fungibility and price sensitivity.[45] Fungibility is established once certain objective criteria are met to the satisfaction of the purchaser.[46] Price then becomes a major factor in the decision to purchase.[47] Although much of the domestic steel is sold drirectly to end users, whereas the majority of imported steel is primarily sold first to service centers/distributors, ultimately imported and domestic steel compete on the basis of price in the same end-user market. In a market where discounting is now commonplace, the mere presence of an offer from an importer of steel at a lower price can have a discernible impact. Such offers affect the ability of the domestic steel producer to price competitively, to cover fixed costs, and to generate funds for needed capital improvements.

Another important condition of trade relevant to these products is that these subsidized imports are entering the U.S. Market at the same time as imports from a variety of sources. Additionally, in some cases, subsidized imports have either entered the U.S. Market or have further increased their penetration levels during the most recent period when U.S. consumption for these products turned downward and the domestic industries were operating at very low levels of capacity utilization. Given these conditions of trade, the impact of seemingly small import volumes and penetrations is magnified in the marketplace. In these steel industries, each of which is characterized by a high level of fixed costs, the loss of even a few sales means that revenues cannot be maintained at levels sufficient to cover fixed costs. The ability to cover these costs is vital to the ongoing viability of these industries. All of the above factors regarding the conditions of trade relating to these industries are significant in our analyses of the impact of subsidized imports from Spain.

Our causation analysis reflects Congressional intent that the effects from subsidized imports are not to "be weighed against the effects associated with other factors * * * which may be contributing to overall injury to an industry." [48] The record in these

[41] See Commissioner Haggart's Additional Views, *infra*.

[42] See discussion of "Conditions of Trade", *infra*.

[43] See Commissioner Haggart's Additional Views, *infra*.

[44] *See* Sen. Rept. No. 96-249, 96th Cong., 1st Sess. (1979) at p. 57 and p. 88; H. Rept. No. 96-317, 96th Cong., 1st Sess. (1979) at p. 46.

[45] See the "like product" discussion, *supra*, p. 3.

[46] See Report at A-45 ff.

[47] With regard to the fungibility question, we note that during the course of these investigations, some purchasers were unable to indicate the country or company of origin of the imported steel they had purchased. See, e.g., Report at A-45, A-48, A-50.

[48] See Sen. Rept., *supra*, at p. 57, and H. Rept., *supra*, at p. 47

investigations suggests that there are a number of causes associated with the problems experienced by the domestic industry, such as high labor costs, reduced productivity levels, and the appreciation of the dollar. In an affirmative determination, the statute directs that we determine whether the material injury experienced by the domestic industry is "by reason of" subsidized imports. There is no requirement that subsidized imports be a "principal, a substantial, or a significant cause of material injury." [49] Congress was explicit in its purpose for providing this guidance:

> Any such requirement has the undesirable result of making relief more difficult to obtain for industries facing difficulties from a variety of sources; such industries are often the most vulnerable to subsidized imports.[50]

The case-by-case determinations which follow are based upon these fundamental perceptions regarding the conditions of trade affecting these domestic industries. Our analysis indicates these industries find themselves increasingly susceptible to injury from subsidized imports.

The information developed in investigations cannot be expected to be comprehensive with regard to all areas of inquiry. With respect to some areas, such as import volume and penetration, the record in these investigations provides information which is comprehensive. The record provides less comprehensive information with regard to transaction prices, lost sales,[51] and price suppression or depression. However, we view such data as indicative of the impact of imports in the market. The totality of data regarding import trends and their effect in the market forms the basis for our determinations in each of these investigations.

Material Injury by Reason of Subsidized Imports

1. *Hot-Rolled Carbon Steel Plate.* Imports from Spain increased from their 1979 level of 74,000 tons to 110,000 tons in 1980 and decreased to 99,000 in 1981. Imports declined over the first three quarters of 1982 compared to the same period in 1981, but they still remained above the level of imports for all of 1979. The ratio of imports to apparent domestic consumption increased from 0.9 percent in 1979 to 1.4 percent in 1980, and decreased slightly to 1.3 percent. In January–September 1982, imports from Spain climbed to 2.3 percent of domestic consumption compared with 1.6 percent for the corresponding period in 1981. Although available pricing data cannot be used in making pricing comparisons between the domestic product and imports from Spain,[52] information relating to lost sales provides a clear indication of underselling. Six instances of lost sales were confirmed in the preliminary investigation and five instances of lost sales have been confirmed in this final investigation.[53] In all these cases, the principal reason cited for the purchase of the Spanish product was the lower price of the imports, which may have been as much as $40 to $140 below comparable domestic products. In addition, two instances of price suppression or depression were confirmed, involving price reductions by domestic producers in order to meet competition from lower-priced Spanish products.

For the foregoing reasons, we find that there is material injury to the affected domestic industry by reason of the subject imports.

2. *Cold-Rolled Carbon Steel Sheet.* While imports from Spain steadily decreased in both absolute terms and in relation to apparent U.S. consumption from 1979 to 1980, imports and import penetration rose sharply in 1981, signalling a reentry in the United States market. Imports rose from 8,000 tons in 1980 to 62,000 tons in 1981 and the levels for the first three quarters of 1982 are significantly higher than the same period in 1981. Import penetration rose from 0.1 percent in 1980 to 0.4 percent in 1981 and the figure for the first three quarters of 1982 is 0.5 percent compared with 0.2 percent in the corresponding period in 1981. Imports from Spain increased at a time when the domestic industry was operating at 52 percent of capacity. It is apparent that these recent sharp increases in the levels of imports have contributed to the accelerating downturn in the industry's performance and have thus caused material injury.

In addition, in the final investigation two instances of lost sales were confirmed. Price was the most important factor in these lost sales, with the imports underselling the domestic product by $80 to $100 per ton.[54]

For the foregoing reasons, we find material injury to the domestic industry by reason of subsidized imports of cold-rolled carbon steel sheet from Spain.

3. *Galvanized carbon steel sheet.* Although imports from Spain fell steadily from their 1979 level of 39,000 tons to 19,000 tons in 1981, Spanish imports increased significantly to 27,000 tons in the first three quarters of 1982 alone,[55] an influx that was substantially in excess of that in the entire year 1981.[56] Import penetration followed a similar trend, reaching 0.6 percent in the first nine months of 1982, compared with 0.1 percent in the corresponding period in 1981. On a quarterly basis imports from Spain were concentrated in the last half of 1981 and the first quarter of 1982, when imports accounted for 1.8 percent of domestic consumption. The significant increase in Spanish imports coincided with the serious downturn in domestic production, and profitability in the first three quarters of 1982.

Other information also strongly supports our conclusion of material injury by reason of subsidized imports. Three allegations of sales lost by domestic firms to imports of galvanized sheet were confirmed in the final investigation.[57] Price was the most important factor in these lost sales, with the imports underselling the domestic product by approximately $100 a ton. In addition, in the preliminary investigation, five transactions were confirmed in which a domestic firm lost revenues by lowering its prices in order to meet price competition by Spanish imports.[58]

For the foregoing reasons, we determine that imports of galvanized carbon steel sheet from Spain are causing material injury to the domestic industry.

4. *Carbon Steel Structural Shapes.* Imports steadly increased from 96,000 tons in 1979 to 238,000 tons in 1981, accounting for a growing share of the U.S. market increasing from 1.5 percent in 1979 to 4.1 percent in 1981. Although the level of imports from Spain dropped somewhat in the first three quarters of 1982 compared with the corresponding period in 1981, they still amounted to 4.5

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[49] *Id.*

[50] *Id.*

[51] *See* Acrylic Yarn from Japan and Italy, Nos. 731–TA–1 (Final) and 731–TA–2 (Final), March 1980. Views of Commissioner Stern and former Vice-Chairman Calhoun:

> While information on lost sales is normally difficult to obtain and actual occurrences are difficult for the Commission to verify, such instances, when confirmed, can be symptomatic of broader practice.

[52] Report at A–36, A–37, A–45.

[53] *Id.* at A–45, A–46.

[54] One purchaser of Spanish sheet indicated that the price gap between Spanish and domestic cold-rolled sheet widened since 1981 and, as a result, this purchaser is buying proportionally more Spanish sheet in 1982 than it did in 1981. Another purchaser indicated that importers of Spanish cold-rolled sheet were targeting their sales to a few dealers. Report at A–46, A–47.

[55] We note that one purchaser of Spanish galvanized sheet reported that a Spanish mill cancelled delivery of an order made in 1981 because of the institution of this countervailing duty investigation report at A–47.

[56] Report at A–28.

[57] *Id.* at A–47.

[58] *Id.* at A–52.

percent of total consumption during this period.[59] Information shows that the industry has lost sales to Spanish imports on the basis of price. Of the ten allegations of lost sales, seven firms confirmed that they had bought the Spanish product primarily because of its lower price.[60] In addition, a number of domestic firms submitted allegations of instances in which prices were lowered or adjusted in order to meet competition from Spain. Six allegations were confirmed representing over $220,000 loss of revenue or an average discount of approximately 11 percent.[61]

Based on the foregoing, we determined that there is material injury to the domestic industry producing carbon steel structural shapes by reason of imports from Spain.

Critical Circumstances

In its final determination, the ITA found that "critical circumstances" existed with respect to imports of structural shapes from Spain.[62] This finding, under 19 U.S.C. 1671d(a)(2), is a finding that these imports benefit from a subsidy inconsistent with the subsidies agreement implemented by the Trade Agreements Act of 1979 and that there have been massive imports over a relatively short period. Given this finding by ITA and our own finding of material injury, we are required by 19 U.S.C. 1671d(b)(4)(A) to make an additional finding as to whether there is material injury which will be difficult to repair and whether the material injury was by reason of the massive imports over a relatively short period of time (March to June 1982) as defined by the ITA.[63] In light of historical import trends since 1980, we find that the material injury was not by reason of the massive imports over a relatively short period referred to by the ITA. Therefore, we have made a negative additional finding with respect thereto.

5. *Hot-Rolled Carbon Steel Bar.* Imports of hot-rolled carbon steel bar from Spain increased irregularly from 28,000 tons in 1979 to 34,000 tons in 1981. Imports during the first three quarters of 1982 were 18,000 tons, compared with 26,000 tons in the same period in 1981. The ratio of Spanish imports to apparent U.S. consumption increased steadily from 0.4 percent in 1979 to 0.7 percent in 1981.[64] Despite the decrease in absolute imports in 1982, the ratio for the January-September 1982 period rose to 0.8 percent compared with 0.7 percent for the same period in 1981.[65]

In the preliminary investigation, one instance of a lost sale because of lower priced imports from Spain was confirmed,[66] as was a price concession because of a purchaser's intention to buy a less expensive Spanish import.[67]

Based on the foregoing, we find that there is material injury by reason of subsidized imports of hot-rolled carbon steel bar from Spain.

6. *Cold-formed carbon steel bar.* Imports, both in absolute terms and as a percentage of apparent U.S. consumption, rose dramatically in 1981 compared with imports in 1979 and 1980. The quantity of Spanish imports more than tripled from 5,000 tons in 1980 to 17,000 tons in 1981. This high level has continued: the January-September 1982 import figure of 12,000 tons is the same as it was for the corresponding period in 1981.[68] The substantial increase in Spanish imports between 1979 and 1981 resulted in a tripling of the import penetration level.[69] The ratio of Spanish imports to apparent U.S. consumption increased from 0.4 percent in 1980 to 1.2 percent in 1981. The ratio of imports increased further in the first three quarters of 1982 to 1.6 percent.

The Commission confirmed four lost sales of 635 tons in its final investigation, in addition to those confirmed in the preliminary investigation.[70] Purchasers of the Spanish product indicated that price was the most important factor in their decisions to buy Spanish bar instead of domestic bar.

For the foregoing reasons, we find that there is material injury to a domestic industry by reason of imports of cold-formed carbon steel bar from Spain.

Additional Views of Commissioner Haggart

As noted in the majority views, there are two central issues in these investigations which warrant further discussion. I have concluded that, as a matter of law, the Commission is only required to find a causal nexus between material injury and the subsidized imports. In addition, because of the "conditions of trade" which exist in these carbon steel industries, I have not cumulated imports from Spain with imports from other countries in making my determinations in these investigations.

Relation of Subsidy to Material Injury

The issue has been raised in these investigations as to whether sections 710(a) and 705(b) of the Trade Agreements Act of 1979 (the Act) and Article 6, paragraph 4, of the Agreement on Interpretation and Application of Articles VI, XVI and XXIII of the General Agreement on Tariffs and Trade (the Subsidies Code) require the Commission to establish a causal link between the net subsidy determined by the Department of Commerce and injury to the domestic industry. Counsel for petitioners assert that the statute does not require the Commission to relate the amount of the net subsidy to the injury to the domestic industry in determining whether there is a causal link between subsidized imports and that injury. As indicated in the majority views, I concur with this view. My conclusion is based on an examination of the statutory language, the relevant legislative history, and the provisions of the Subsidies Code as they relate to U.S. law.

Insofar as U.S. law is concerned, the MTN agreements, including the Subsidies Code, are Congressionally authorized executive agreements.[71] These agreements are not self-executing; therefore, their effectiveness is dependent on U.S. implementing legislation. Consequently, it was necessary for Congress to pass the Trade Agreements Act of 1979 in order to give the Subsidies Code domestic legal effect.[72] It is therefore incumbent

[59] *Id.* at A-28, A-30.
[60] *Id.* at A-48, A-49.
[61] *Id.* at A-52.
[62] 47 FR 51438, 51448 (November 15, 1982), reproduced as Appendix A of our Report in these investigations.
[63] See, 47 FR 38167 (August 30, 1982).
[64] *Id.* at A-29, A-31.
[65] *Id.* at A-31. This increase in import penetration occurred at the same time this industry was operating at 34.4 percent of its capacity. Thus, the impact of these imports on the domestic industry was magnified.
[66] *Id.* at A-49.
[67] *Id.* at A-52, A-53.
[68] *Id. at A-29.*
[69] *Id. at A-31.*
[70] *Id. at A-.50*

[71] Senate Committee on Finance, Trade Agreements Act of 1979, S. Rept. No. 96-249, 96th Cong., 1st Sess., 36 (1979) [hereinafter cited as S. Rept.]; House Committee on Ways and Means, Trade Agreements Act of 1979, H.R. No. 96-317, 96th Cong., 1st Sess., 1 (1979) [hereinafter cited as H. Rept.]. See Cohen, *The Trade Agreements Act of 1979: Executive Agreements, subsidies, and Countervailing Duties*, 15 Texas Int. Law Journal 96 (1980), for an analysis of the different types of executive agreements.

[72] The Trade Agreements Act of 1979 added Title VII to the Tariff Act of 1930, which replaced the Antidumping Act of 1921, and amended the countervailing duty statute. Section 102 of the Trade Act of 1974 authorized the President to negotiate trade agreements with foreign countries subject to procedures for the approval and implementation of such agreements by Congress. These procedures outlined in the Trade Act of 1974 represented "a unique Constitutional experiment". According to the Senate Report, "* * * virtually all the provisions of H.R. 4537 [the Trade Agreements Act of 1979] reflect the decision of the Committee of Ways and Means of the House of Representatives and Senate Finance Committee," as coordinated in joint meetings with representatives of the administration and other

upon us to examine the statute itself in order to determine how Congress implemented into U.S. law the obligations assumed by the United States under the Subsidies Code.

According to the Senate Report accompanying the Act, Section 705 of the Tariff Act, as amended by section 101 of the Trade Agreements Act of 1979, codifies U.S. obligations under the Subsidies Code into U.S. law.[73] Section 705(b) provides that injury is to be "by reason of imports of the merchandise with respect to which the administering authority has made an affirmative determination under subsection (a) of this section [705(a)].". Article 6, paragraph 4, of the Code states that a countervailing duty will not be imposed on the product of any country which is a party to the GATT unless it is demonstrated that "the subsidized imports, through the effects of the subsidy, [are] causing injury * * *"

Congress could have used the specific language of the Code in the statute; however, it chose not to do so. Instead, Congress elected to require the Commission to make a final determination of whether an industry is materially injured "by reason of imports of the merchandise".[74] Thus, within the context of the issue of causality, the plain meaning of the statute requires us to trace any injury to imports of the subsidized merchandise from a particular country. The statute does not require the Commission to relate the amount of the subsidy to the injury being experienced by a domestic industry.

During its consideration of the Trade Agreements Act, Congress was aware that the relationship between the trade agreements and domestic law was a sensitive issue. The Senate Report states: "This bill is drafted with the intent to permit U.S. practice to be consistent with the obligations of the agreement, *as the United States understands those obligations*".[75] (Emphasis added.) Further, Congress was acutely aware that the U.S. law did not repeat the precise language of the agreements. Congress observed that greater precision in our law is required than the "often vague terms of the agreements or implementing regulations of other countries" because our trade laws are subject to administrative and judicial review processes.[76] Congress further stated that: "Unfamiliar terms in the agreements, or terms which may have a different meaning in United States law than in international practice or another country's laws, need to be rendered into United States law in a way which insures maximum predictability and fairness."[77]

The function of the Commission is to abide by the Congressional statutory scheme.[78] When the legislative history as a whole does not demonstrate that a literal reading of the statutory language results in an interpretation of the law that is clearly contrary to Congressional intent, rules of statutory construction do not require the Commission to look behind the clear language of the statute. There is no compelling reason to rely upon certain portions of the legislative history to interpret statutory language which is not ambiguous.[79] In the instant case, the legislative history does not contradict the plain meaning of the statute. Accordingly, the statutory language should be accorded its plain meaning.

Interpreting Congressional intent in conformity with the plain meaning of the statute is not inconsistent with the Subsidies Code. The relationship between the provisions of the Subsidies Code and the provisions of Title VII can be better understood by a comparison of certain articles of the Code with certain sections of Title VII. Section 771(7)(B) employs language very similar to Article 6, paragraph 1, of the Code with regard to the volume of imports, the effect of imports on prices, and the impact of imports on producers. Sections 771(7)(C)(i) and (ii) also closely parallel Article 6, paragraph 2, of the Code. These provisions refer to absolute or relative increases in the volume of imports, significant price undercutting, and imports as a cause of price depression or supression. Similarly, section 771(7)(C)(iii) closely parallels Article 6, paragraph 3, of the Code, inasmuch as both refer to an evaluation of all relevant economic factors which have a bearing on examining the impact on the industry concerned. Both provisions specifically include the following factors: actual and potential decline in output, sales, market share, profits, return on investment, utilization of capacity, factors affecting prices, actual and potential negative effects on cash flow, etc.

The provisions of the Trade Agreements Act and of the Code central to the dispute of whether the Act implements the Code are section 705(b) and Article 6, paragraph 4, respectively. Section 705(b), in relevant part, reads:

. . . The Commission shall make a final determination of whether—

. . . an industry . . . is materially injured

. . . *by reason of imports of the merchandise* with respect to which the administering authority has made an affirmative determination. (Emphasis added.)

Article 6, paragraph 4, in relevant part, states:

It must be demonstrated that the subsidized imports are, *through the effects*[18] *of the subsidy*, causing injury within the meaning of this Agreement . . . (Emphasis added.)

[18] As set forth in paragraphs 2 and 3.

Footnote 19 to Article 6, paragraph 4, specifically cross-references paragraphs 2 and 3 and, therefore, paragraph 4 must be examined in conjunction with paragraphs 2 and 3 of Article 6. As indicated above, Article 6, Paragraph 2, is implemented in section 771(C)(i) and (ii) of the statute, and Article 6, Paragraph 3, is implemented in section 771(7)(C)(iii) of the statute.

The methodology contemplated in Article 6 for tracing the effects of the subsidy to any material injury

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relevant House and Senate Committees." Congress had agreed that the bill as reported out of Committee would either be enacted without amendment or rejected.

[73] S. Rept. at 57.

[74] The language "by reason of imports" is articulated in sections 701 and 705. In addition, Congress focused on the "volume of imports," the "effect of imports" on prices, and "the impact of imports" on domestic producers. Section 771(7)B. In contrast, in section 771(7)(E), which pertains only to threat cases, Congress directed the Commission to consider "the effects likely to be caused by the subsidy," in addition to the other factors. This is the only provision of the statute that directs the Commission to take cognizance of the effect of the foreign subsidy. Had Congress intended the Commission to take cognizance of the effect of the subsidy, it is logical to assume that it would have used the language employed in section 771(7)(E) in other sections of the statute.

[75] S. Rept. at 36.

[76] *Id.*

[77] *Id.*

[78] Within another context involving the administration of the countervailing duty provisions, Judge Watson of the Court of International Trade observed: Congress has explicitly enacted this legislation to conform to trade agreements entered into by the United States and has defined those procedures which constitute conformity in the initiation of investigations. Thus, the petition determination by the ITA and the preliminary injury determination by the ITC were considered together to implement the code requirement that before a countervailing duty investigation is initiated the existence of a subsidy and injury must be considered. [Citation omitted]. The ITA's first duty in determining the sufficiency of a petition is to adhere to the procedures contained in the law *and not to assume a larger responsibility by looking beyond the law to the codes or trade agreements it implements.* (Emphasis added). Republic Steel, et al. v. United States et al., Slip Op. 82–58, at 14, July 22, 1982.

[79] Although the legislative history refers to the term "net subsidy" and "subsidization" in conjunction with injury to the domestic industry, e.g., S. Rept. at 57–58, H.R. at 46, focusing on these references in the legislative history in preference to the numerous references, e.g., S. Rept. at 43–45, 47–60, 84–89, H. Rept. 46–58, 73–75, in the same legislative history that strongly support the plain meaning of the statutory language is not justified.

experienced by the domestic producers in the importing country is to determine the effects of the volume of subsidized imports on the prices in the product markets of the importing country and their impact on the domestic producers. These are the same effects that sections 771(7)(B) and (C) direct the Commission to consider. Thus, section 771 implements Article 6, paragraphs 2, 3, and 4, of the Code. Therefore, the argument that the statute fails to implement the provision of Article 6, Paragraph 4, of the Code is not persuasive. For these reasons, the literal language of the Code cannot be relied upon to defeat the argument that the Commission must follow the plain meaning of Title VII in making its injury determinations.

Although the statute directs us to determine whether injury is "by reason of imports of the merchandise", we are not precluded from considering the amount of the subsidy or the likely effect of the subsidy as one of the non-specified factors in the Commission's analysis under section 771(7)(B).[80] However, the presence or absence of a causal nexus between the amount of the net subsidy and material injury should not be dispositive with respect to the issue of the cause of any material injury since "the presence or absence of any factor which the Commission is required to evaluate under subparagraph (C) or (D) shall not necessarily give decisive guidance with respect to the determination by the Commission of material injury."[81] If the presence or absence of a specified factor is not decisive, than *a fortiori*, the presence or absence of a non-specified factor should not be dispositive.

Other considerations support the conclusion that the amount of the net subsidy should not be relied upon in determining material injury by reason of subsidized imports. There is no compelling reason to presume that there is a casual relationship between the amount of the net subsidy calculated by the Department of Commerce and any price differential in the U.S. market between domestic products and imported subsidized products. Commerce's net subsidy calculation reflects a determination of the value of a foreign subsidy. Essentially, foreign accounting principles are used in determining whether a program is a subsidy and assessing the benefits accruing to the foreign manufacturer because of the subsidy. Caution is warranted in relying upon this net subsidy calculation in light of the fact that accounting calculations may not accurately reflect economic phenomena outside the system within which they are used.[82]

Although there may be some logic in assuming that a less than fair value dumping margin will manifest itself through price differentials in the market, this may not be the case with a subsidy. Subsidies may be utilized by foreign producers for a number of purposes such as to improve cash flow, to achieve economies of scale through encouraging production, to encourage employment, or to contribute to product development. Imports still may be a cause of material injury even if there is no evidence of underselling in the market.[83] Thus, a negative determination based on the fact that the net subsidy calculated by the Department of Commerce does not account for a certain portion of the underselling would not comport with the plain meaning of the statute and Congressional intent.

Moreover, the period of investigation covered by the Department of Commerce does not always correspond with the period of investigation covered by the Commission. In these investigations, the period of investigation for the Commission ended in September of 1982. By comparison, the period used by Commerce for measuring subsidization for the Spanish producers was the 1981 calendar year. Thus, certain analytical obstacles exist in drawing conclusions from the relationship between the net subsidies and margins of underselling, when the latter are based on a time period that is not analogous to the period for which the net subsidies were calculated.

In light of these problems, a compelling argument can be made that the amount of the net subsidy calculation may have no methodological connection with any attempt to assess the effects in the U.S. market likely to be caused by certain foreign subsidy practices. Consequently, in these investigations, I have relied on the existence of a casual nexus between the subsidized imports and injury, rather than attempting to relate the amount of the net subsidy to the injury.

This conclusion is consistent with the bifurcated statutory scheme established by Congress.[84] Under the statutory scheme, there are two basic determinations required before a countervailing duty is imposed. The law states that the Department of Commerce shall make a final determination as to whether a subsidy is being provided. The Commission is then required to make a final determination as to whether an industry is materially injured or threatened with material injury "by reason of the imports" of the merchandise with respect to which the Department of Commerce has made an affirmative final subsidy determination. As stated in the Senate Report, "[a] domestic industry must be materially injured by reason of subsidized imports before a countervailing duty could be imposed."[85] If both the finding of the Department of Commerce and the Commission are affirmative, the Department of Commerce is required to publish upon notification from the Commission, a countervailing duty order and duties are assessed in accordance with that order.[86]

"Title VII is not punitive, it is a limited remedy statute. Under the scheme [only] the amount of the advantage enjoyed [subsidy] by the imports is offset by a corresponding duty. Imports are still permitted full access to the U.S. market."[87] Thus, the statutory scheme results in an offset of the advantage the net subsidy bestows on the imported product. To the extent the subsidy adversely affects the U.S. market, such distortive impact is negated by the countervailing duty. As a result, the statute affords protection to the domestic industry from the distortive effects of subsidization while still permitting imports of subsidized merchandise into the market.

The Commission should not be required to project what effect an affirmative determination will have in the market. The statute is only designed to insure that subsidized imports which cause material injury do not compete in the U.S. market without an offsetting of the subsidy.

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[80] Section 771(7)(B) states: "The Commission shall consider, *among other factors*" (Emphasis added), the volume of imports, the effect of imports on prices, and the impact of imports on domestic producers. The reference to "other factors" can properly be construed as referring to factors other than those enumerated which could include the effects of the net subsidy. As the Senate Report states, "In determining whether injury is 'by reason of' subsidized imports, the ITC now looks at the effects of such imports on the domestic industry. [The Commission] also considers, among other factors, the quantity, nature, and rate of importation of the imports subject to investigation, and how the effects of the net bounty or grant relate to injury . . ." S. Rept. at 57.

[81] Section 771(7)(E)(ii).

[82] As a general proposition, accounting calculations "do not provide valid measurements that can be used for answering or gaining insights into most economic questions." George J. Benton, "Accounting Numbers and Economic Values," XXVII The Antitrust Bulletin 161 (1982).

[83] Section 771(7)(E)(ii).

[84] Section 705(a)(1) and Section 705(b)(1).

[85] S. Rept. at 44.

[86] Section 705(c)(2) and Section 706(a).

[87] Additional views of Vice-Chairman Calhoun. Certain Steel Wire Nail from the Republic of Korea, Inv. No. 701-TA-145, March 1982.

Based on the foregoing, I have concluded that a causal link between the amount of the subsidy and material injury is not required to be established before an affirmative final determination can be made by the Commission. In other words, an analysis of the effect of the subsidy should not be dispositive. The relationship of the level of net subsidy to material injury is, at best, a non-specified factor that the Commission may consider at its discretion under § 771(7)(B) of the Act.

Cumulation

In each of the subject investigations, I have made my determination on a case-by-case basis and have not cumulated imports from more than one country. The statute expressly gives the Commission the discretion to consider imports from all sources in making its injury analysis with respect to the imports from a particular country. Section 771(7) of the Tariff Act of 1930 directs the Commission to "evaluate all relevant economic factors which have a bearing on the state of the industry". Further, both the Senate and House Reports accompanying the Trade Agreements Act specifically note that the Commission is to consider all factors and conditions of trade in the relevant industry.[88] Imports from all countries can and should be considered as part of the conditions of trade in assessing the impact of imports from a particular country on the domestic industry. The mere existence in the market of these imports is plainly a "factor or condition of trade" that would bear on an injury analysis conducted on a case-by-case basis.

This analysis, however, is different from cumulation inasmuch as it does not require the Commission to determine that imports from each country are a contributing cause of material injury; nor does it result in a finding of material injury with respect to imports from one country solely by reason of aggregating that country's imports with imports from other countries. Rather, imports from other countries are one of many factors to be considered in the market in determining whether imports from a particular country themselves are a cause of material injury.[89]

[88] Sen. Rept. at p. 57 and p. 88, H. Rept. at p. 45.

[89] The distinction between those two approaches should not be minimized. Under the latter approach, the Commission's determination is made without reliance upon the cumulative impact of imports subject to sequential investigations, suspension agreements, or settlement agreements. A case-by-case analysis will result in the Commission's final determinations having the advantage of more stability and repose.

"Material injury" means "harm which is not inconsequential, immaterial, or unimportant".[90] According to the statute, in making a final determination of material injury pursuant to section 771(d), the Commission shall consider, among other factors—

(i) The *volume of imports* of the merchandise which is the subject of the investigation,

(ii) The *effect of imports of that merchandise on prices* in the United States for like products, and

(iii) The *impact of imports of such merchandise on domestic producers* of like products. 19 U.S.C. § 1677(7)(b) (Emphasis added).

According to the Senate Report, the significance of each factor affecting the industry will depend on the facts of each case. Neither the presence nor absence of any such factor necessarily gives decisive guidance with respect to whether an industry is materially injured and the Commission has the discretion to decide what significance should be assigned to particular factors. In deciding the weight to give to a particular factor, the Commission should consider the conditions of trade, competition, and development with respect to the industry concerned.[91] More specifically, according to section 771(7)(C)(i)

> "In evaluating the volume of imports of merchandise, the Commission shall consider whether the volume of imports of the merchandise, or any increase in that volume, either in absolute terms or relative to production or consumption in the United States, is significant" [19 U.S.C. 1677(7)(C)].

The Senate Report points out that *"for some industries an apparently small volume of imports may cause harm that is not inconsequential* (Emphasis added)." [92]

Whether a certain volume of imports is capable of causing harm which is not inconsequential depends on the facts present in each investigation. For example, a certain volume of imports in a market dominated by the domestic industry may be incapable of causing material injury. However, that same volume of imports in a market characterized by severe price competition from several sources, both domestic and foreign, may be considered significant in light of the conditions of trade in the industry, the nature of the industry itself, and the economic condition of the industry at the time that the imports became a factor in the market. A relatively healthy industry facing competition from only one foreign source may be in a position to withstand certain lost sales. The same lost sales, however, may have a more significant impact on an industry which has not only lost these particular sales, but has also lost numerous additional sales to other unfairly traded imports. In addition, the effect on prices that a certain volume of imports may have also depends on the conditions of trade in existence at the time. Significant price depression or suppression may occur in one set of circumstances whereas the same volume of imports priced at the same level may not have a significant impact under a different set of circumstances. Consequently, harm which may be inconsequential in one context can be considered not inconsequential in another context. Accordingly, the statute gives the Commission the discretion to weigh all relevant factors in making its material injury determination. The Senate Report states:

> ". . . (J)udgment as to whether the facts in a particular case actually support a finding of injury are for the Commission to determine, subject to judicial review for substantial evidence on the record."

Counsel for petitioners have argued that cumulation is warranted in these investigations because the subject imports are fungible along product lines, compete on the basis of price, and they are indistinguishable once they enter the U.S. market. These factors, among others, should be taken into consideration as part of the conditions of trade which relate to the assessment of the impact of imports from a particular country on the domestic industry. In these investigations involving certain carbon steel industries, the record with respect to the conditions of trade has been sufficiently developed and, consequently, I have made my determinations on a case-by-case basis.

Applying the above principles to the cases currently before us, it is evident that the domestic steel industries in their present distressed condition are industries as to which even an apparently small volume of imports can have a significant adverse market effect. With respect to all six products involved in these investigations, the industries can be characterized by high fixed costs and relatively low variable costs, thereby requiring relatively high levels of capacity utilization and sales to cover those costs. As capacity utilization decreases, average costs per unit rise at a disproportionately steep rate. When capacity utilization is low, industry profits are more adversely affected by lost sales. Any additional increment of

[90] Section 771(7)(A).

[91] S. Rept. at 88.

[92] *Id.*

import volume or penetration may have a more severe effect under these circumstances. In many of these cases, import penetration increased significantly at a time when the domestic industry was experiencing its most difficult problems.

I have made an affirmative determination in these investigations because the record provides sufficient information to conclude that the levels of imports from Spain are such that those imports are capable of causing material injury in light of the conditions of trade which exist in these industries. Whether or not these imports have in fact caused material injury also depends on a more detailed analysis of the existence of underselling, price suppression or depression, lost sales, and other factors regarding the effect of these imports on competition in the marketplace. The presence or absence of any of these factors is not decisive.[93] The weight to be given the presence or absence of each factor is dependent on the facts of each case. When information on the record supports a conclusion of material injury by reason of the imports from an individual country, there is no need to cumulate the imports from several countries while ignoring the impact, or lack thereof, of imports from an individual country.

Views of Commissioner Paula Stern

In these cases on imports from Spain, as in the other recent cases on various carbon steel imports,[94] my determinations have diverged from those of my colleagues on the question of causality. All six product lines under consideration here are experiencing severe problems reflected in virtually all the economic indicators examined in these investigations. The link between these difficulties and subsidized imports from Spain, however, varies by product line.

I have presented in detail the general legal and analytical framework I am utilizing to assess causality in my opinion in Certain Carbon Steel Products from Belgium, France, Italy, Luxembourg, the United Kingdom and the Federal Republic of Germany.[95] I incorporate those views by reference in this opinion.[96] My views on the general conditions of trade and competition in the carbon steel industry are also set forth in that opinion.[97] I have considered these conditions in reaching my determinations in the cases under consideration here.

In these views I would like to emphasize the need to consider the level of subsidization in reaching a determination in cases brought under this unfair trade statute.[98] [99] This point is brought into sharp focus in these cases on imports from Spain because comparative purchase price data are not available and thus a full analysis comparing the margin of subsidization with the margin of underselling is not possible. Still, the magnitude of the subsidization is relevant in assessing causality.

In recent cases, I am increasingly struck by the danger of this statute becoming a means of obtaining protection, albeit limited, from fair rather than unfair competition. The Congress has established standards for relief from fair competition which are considerably more stringent than those that apply to unfair competition.[100] Theories on causality which suggest that the level of subsidization is irrelevant to the Commission's analysis of the impact of "subsidized imports" on the domestic industry can lead to a breakdown of the carefully constructed framework that Congress [101] has established for providing protection consistent with the public interest and U.S. international obligations.

An affirmative finding in any unfair trade case is premised on a finding of potentially unfair trade, [102] i.e., the existence of subsidization or less than fair value imports. This very basic element was missing in a number of recent cases before the Commission (and yet there were some affirmative votes.[103] Even when the subsidy level is not zero, as in the cases before us here, its significance must still be examined to determine whether it—the potentially unfair trade practice—has resulted or is likely to result in volume or price effects.[104] Only if this has occurred as a result of the subsidy does the potential for material injury or threat of material injury caused by the subsidized imports exist within the meaning of the statute.

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[93] Section 771(7)(E)(i).

[94] Certain Carbon Steel Products from Belgium, France, Italy, Luxembourg, the United Kingdom, and the Federal Republic of Germany, Inv. Nos. 701-TA-86 to 701-TA-128 (numbers not inclusive); Carbon Steel Wire Rod from Belgium and France, Inv. Nos. 701-TA-148 and 701-TA-150, Carbon Steel Wire Rod From Brazil and Trinidad and Tobago, Inv. Nos. 731-TA-113 and 731-TA-114.

[95] *Id.* My opinion in these cases appears at pages 1*-71* of USITC Pub. No. 1316 (November 1982). These cases were terminated by the Commission, despite my dissent. I believe that the Commission did not have the legal authority to terminate these cases. I found that action to be inconsistent with the public interest and contrary to sound, responsible agency practice. On the latter point, I note that termination of cases on the basis of settlements after the Commission votes places the Commission's independent status in jeopardy as its votes can become a part of the Executive Branch's negotiating process.

The Commission's final determinations in those carbon steel cases took place at the time of the votes on October 15, 1982. According to the statute, 19 U.S.C. 167d(d):

(d) Publication of notice of determinations—Whenever the administering authority or the Commission makes a determination under this section, it shall notify the petitioner, other parties to the investigation, and the other agency of the determination and the facts and conclusions of law upon which the determination is based, and it shall publish notice of its determination in the **Federal Register**. The requests for withdrawal of the petitions and the settlement agreement were not on the record of those investigations which closed at the time of the vote and was not subsequently reopened. Thus, the Commission was legally bound to issue its determination and transmit its views to the Commerce Department.

I note that the sequence of events that occurred in those carbon steel cases was without precedent. Prior to those cases, settlements of unfair trade cases had consistently been made before the Commission's votes in line with both the statute and the public interest. For my full views on this matter see my memorandum, CO2-F-74, relative to Commission action jacket GC-82-143, dated October 22, 1982.

[96] See in particular pages 1*-38* of that opinion which include discussion of margins analysis, de minimis subsidies, circumstances for cumulation and the meaning of lost sales. ITC Pub. No. 1316 (November 1982).

[97] See Pages 54*-70* of that opinion. ITC Pub. No. 1316 (November 1982).

[98] I note that the sequence of the bifurcated administrative process established by the Congress for countervailing duty cases supports the view that the level of subsidization is relevant to the Commission's final determination. As a matter of law, the Commission's final determination on the injury question awaits the Commerce Department's final determination of the margin of subsidization. If this final margin were irrelevant to the Commission and we were to consider only "the imports" as some have suggested, our final injury determination could just as well precede that of the Commerce Department. This sequence, however, is precluded by the statute.

[99] That is not to say that the level of subsidization alone is dispositive. It is one of a myriad of factors which the Commission should consider in drawing a final conclusion on the question of injury.

[100] The standards for relief from fairly traded imports are set forth in section 201 of the Trade Act of 1974. In a section 201 investigation, the Commission must determine whether "an article is being imported into the United States in such increased quantities as to be a *substantial* cause of *serious* injury, or the threat thereof, to the domestic industry . . ." (emphasis added).

[101] The framework is part of international agreements negotiated over the last thirty-five years under the General Agreement on Tariffs and Trade.

[102] It is unfair only if material injury or threat of material injury to a U.S. industry results.

[103] In the following cases, Commerce made affirmative determinations despite the fact that for most or all of the subject imports subsidies were evaluated at zero:

Hot-rolled Stainless Steel Bar from Spain, Inv. No. 701-TA-176. Cold-formed Stainless Steel Bar from Spain, Inv. No. 701-TA-177. Hot-rolled Carbon Steel Plate from Belgium and the FRG*, Inv. Nos. 701-TA-86 and 701-TA-93. Hot-rolled Carbon Steel Sheet and Strip from the FRG*, Inv. No. 701-TA-101. Cold-rolled carbon steel sheet and strip from the FRG*, Inv. No. 701-TA-109. Carbon Steel Structural Shapes from the FRG Inv. Nos. 701-TA-124 and 701-TA-121. An asterisk indicates that subsidies on all the subject imports were evaluated at zero by the Department of Commerce.

[104] 19 U.S.C. 1677(7)(B)(i)-(ii).

This is clear from the legislative history. In pointing out that the significance of various factors will differ from industry to industry, the Senate noted:

> Similarly, for one type of product, *price may be a factor in making a decision as to which product to purchase* and a small price differential resulting from the *amount of the subsidy* or the margin of dumping *can be decisive;* for others the size of the differential may be of lesser significance.[105] (Emphasis added.)[106]

The Congress was concerned about price differences resulting from a subsidy which could affect the condition of a domestic industry, and so am I. As a legal matter, the impact of the subsidy needs to be assessed on the basis of the best information available in a particular case. That this task will at times prove difficult provides neither an excuse nor legal justification for us to avoid making an effort toward such assessment.

Though my positon on this matter is taken strictly as a result of the direction of the statute and the legislative history, I point out that it is also based on sound economic and public policy. In brief, if subsidies have no material influence on import prices or volume (as when the subsidy is very small or when it is insignificant in relation to the margin by which the foreign product undersells the U.S. product), corresponding countervailing duties do not correct a problem. Instead, they impose a cost on the U.S. economy and become a nuisance to trade. They result in American penalties for foreign government intervention in their economies even in those instances where the intervention does not materially affect the competing U.S. industry. From a public policy point of view, affirmative Commission findings in cases where the potentially unfair practice itself has not been a cause of injury to the domestic industry fosters a myopic public perception of the factors necessary to strengthen U.S. competitiveness.

The following are my views on the specific cases covered in these investigations.

I. Hot-rolled Carbon Steel Plate

1. *Imports from Spain.* Imports rose from 74,000 tons in 1979 to 110,000 tons in 1980 and then fell to 99,000 tons in 1981. Imports in January–September 1982 amounted to 76,000 tons, 17 percent below the level for the same period of 1981. The ratio of these imports to apparent U.S. consumption rose from 0.9 percent in 1979 to 1.3 percent in 1981. In the first three quarters of 1982 the market share rose to 2.3 percent compared to 1.6 percent for the like period of 1981.[107]

2. *Prices and Lost Sales.*[108] Comparisons of delivered prices paid by purchasers for the subject import and the domestic product are not available.[109] [110]

Of 15 lost sales allegations checked, 5 were confirmed, all because of price. Confirmed lost sales covered 0.2 percent of the subject sales. Purchasers noted that Spanish prices were from $40.00–$120.00 per ton below domestic prices.

3. *Subsidy.* The size of subsidies found on the subject steel product was 10.12 percent.

4. *Determination.* In light of the level of market penetration of imports of hot-rolled carbon steel plate from Spain and other information on the record, in my judgment the facts before us most clearly support an affirmative finding on the basis of threat of material injury. The criteria suggested in the legislative history of the Trade Agreements Act of 1979 for a finding of threat are satisfied in this case.[111]

Import penetration is increasing and the rate of increase is accelerating. These trends are likely to continue. Importers' inventories are already substantial. Spanish raw steel capacity has been steadily increasing and Spain has the capacity to generate increased exports.[112] The United States is likely market for increased Spanish production. Spanish domestic consumption is depressed and Spain's access to another important foreign market, the EC, is subject to restrictions.[113] In 1979 Spain shipped 20% of its total exports of this product to the United States. By 1981 this figure was 32.8%. The sizable subsidy—10.12 per cent—provided to the sole Spanish exporter of this product, Ensidesa, provides a competitive advantage which assures a "real and imminent" increase in Spanish exports to the U.S. market resulting in a further deterioration of the U.S. industry.

Given the current weakened state of the domestic industry, even a very small additional increase in these imports would result in material injury. Thus, I have further determined that the industry would have been materially injured by reason of the subsidized imports but for the suspension of liquidition of entries thereof.[114]

II. Cold-rolled Carbon Steel Sheet

1. *Imports from Spain.* Imports fell from 48,000 tons in 1979 to 8,000 tons in 1980, but then increased to 62,000 tons in 1981. Imports in January–September 1982 amounted to 48,000 tons, almost twice the level for the same period of 1981. The ratio of imports from Spain to apparent U.S. consumption fell from 0.4 in 1978 percent to 0.1 percent in 1980, the rose to 0.4 percent in 1981. In the first three quarters of 1982 the market share rose to 0.5 percent compared to 0.2 percent for the like period of 1981.[115]

2. *Prices and Lost Sales.* Two lost sales allegations were checked, and both were confirmed, principally because of price. In this particular case, the confirmed lost sales covered a significant share, 10.7 percent, of the subject sales. Purchasers indicated that Spanish prices were $80.00–$100.00 per ton below domestic prices and that the price gap had recently widened.

3. *Subsidy.* The size of subsidies found on the subject steel product ranged from 10.12 to 38.25 percent. The weighted average subsidy was 30.54 percent.[116]

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[105] S. Rep. 96–249, 96th Cong., 1st Sess. (1979) p. 88. See also pps. 57–58 and H. Rep. 96–317, 96th Cong., 1st Sess. (1979) p. 46.

[106] In the carbon steel industries price is important and the products are relatively fungible. Even here, however, other factors such as quality and reliability of supplier do play a role. Thus, very small subsidies are unlikely to affect the level of imports.

[107] Report at A–28, A–30.

[108] Lost sales information presented in this opinion relates only to data gathered in the final investigations. Lost sales information gathered in the preliminary investigation is presented in the Report at A–45 to A–51.

[109] This point applies to all cases covered here. Therefore, I will not discuss price data in subsequent product-line discussions.

[110] Some may argue that margins of underselling based on lost sales information should be used as a substitute for purchase price comparisons. Margins calculated on the basis of lost sales, however, generally have only limited value. Purchase price data ideally provide a representative sample of different transactions for both domestic and imported merchandise reported in confidential responses to official Commission questionnaires. These data include both domestic and imported prices in actual market transactions. In contrast, lost sales information is gathered through telephone inquiries concerning petitioners' allegations of purchases of imports in lieu of domestic products. The sample is suggested by an interested party to the investigation. Though it is sometimes possible to derive margins of underselling based on lost sales conversations, these margins are often based on the purchaser's collection of the price of the imported product in a given transaction in comparison with what the purchaser perceived to be the prevailing domestic price at the time.

[111] Sen. Rep. 96–249, 96th Cong., 1st sess. (1979), pp. 88–89.

[112] Report at A–23 to A–26.

[113] Staff Report on Certain Steel from Belgium *et al.*, Investigation Nos. 701–TA–86—128 (not inclusive), at pp. E2–E10.

[114] The additional finding is required by 19 USC § 1671d(B)(4)(B), when a finding of threat of material injury is made.

[115] Report at A–28, A–30.

[116] Weighted average subsidies were obtained from calculations performed by the Office of Investigations. See Confidential Memorandum INV–F–190.

4. *Determination.* Spanish imports taken alone are not sufficient to cause or threaten material injury. During the entire period of this investigation, however, subsidized imports, which I found to be injurious when cumulated, entered the United States from France and Italy.[117] The substantial Spanish subsidies on this product, most at 38 percent, have been instrumental in enabling Spanish producers to offer substantially lower prices to U.S. purchases as confirmed in lost sales reports.

For an affirmative finding of present injury, we are to judge whether material injury occurred during the period of the investigation by reason of the subsidized imports. During the entire period of this investigation subsidized imports (not subject to countervailing duties or a settlement agreement) entered the U.S. market from Spain, Italy and France. In light of the imports from France and Italy and the large subsidy margins, I voted in the affirmative in this case on imports from Spain.

III. Galvanized Carbon Steel Sheet

1. *Imports from Spain.* Imports fell from 39,000 tons in 1979 to 24,000 tons in 1980 and again fell in 1981 to 19,000 tons. In January–September 1982 imports amounted to 27,000 tons, compared to 7,000 tons for the same period of 1981. The ratio of these imports from Spain to apparent U.S. consumption fell from 0.5 percent in 1979 to 0.3 percent in 1981. In the first three quarters of 1982 the market share was to 0.6 percent compared to 0.1 percent for the like period of 1981.[118]

2. *Prices and Lost Sales.* Three lost sales allegations were checked and all three were confirmed, principally because of price. Confirmed lost sales covered 9.2 percent of the subject sales.

3. *Subsidy.* The size of subsidies found on the subject steel product ranged from 4.54 to 10.12 percent. Most sales benefitted from subsidies of 4.54 percent. The weighted average subsidy was 5.71 percent.

4. *Determination.* The tiny presence of imports of galvanized sheet from Spain in the United States market is simply not enough to cause or threaten material injury. Cumulation was not an issue in this case. Therefore, I found in the negative.

IV. Carbon Steel Structural Shapes

1. *Imports.* Imports rose from 96,000 tons in 1979 to 174,000 tons in 1980 and 238,000 tons in 1981. Imports in January–September 1982 amounted to 149,000 tons, 30 percent below the level for the same period of 1981. The ratio of these imports to apparent U.S. consumption rose from 1.0 percent to 4.1 percent in 1981. In the first three quarters of 1982 the market share was 4.5 percent compared to 4.6 percent for the like period of 1981.[119]

2. *Prices and Lost Sales.* Of 10 lost sales allegations checked, 7 were confirmed, principally because of price. Confirmed lost sales covered 0.2 percent of the subject sales.

3. *Subsidy.* The size of subsidies found on subject steel product ranged from 1.64 to 10.12 percent. The weighted average subsidy was 7.31 percent.

4. *Determination.* I have determined that subsidized imports of structural shapes from Spain are causing material injury to the domestic industry. The major considerations in my determination include the significance of the subsidies in maintaining the competitiveness of Spanish steel and the level of current penetration by these imports. Moreover Spain has been increasing the share of its total exports of this product to the United States. In 1979 12 percent of Spanish exports went to this country. In 1981 this figure was 18 percent. The EC is now considering a dumping action against Spanish wide flange beams.[120] Material injury to the U.S. industry has already taken place and further injury is imminent without a countervailing duty order.

On the question of the retroactive application of countervailing duties, unlike my colleagues, I have voted in the affirmative. The difference in our votes relates to a difference in interpretation of the facts on the record, rather than to a difference in legal interpretation. I find the jump in penetration of the U.S. market by imports from Spain during the period we are concerned with here (March–June, 1982) to be unusual. Quarterly data available show that for April–June 1982 Spanish penetration of the U.S. market was 5.9 percent. This is the highest penetration level recorded for that period in recent years. It also is a sharp increase from the previous quarter's level of 3.7 percent. I believe that such an increase is evidence of actions by importers to avoid the bond and the possibility of countervailing duties. Thus, an affirmative additional finding is warranted.

V. Hot-Rolled Carbon Steel Bar

1. *Imports.* Imports fell from 28,000 tons in 1979 to 24,000 tons in 1980, but then increased to 34,000 tons in 1981. Imports in January–September 1982 amounted to 18,000 tons, 31 percent below the level for the same period of 1981. The ratio of these imports to apparent U.S. consumption rose from 0.4 percent in 1979 to 0.7 percent in 1981. In the first three quarters of 1982 the market share rose to 0.8 percent compared to 0.7 percent for the like period of 1981.[121]

2. *Prices and Lost Sales.* One lost sale was alleged, but it could not be confirmed.

3. *Subsidy.* The size of subsidies found on the subject steel product ranged from 1.59 to 15.08 percent. The weighted average subsidy margin was 2.82 percent, but nearly all imports entered benefitted from subsidies of either 1.59 percent or 1.74 percent. One producer, Pedro Orbegozo y Cia. S.A., was continued by Commerce with no current subsidy margin.

4. *Determination.* My determination in this case was in the negative. Spanish exports to the United States and Spanish U.S. market penetration are both small. Nearly all Spanish imports benefit from only a small subsidy, ranging from 1.59 to 1.74 percent. These imports have no significance in the market place. The small subsidy is not sufficient to trigger increased import penetration by Spain. Therefore, I find no present injury and no "real and imminent" threat of injury to the domestic industry by these imports.[122]

VI. Cold-formed Carbon Steel Bar

1. *Imports.* Imports rose from 6,000 tons in 1979 to 17,000 tons in 1981. Imports in January–September 1982 amounted to 12,000 tons, the same level as for the same period of 1981. The ratio of these imports to apparent U.S. consumption rose from 0.3 percent in 1979 to 1.2 percent in 1981. In the first three quarters of 1982 the market share rose to 1.6 percent compared to 1.1 percent for the like period of 1981.[123]

2. *Prices and Lost Sales.* Of 11 lost sales allegations checked, 4 were confirmed, principally because of price. Confirmed lost sales covered 1.9 percent of the subject sales.

3. *Subsidy.* Virtually all the subject steel product benefitted from subsidies of 1.56 percent. One producer, Pedro

[117] See my opinion in Certain Carbon Steel Products from Belgium *et al.* published in USITC Pub. No. 1316 (November 1982).

[118] Report at A–28, A–30.

[119] Report at A–28, A–30.

[120] Metal Bulletin, June 29, 1982.

[121] Report at A–29, A–31.

[122] In Certain Carbon Steel from Belgium *et al.* I voted affirmatively on imports of hot-rolled carbon steel bar from the U.K. In that case penetration of subsidized imports was higher and the level of subsidization was meaningful. Imports from Spain have not contributed to a hammering effect.

[123] Report at A–29, A–31.

Orbegozo y Cia, S.A., was continued by Commerce with no current subsidy.

4. *Determination.* I have found in the negative in this case. Spanish exports to the U.S. are small as is import penetration. The subsidies provided to the largest Spanish exporter amount to only 1.56 percent. These imports are not significant in the market and the subsidy level is not sufficient to distort trade patterns. Thus, there is neither present material injury nor a "real and imminent" threat of such injury as a result of subsidized imports from Spain.

By Order of the Commission.

Issued: December 21, 1982.

Kenneth R. Mason,

Secretary.

[FR Doc. 83-218 Filed 1-4-83; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-104]

Certain Card Data Imprinters and Components Thereof; Termination of Investigation

AGENCY: International Trade Commission.

ACTIONS: Termination of investigation No. 337-TA-104 on the basis of a finding of no violation of section 337.

SUMMARY: Complainants AM International, Inc. and Bartizan Corp., moved on September 27, 1982, to terminate this investigation. On October 14, 1982, the presiding officer recommended that the motion be granted. On December 22, 1982, the Commission terminated Inv. No. 337-TA-104, based on a finding of no violation of section 337.

SUPPLEMENTARY INFORMATION: This investigation was conducted under section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and concerns alleged unfair trade practices in the importation into and sale in the United States of certain card data imprinters and components thereof. Notice of the institution of the investigation was published in the **Federal Register** of June 12, 1981 (46 F.R. 31094).

Copies of the Commission's Action and Order and all other non-confidential documents filed in connection with the investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, telephone 202-523-0161.

FOR FURTHER INFORMATION CONTACT: Michael P. Mabile, Esq., Office of the General Counsel, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, telephone 202-0523-0189.

By order of the Commission.

Issued: December 28, 1982.

Kenneth R. Mason,

Secretary.

[FR Doc. 83-212 Filed 1-4-83; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-112]

Certain Cube Puzzles; Issuance of Exclusion Order

AGENCY: International Trade Commission.

ACTION: Issuance of exclusion order.

SUPPLEMENTARY INFORMATION: On December 15, 1982, the Commission determined with respect to the above-captioned investigation that there is a violation of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation of certain infringing cube puzzels into the United States, and in their sale, the effect or tendency of which is to substantially injure an industry, efficiently and economically operated, in the United States. The Commission determined that a general exclusion order pursuant to subsection (d) of section 337 is the most appropriate remedy for the violation found to exist, that the public interest factors enumerated in subsection (d) did not preclude the issuance of such an order, and that the amount of the bond under subsection (g) of section 337 would be 600 percent of the entered value of the articles concerned. The Commission's Action and Order and the Commission opinions in support thereof or dissenting therefrom where issued on December 29, 1982.

The notice instituting the investigation and defining its scope was published in the **Federal Register** on December 29, 1981 (46 FR 62964).

The Commission Action and Order, the Commission opinions, and all other nonconfidential documents on the record of the investigation are available for public inspection Monday through Friday during official working hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Room 156, Washington, D.C. 20436, telephone 202-523-0471.

FOR FURTHER INFORMATION CONTACT: William E. Perry, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202-523-0499.

By order of the Commission.

Issued: December 30, 1982.

Kenneth R. Mason,

Secretary.

[FR Doc. 83-216 Filed 1-4-83; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-135]

Certain Direction-Reversing Musical Crib Toys; Order

Pursuant to my authority as Chief Administrative Law Judge of this Commission, I hereby designate Administrative Law Judge Janet D. Saxon as Presiding Officer in this investigation.

The Secretary shall serve a copy of this order upon all parties of record and shall publish it in the **Federal Register.**

Issued: December 23, 1982.

Donald K. Duvall,

Chief Administrative Law Judge.

[FR Doc. 83-209 Filed 1-4-83; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-115]

Certain Power Woodworking Tools, Their Parts, Accessories and Special Purpose Tools; Termination of Six Respondents on the Basis of Settlement Agreements and Termination of the Investigation

AGENCY: International Trade Commission.

ACTIONS: Termination of investigation as to respondents King Feng Fu Machinery Works Co., Ltd., ABCA, Inc., Johnson Metal Industries Co., Ltd., Master Woodcraft and Hobby Machine Company, United States Metal Service, Inc., and Big Joe Industrial Corporation on the basis of settlement agreements. Termination of investigation as to respondents Tops Equipment and Tool Co., Ltd. ("Tops"), Herbert Clark and Associates ("Herbert Clark"), and Worcester Tool Factory Outlet ("Worchester Tool") on the basis of a finding of no violation of section 337. Termination of the investigation.

SUMMARY: Complainant Shopsmith, Inc. jointly moved with respondents King Feng Fu Machinery Works Co., Ltd. ("KFF"), ABCA, Inc. ("ABCA"), Johnson metal Industries Co., Ltd. ("Johnson Metal"), Master Woodcraft and Hobby Machine Company ("Master Woodcraft"), United States Metal Service, Inc. ("United Metals"), and Big Joe Industrial Corporation ("Big Joe") in several motions to terminate the investigation with regard to those respondents on the basis of written

settlement agreements. On August 2, 1982, the presiding officer recommended the joint motions be granted. A **Federal Register** notice was published on October 20, 1982 (47 FR 46774), seeking comments from interested members of the public. No comments adverse to termination were received. On December 20, 1982, the Commission granted the joint motion to terminate the investigation as to respondents KFF, ABCA, Johnson Metals, Master Woodcraft, United Metals, and Big Joe on the basis of settlement agreements.

The presiding officer recommended that respondents Tops, Herbert Clark, and Worcester Tool be terminated on the basis of a finding of no violation of section 337. The Commission on December 20, 1982, voted to terminate the aforementioned respondents from this investigation on the basis of a finding of no violation of section 337.

Inasmuch as no respondents remain, the Commission on December 20, 1982 terminated investigation No. 337–TA–115.

SUPPLEMENTARY INFORMATION: This investigation is being conducted under section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and concerns alleged unfair trade practices in the importation into and sale in the United States of certain power woodworking tools. Notice of the institution of the investigation was published in the **Federal Register** of January 28, 1982 (47 FR 4165).

Copies of the Commission's Action and Order and all other non-confidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, telephone 202–523–0161.

FOR FURTHER INFORMATION CONTACT: Michael P. Mabile, Esq., Office of the General Counsel, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436; telephone: 202–523–0119.

By order of the Commission.

Issued: December 28, 1982.

Kenneth R. Mason,

Secretary.

[FR Doc. 82-213 Filed 1-4-83; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 731–TA–92 (Final)]

Stainless Steel Sheet and Strip From the Federal Republic of Germany

AGENCY: International Trade Commission.

ACTION: Institution of final antidumping investigation and scheduling of a hearing to be held in connection with the investigation.

SUMMARY: As a result of an affirmative preliminary determination by the U.S. Department of Commerce that there is a reasonable basis to believe or suspect that imports from the Federal Republic of Germany of stainless steel sheet and strip, provided for in items 607.7610, 607.9010, 607.9020, 608.4300, and 608.5700 of the Tariff Schedules of the United States Annotated, are being, or are likely to be, sold in the United States at less than fair value (LTFV) within the meaning of section 731 of the Tariff Act of 1930 (19 U.S.C. 1673), the United States International Trade Commission hereby gives notice of the institution of investigation No. 731–TA–92 (Final) under section 735(b) of the act (19 U.S.C. 1673d(b)) to determine whether an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports of such merchandise. Unless the investigation is extended, the Department of Commerce will make its final dumping determination in the case on or before March 1, 1983, and the Commission will make its final injury determination by April 8, 1983 (19 CFR 207.25).

EFFECTIVE DATE: December 17, 1982.

FOR FURTHER INFORMATION CONTACT: Mr. Stephen A. Vastagh (202–523–0283), Office of Investigations, U.S. International Trade Commission.

SUPPLEMENTARY INFORMATION:

Background.—On June 2, 1982, the Commission determined, on the basis of the information developed during the course of its preliminary investigation, that there was a reasonable indication that an industry in the United States was materially injured or threatened with material injury by reason of allegedly LTFV imports of stainless steel and strip from the Federal Republic of Germany. The preliminary investigation was instituted in response to a petition filed on April 26, 1982, by members of the Tool & Stainless Steel Industry Committee (since renamed: Specialty Steel Industry of the United States), and the United Steelworkers of America.

Participation in the investigation.—Persons wishing to participate in this investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's Rules of Practice and Procedure (19 CFR 201.11, as amended by 47 FR 6189, Feb. 10, 1982), not later than 21 days after the publication of this notice in the **Federal Register**. Any entry of appearance filed after this date will be referred to the Chairman, who shall determine whether to accept the late entry for good cause shown by the person desiring to file the entry.

Upon the expiration of the period for filing entries of appearance, the Secretary shall prepare a service list containing the names and addresses of all persons, or their representatives, who are parties to the investigation, pursuant to §201.11(d) of the Commission's rules (19 CFR 201.11(d), as amended by 47 FR 6189, Feb. 10, 1982). Each document filed by a party to this investigation must be served on all other parties to the investigation (as identified by the service list), and a certificate of service must accompany the document. The Secretary will not accept a document for filing without a certificate of service (19 CFR 201.16(c), as amended by 47 FR 33682, Aug. 4, 1982).

Staff report.—A public version of the staff report containing preliminary findings of fact in this investigation will be placed in the public record on February 15, 1983, pursuant to § 207.21 of the Commission's rules (19 CFR 207.21).

Hearing.—The Commission will hold a joint hearing in connection with this investigation and with Inv. 731–TA–95 (Final), Stainless Steel and Strip from France, beginning at 10:00 a.m. on March 3, 1983, at the U.S. International Trade Commission Building, 701 E Street NW., Washington, D.C. 20436. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission not later than the close of business (5:15 p.m.) on February 14, 1983. All persons desiring to appear at the hearing and make oral presentations should file prehearing briefs and attend a prehearing conference to be held at 10:00 a.m. on February 17, 1983, in room 117 of the U.S. International Trade Commission Building. The deadline for filing prehearing briefs is February 25, 1983.

Testimony at the public hearing is governed by § 207.23 of the Commission's rules (19 CFR 207.23, as amended by 47 FR 33682, Aug. 4, 1982). This rule requires that testimony be limited to a nonconfidential summary and analysis of material contained in prehearing briefs and to information not availale at the time the prehearing brief was submitted. All legal arguments, economic analyses, and factual materials relevant to the public hearing should be included in prehearing briefs in accordance with § 207.22 (19 CFR

207.22, as amended by 47 FR 33682, Aug. 4, 1982). Posthearing briefs must conform with the provisions of § 207.24 (19 CFR 207.24, as amended by 47 FR 6191, Feb. 10, 1982) and must be submitted not later than the close of business on March 11, 1983.

Written submissions.—As mentioned, parties to this investigation may file prehearing and posthearing briefs by the dates shown above. In addition, any person who has not entered an appearance as a party to the investigation may submit a written statement of information pertinent to the subject of the investigation on or before March 11, 1983. A signed original and fourteen (14) true copies of each submission must be filed with the Secretary to the Commission in accordance with § 201.8 of the Commission's rules (19 CFR 201.8, as amended by 47 FR 6188, Feb. 10, 1982, and 47 FR 13791, Apr. 1, 1982). All written submissions except for confidential business data will be available for public inspection during regular business hours (8.45 a.m. to 5:15 p.m.) in the Office of the Secretary to the Commission.

Any business information for which confidential treatment is desired shall be submitted separately. The envelope and all pages of such submissions must be clearly labeled "Confidential Business Information." Confidential submissions and requests for confidential treatment must conform with the requirements of § 201.6 of the Commission's rules (19 CFR 201.6).

For further information concerning the conduct of the investigation, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, Part 207, Subparts A and C (19 CFR Part 207, as amended by 47 FR 6190, Feb. 10, 1982, and 47 FR 33682, Aug. 4, 1982), and Part 201, Subparts A through E (19 CFR Part 201, as amended by 47 FR 6188, Feb. 10, 1982; 47 FR 13791, Apr. 1 1982; and 47 FR 33682, Aug. 4, 1982).

This notice is published pursuant to § 207.20 of the Commission's rules (19 CFR 207.20, as amended by 47 FR 6190, Feb. 10, 1982).

By order of the Commission.

Issued: December 28, 1982.

Kenneth R. Mason,

Secretary.

[FR Doc. 83-210 Filed 1-4-83; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 731-TA-95 (Final)]

Stainless Steel Sheet and Strip From France

AGENCY: International Trade Commission.

ACTION: Institution of final antidumping investigation and scheduling of a hearing to be held in connection with the investigation.

SUMMARY: As a result of an affirmative preliminary determination by the U.S. Department of Commerce that there is a reasonable basis to believe or suspect that imports from France of stainless steel sheet and strip, provided for in items 607.7610, 607.9010, 607.9020, 608.4300, and 608.5700 of the Tariff Schedules of the Unites States Annotated, are being, or are likely to be, sold in the United States at less than fair value (LTFV) within the meaning of section 731 of the Tariff Act of 1930 (19 U.S.C. 1673), the United States International Trade Commission hereby gives notice of the institution of investigation No. 731-TA-95 (Final) under section 735(b) of the act (19 U.S.C. 1673d(b)) to determine whether an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports of such merchandise. Unless the investigation is extended, the Department of Commerce will make its final dumping determination in the case on or before February 21, 1983, and the Commission will make its final injury determination by April 8, 1983 (19 CFR 207.25).

EFFECTIVE DATE: December 9, 1982.

FOR FURTHER INFORMATION CONTACT: Mr. Stephen A. Vastagh (202-523-0283), Office of Investigations, U.S. International Trade Commisssion.

SUPPLEMENTARY INFORMATION:

Background.—On June 17, 1982, the Commission determined, on the basis of the information developed during the course of its preliminary investigation, that there was a reasonable indication that an industry in the United States was materially injured or threatened with material injury by reason of allegedly LTFV imports of stainless steel and strip from France. The preliminary investigation was instituted in response to a petition filed on May 10, 1982, by members of the Tool & Stainless Steel Industry Committee (since renamed: Specialty Steel Industry of the United States), and the United Steelworkers of America.

Participation in the investigation.—Persons wishing to participate in this investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's Rules of Practice and Procedure (19 CFR 201.11, as amended by 47 FR 6189, Feb. 10, 1982), not later than 21 days after the publication of this notice in the **Federal Register.** Any entry of appearance filed after this date will be referred to the Chairman, who shall determine whether to accept the late entry for good cause shown by the person desiring to file the entry.

Upon the expiration of the period for filing entries of appearnce, the Secretary shall prepare a service list containing the names and addresses of all persons, or their representatives, who are prties to the investigation, pursuant to a § 201.11(d) of the Commission's rules (19 CFR 201.11(d), as amended by 47 FR 6189, Feb. 10, 1982). Each document filed by a party to this investigation must be served on all other parties to the investigation (as identified by the service list), and a certificate of service must accompany the document. The Secretary will not accept a document for filing without a certificate of service (19 CFR 201.16(c), as amended by 47 FR 33682, Aug. 4, 1982).

Staff report.—A public version of the staff report containing preliminary findings of fact in this investigation will be placed in the public record on February 15, 1983, pursuant to § 207.21 of the Commission's rules (19 CFR 207.21).

Hearing.—The Commission will hold a joint hearing in connection with this investigation and with Inv. 731-TA-92 (Final), Stainless Steel and Strip from the Federal Republic of Germany, beginning at 10:00 a.m. on March 3, 1983, at the U.S. International Trade Commission Building, 701 E Street NW., Washington, D.C. 20436. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission not later than the close of business (5:15 p.m.) on February 14, 1983. All persons desiring to appear at the hearing and make oral presentations should file prehearing briefs and attend a prehearing conference to be held at 10:00 a.m. on February 17, 1983, in room 117 of the U.S. International Trade Commission Building. The deadline for filing prehearing briefs is February 25, 1983.

Testimony at the public hearing is governed by section 207.23 of the Commission's rules (19 CFR 207.23, as amended by 47 FR 33682, Aug. 4, 1982). This rule requires that testimony be

limited to a nonconfidential summary and analysis of material contained in prehearing briefs and to information not available at the time the prehearing brief was submitted. All legal arguments, economic analyses, and factual materials relevant to the public hearing should be included in prehearing briefs in accordance with § 207.22 (19 CFR 207.22, as amended by 47 FR 33682, Aug. 4, 1982). Posthearing briefs must conform with the provisions of § 207.24 (19 CFR 207.24, as amended by 47 FR 6191, Feb. 10, 1982) and must be submitted not later than the close of business on March 11, 1983.

Written submissions.—As mentioned, parties to this investigation may file prehearing and posthearing briefs by the dates shown above. In addition, any person who has not entered an apperance as a party to the investigation may submit a written statement of information pertinent to the subject of the investigation on or before March 9, 1983. A signed original and fourteen (14) true copies of each submission must be filed with the Secretary to the Commission in accordance with § 201.8 of the Commission's rules (19 CFR 201.8, as amended by 47 FR 6188, Feb. 10, 1982, and 47 FR 13791, Apr. 1, 1982). All witten submissions except for confidential business data will be available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary to the Commission.

Any business information for which confidential treatment is desired shall be submitted separately. The envelope and all pages of such submissions must be clearly labeled "Confidential Business Information." Confidential submissions and requests for confidential treatment must conform with the requirements of § 201.6 of the Commission's rules (19 CFR 201.6).

For further information concerning the conduct of the investigation, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procudure, Part 207, Subparts A and C (19 CFR Part 207, as amended by 47 FR 6190, Feb. 10, 1982, and 47 FR 33682, Aug. 4, 1982), and Part 201, Subparts A through E (19 CFR Part 201, as amended by 47 FR 6188, Feb. 10, 1982; 47 FR 13791, Apr. 1, 1982 and 47 FR 33682, Aug. 4, 1982).

This notice is published pursuant to § 207.20 of the Commission's rules (19 CFR 207.20, as amended by 47 FR 6190, Feb. 10, 1982).

By order of the Commission.

Issued: December 28, 1982.

Kenneth R. Mason,

Secretary.

[FR Doc. 83-211 Filed 1-4-83; 8:45 am]

BILLING CODE 7020-02-M

[Investigations Nos. 701-TA-176 Through 178 (Final)]

Hot Rolled Stainless Steel Bar, Cold-Formed Stainless Steel Bar, and Stainless Steel Wire Rod From Spain

Determinations

On the basis of the record [1] developed in investigations Nos. 701–TA–176 and 177 (Final), the Commission determines, pursuant to section 705(b) of the Tariff Act of 1930 (19 U.S.C. 1671d(b)), that an industry in the United States is not materially injured or threatened with material injury, and the establishment of an industry in the United States is not materially retarded [2] by reason of imports of the following products for which the Department of Commerce has made a final affirmative determination:

Hot-rolled stainless steel bar, provided for in item 606.90 of the Tariff Schedules of the United States (TSUS), (investigation No. 701–TA–176 (Final)); [3]

Cold-formed stainless steel bar, provided for in item 606.90 of the TUSU, (investigation No. 701–TA–177 (Final)).[3]

On the basis of the record, the Commission also determines that an industry in the United States is materially injured by reason of imports of the following product which has been found by the Department of Commerce to be subsidized by the Government of Spain:

Stainless steel wire rod, provided for in items 607.26 and 607.43 of the TSUS, (investigation No. 701–TA–178 (Final)).

Background

The Commission instituted these investigations effective September 9, 1982, following preliminary determinations by the United States Department of Commerce that there was a reasonable basis to believe or suspect that subsidies were being provided to the manufacturers, producers, or exporters of certain stainless steel products in Spain. On November 15, 1982, Commerce made affirmative final subsidy determinations on the products subject to these investigations (47 FR 51453).

Notice of the institution of the Commission's investigations and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, D.C., and by publishing the notice in the **Federal Register** on September 13, 1982 (47 FR 40732). The hearing was held in Washington, D.C., on November 16, 1982, and all persons who requested the opportunity were permitted to appear in person or by counsel. The Commission voted on the investigations on December 15, 1982.

Views of the Commission

Introduction

The following constitute our views on the three final countervailing duty investigations involving stainless steel hot-rolled, bar, stainless steel cold-formed bar and stainless steel wire rod from Spain. First, we summarize the standards for our determinations. Second, we define the domestic industries against which the impact of the imports under investigation are to be assessed. We then examine the condition of the domestic industry and analyze the issue of causality.

Standards for Determination

Material injury is defined as "harm which is not inconsequential, immaterial, or unimportant." [4] In making a determination as to whether there is material injury by reason of the imports under investigation, the Commission is required to consider, among other factors: (1) The volume of imports; (2) the effect of imports on domestic prices for like products; and (3) the impact of imports on the domestic industry.[5]

In making a determination as to whether there is a threat of material injury by reason of the imports under investigation, the Commission considers, among other factors: (1) The rate of increase of subsidized imports into the U.S. market, (2) the capacity in the exporting country to generate exports, and (3) the availability of other export markets.[6] A finding of threat of material injury must be based on a showing that the likelihood of harm is real and imminent, and not on mere supposition, speculation, or conjecture.[7]

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[1] The record is defined in § 207.2(i) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(i)).

[2] Material retardation is not an issue in these investigations.

[3] Chairman Eckes dissenting.

[4] 19 U.S.C. 1677(7)(A).

[5] 19 U.S.C. 1677(7)(B).

[6] 19 CFR 207.26(d).

[7] S. Rep. No. 249, 96th Cong., 1st Sess. 88–89 (1979); S. Rep. No. 1298, 93d Cong., 2d Sess. 180 (1974); Alberta Gas Chemicals, Inc. v. United States, 515 F. Supp. 780, 790 (Ct. Int'l Trade 1981).

Domestic Industry

Section 771(4)(A) of the Tariff Act of 1930 defines the term "industry" as the "domestic producers as a whole of a like product, or those producers whose collective output of the like product constitutes a major proportion of the total domestic production of that product." [8] Section 771(10) defines "like product" as "a product which is like, or in the absence of like, most similar in characteristics and uses" with the article under investigation." [9]

The imported articles under investigation are stanless steel hot-rolled bar, stainless steel cold-formed bar, and stainless steel wire rod. Each of these products is manufactured by domestic producers. The imports under investigation are like the domestically produced products of the same grade and specification. Therefore, the following discussion pertains to both the imported and domestic products.

Stainless steel bar [10] is a semifinished product that has numerous applications in the manufacture of such items as pump shafts, ball bearings, automotive parts, and medical instruments.[11] One major distinguishing characteristic of bar as shipped is that it is straightened and cut to length, as opposed to wire rod, which is shipped in coil form.

Hot-rolled stainless steel bar is produced from stainless steel billets in a rolling mill which reduces the steel to a specific diameter and size.[12] Hot-rolled bar is used for applications for which appearance and precise tolerances are not critical, or where further processing is intended.[13] The principal applications of hot-rolled bar are in the manufacture of turbines, electrical equipment, and industrial equipment.[14]

Cold-formed stainless steel bar is produced by subjecting hot rolled bar to an additional "cold working" process, either by "cold drawing", [15] or "cold finishing".[16] The object of the cold working process is to produce a thinner bar with closer tolerances. Cold-formed bars may also be subject to various operations to improve their surface, such as polishing. Because the cold working processes result in a bar with greatly superior surface and mechanical properties than the hot-rolled product,[17] cold-formed bar has applications for which hot-rolled bar would not be suitable, i.e., applications for which precise tolerances or appearance are important.[18] For example, cold-formed bars are used to make automobile valves and fittings, drive shafts, airplane landing gear, boat propeller shafts, water pumps and cutlery.[19]

Stainless steel wire rod is a semifinished, hot-rolled product that is round in cross section and measures between 0.02 inch and 0.74 inch in diameter. The distinguishing characteristic of rod is that it is a round, narrow-diameter hot-rolled product that is produced and purchased in large coils. Most rod is sold to converters or "redrawers" that draw the rod into wire or to manufacturers of fasteners.[20] Such purchasers have continuous operations which are most efficient when large coils of rod are used.

Petitioners argue that hot-rolled bar, cold-formed bar, and wire rod should be considered to be one like product because they can be and are generally rolled on the same equipment, and because they are to some extent substitutable.[21] The fact that all three products share production processes is not dispositive.[22] This factor is only relevant to the extent that it relates to the basic issue of characteristics and uses. Furthermore, although there may be some limited substitutability among these products, such instances are not sufficient to warrant a finding that these products collectively are "like." [23] [24] Therefore, we find that hot-rolled bar, cold-formed bar and wire rod are three separate like products. Accordingly, we determine that there are three separate domestic industries consisting of the producers of each like product.

I. Hot-Rolled Stainless Steel Bar

Condition of the Domestic Industry

Apparent U.S. consumption of hot-rolled stainless steel bar declined by 11 percent between 1979 and 1981, and by 15 percent in the January-August 1982 period as compared to the corresponding period of 1981.[25] Domestic production declined by 14 percent between 1979 and 1981, and by 27 percent in the January-August 1982 period as compared with the corresponding period of 1981.[26] Domestic shipments followed a similar downward trend.[27] In addition, the ratio of end-of-period inventories to domestic shipments increased from 19.8 percent in 1979 to 24.7 percent in 1981, and to 34 percent in January-August 1982 as compared with 25 percent in the corresponding period of 1981.[28]

Utilization of hot-rolled bar capacity declined steadily, from 67 percent in 1979 to 58 percent in 1981, and to 45 percent in the January-August 1982 period as compared with 62 percent in the corresponding period of 1981.[29]

Employment also steadily declined. The average number of production and related workers producing hot-rolled bar declined 6 percent between 1979 and 1981, and fell 19 percent in the January-August 1982 period as compared with the corresponding period of 1981.[30] The number of hours paid—a more accurate indicator of loss of employment in an industry with reduced hours and furloughs—fell by 14 percent between 1979 and 1981, and by 27 percent during the January-August 1982 period as compared with the corresponding period of 1981.

Financial data indicate that sales and profits nevertheless increased slightly during the 1979–1981 period, and that the

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[8] 19 U.S.C. 1677(4)(A).

[9] 19 U.S.C. 1677(10).

[10] Bars are steel products not conforming to the specifications of other steel products and having cross sections in a variety of shapes, such as circles, rectangles, and triangles, for various end uses. For the full definition, see Report at A–5 and A–6.

[11] *Id.* at A–10.

[12] For a full description of the production process, *see id.* at A–6 and A–7.

[13] *Id.* at A–9 and A–10, (Table 2).

[14] *Id.* at A–9.

[15] Cold drawing is the process whereby a hot-rolled bar is forced through a die having an opening smaller than the entering material in order to reduce it to a required size. This is generally done to bars less than one inch in diameter. *The Making, Shaping and Treating of Steel*, 9th Ed., U.S. Steel (1971) at 607; Transcript of Preliminary Conference (Tr.) in Stainless Steel Hot-Rolled Bar, Cold-Formed Bar and Wire Rod from Brazil, Inv. Nos. 701–TA–179 through 181 (hereinafter *Brazil*) at 42.

[16] Bars of a diameter greater than one inch can only be cold reduced by turning (using a lathe) or by centerless grinding. The latter is similar to lath turning, but allows for achieving closer tolerances. *Making of Steel* at 802.

[17] *Making of Steel* at 933.

[18] *See, e.g.*, Tr. *Brazil* at 42.

[19] Report in *Brazil* at A–16, Tr. *Brazil* at 41–42.

[20] Report at A–10 (Table 4).

[21] Petitioners' Post-Conference Statement at 1.

[22] *See* General Counsel Memorandum GC–F–416 (Dec. 13, 1982, as revised Dec. 15, 1982) at 8–10.

[23] There is some overlap with respect to characteristics and uses between hot-rolled bar and rod to the extent that narrow gauge bar can be produced by uncoiling, cutting, and straightening rod. However, most rod as purchased is not converted into bar but is used in continuous manufacturing processes such as wire rod and fasteners. *See* Report at A–11 (Table 4).

[24] Because cold-formed bar is a refinement of hot-rolled bar, a purchaser that required cold-formed bar could purchase hot-rolled bar and cold-work it, provided that the purchaser had the necessary equipment. However, because of the higher cost of cold-formed bar, it would not be economical for a purchaser that only required hot-rolled bar to use cold-formed bar as a substitute. Furthermore, although service centers are able to cold-finish bars to some extent, a significant amount of cold-formed bar is accounted for by a firm that sells directly to end users. *See id.* at A–12, (Table 5).

[25] *Id.* at A–37 (Table 22).

[26] *Id.* at A–20 (Table 10).

[27] Shipments declined by 14 percent between 1979 and 1981, and by 26 percent in January-August 1982 compared with the corresponding period of 1981. *Id.* at A–21 and A–22.

[28] *Id.* at A–23 (Table 12).

[29] *Id.* at A–20 (Table 10).

[30] *Id.* at A–25 (Table 13).

ratio of operating profit to net sales was favorable. The ratio of operating profit to net sales increased slightly from 9.1 percent in 1979 to 9.6 percent in 1981.[31] However, all financial indicators fell substantially during the January-August 1982 period. During the period, the ratio of operating profit to net sales dropped to a negative 2.8 percent as compared with a positive 10.4 percent in the corresponding period of 1981.[32] In addition, the number of firms reporting operating and net losses increased substantially in January-August 1982 as compared with the corresponding period of 1981.[33]

Therefore, we find that the domestic industry is currently experiencing material injury.

ISSUE OF MATERIAL INJURY OR THREAT BY REASON OF IMPORTS

Views of Commissioner Paula Stern

I find that the domestic stainless steel hot-rolled bar industry is not materially injured or threatened with material injury by reason of imports from Spain.

Virtually all of the imports of stainless steel hot-rolled bar from Spain are not presently benefitting from subsidies.[34] [35] This case was continued by the Department of Commerce which stated that the key Spanish producer, Olarra S. A., could qualify for subsidies in the future [36] should its financial situation improve.

Since there are virtually no subsidized imports of stainless steel hot-rolled bars from Spain, I have determined in the negative on the question of present injury. The countervailing duty law is designed to remedy material injury or threat of material injury to a domestic industry caused by an unfair trading practice. Subsidization is unfair only if material injury or threat of material injury to a U.S. industry results. If there is no unfair practice, relief falls outside the logic of the law as there are no unfairly traded imports.[37]

As far as threat is concerned, the Commission cannot base its judgment on "conjecture" or "speculation;" the threat must be "real" and "imminent." [38] Nothing in the record supports such a judgment in this case. There is no indication on the record that Olarra's financial situation will improve, that it will, in fact, receive subsidies, or that these subsidies will be significant enough to affect the volume and price of imports and thus possibly materially injure the domestic industry.[39] Therefore, I have determined in the negative on the question of threat.

Some may view the Commission's vote in a case where the Department of Commerce has evaluated the subsidy at zero as merely academic, since no countervailing duties will be collected in any case. From a public policy point of view, the Commission's vote is significant. Affirmative Commission votes lead the public to believe that an unfair trade practice has taken place which has injured a domestic industry. Issuing affirmative findings when in fact there has been no unfair act or where subsidization has not resulted in material injury or threat thereof fosters a myopic public perception of the factors necessary to strengthen U.S. competitiveness.

Views of Commissioner Veronica Haggart

I find that the domestic hot-rolled bar industry is not being materially injured or threatened with material injury by reason of subsidized imports from Spain. As set forth more fully below, virtually none of the imports of hot-rolled bar from Spain are presently being subsidized.[40] Congress has instructed us that: "A domestic industry must be materially injured by reason of *subsidized* imports before a countervailing duty could be imposed" [41] (Emphasis added). Thus, even though I find that the domestic hot-rolled stainless steel bar industry is experiencing injury in 1982, the requisite causal nexus between the injury and subsidized imports from Spain is not present.

In its final determination, the Department of Commerce noted that Olarra S. A., which accounted for virtually all of the imports of hot-rolled bar from Spain in 1981,[42] had received some countervailable short-term loans before going into receivership in 1979, that it has not received any countervailable benefits since 1979, and that it is not presently benefitting from such loans. Thus, Commerce concluded: "We have determined that no subsidy is currently being provided to Olarra." [43] Therefore, for purposes of our injury determination, there can be no injury to the domestic industry by reason of subsidized imports.[44]

I have also concluded that a domestic industry is not threatened with material injury by reason of subsidized imports from Spain. *Sprague Electric Co. v. United States*, 488 F. Supp. 910 (Cust. Ct.), *as modified on reh'g*, 84 Cust. Ct. 260 (1980) has been cited as support for the proposition that non-subsidized imports which are included in an affirmative determination must be considered in the context of any analysis of threat of material injury. However, Sprague is distinguishable from the instant case in that it involved less than fair value imports and not subsidized imports. In a dumping case, section 735(a) of the statute provides that Commerce may determine whether merchandise "is being or *is likely to be*, sold in the U.S. at less than fair value" (Emphasis added). By contrast, in a countervailing duty case, section 705(a) of the statute directs only that Commerce is to determine whether or not "a subsidy *is* being provided" (Emphasis added). Assuming arguendo that it is appropriate to consider non-subsidized imports in a threat analysis in a countervailing duty case, under the facts of this case, there is no "real and

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[31] *Id.* at A-27.

[32] *Id.*

[33] *Id.*

[34] The exact figure is based upon confidential information received from the Department of Commerce. The data is for 1981, which is the best information available.

[35] 47 F.R. 51,459 (1982). An argument has been made that there is a distinction between these stainless steel bar cases and the recent cases involving carbon steel imports from the Federal Republic of Germany and Belgium, Inv. Nos. 701-TA-86 thru 144, 701-TA-146, and 147. See my views as incorporated in Carbon Steel Bar and Wire Rod from Brazil and Trinidad and Tobago, Inv. Nos. 731-TA-113 and 114 (Preliminary) USITC Pub. No. 1316 (November 1982) (hereinafter "Carbon Steel from Brazil and Tobago"). However, for the purpose of examining injury which is the sole responsibility of the ITC in this bifurcated process, there is no material distinction between a Commerce finding of a *de minimis* subsidy which it evaluates as zero and a finding that no subsidy has been provided.

[36] 47 FR 51,458 (1982).

[37] For detailed discussed of my views on causality, see my views in Certain Carbon Steel from Belgium, *et al.* as incorporated in Carbon Steel from Brazil and Tobago, *supra*, and my views in Certain Steel Products from Spain, Inv. Nos. 701-TA-115 thru 163 (Final) (December 1982).

[38] S. Rep. No. 249, 96th Cong., 1st Sess. 88-89 (1979); S. Rep. No. 1298, 93d Cong., 2d Sess. 180 (1974); Alberta Gas Chemicals, Inc. v. United States, 515 F. Supp. 780, 790 (Ct. Int'l Trade 1981).

[39] See General Counsel memorandum GC-F-418 (December 15, 1982).

[40] Only a minuscule amount of the imports of hot-rolled bar from Spain have been determined by Commerce to be subsidized. I have determined that the volume of these subsidized imports is too small to be a cause of material injury or threat thereof to the domestic industry.

[41] S. Rep. No. 249, 96th Cong., 1st Sess. 44 (1979).

[42] The exact percentage of imports attributable to Olarra is confidential.

[43] 47 FR 51,459 (1982). This language is different from the language used by Commerce in its final affirmative determination of *de minimis* subsidies in Certain Steel Products from Belgium, et al. In that determination, Commerce stated: "We have determined that a subsidy is being provided to P&S" 47 FR at 39,315 (1982). The identical statement was made with respect to the "affirmative *de minimis*" determination for Forges de Clabecq. 47 FR 39,355 (1982). Thus, in these earlier cases, unlike the instant investigation, Commerce did make an explicit finding that the imported products benefited from a subsidy.

imminent" threat of material injury by reason of the imports under investigation.

Commerce included Olarra in its final affirmative determination based upon the following grounds:

> We consider any benefits associated with pre-receivership privileged circuit working-capital loans to have been lost when the loans were incorporated into Olarra's receivership debt. However, Olarra received these benefits in the past and if its financial condition improves, Olarra could again qualify and obtain benefits from that program in the future. For that reason Olarra is not being excluded from the final determination in these investigations.[46]

Therefore, the Department's affirmative final determination appears to have been made on the basis that Olarra *might* receive countervailable benefits in the future should its financial condition improve. There is no basis in the record for concluding that Olarra is likely to receive subsidies or that Olarra's financial condition is likely to improve in the near future.[46] Thus, there is no "real and imminent" threat that imports from Olarra will benefit from subsidies.

Views of Chairman Alfred Eckes

I do not agree with my colleagues regarding the ramifications of including Olarra in the Department of Commerce's final affirmative determination.

In my view the Commission is required, as a matter of law, to base its analysis of material injury or threat thereof upon all the imports which were included within the scope of the final determination by Commerce. Section 705(b) provides "the Commission shall make a final determination [of material injury or threat thereof, or material retardation] *by reason of imports of the merchandise with respect to which the administering authority has made an affirmative determination under subsection (a)."* (Emphasis supplied).[47] The inclusion of all imports in the Commission's final determination reflects the bifurcated authority which Congress purposely vested in the Department of Commerce, as the administering authority, and the Commission.

In a countervailing duty investigation, the Commerce Department determines whether the imports subject to investigation are subsidized within the meaning of the countervailing duty laws and, if so, calculated the net subsidy. The net subsidy calculation becomes the basis for a tax assessed as a countervailing duty on the subject imports. The Commission, in turn, determines whether or not imports covered by that affirmative determination are causing material injury to domestic producers. In essence, the Department's affirmative determination designates for the Commission those imports which we must determine are, or are not, causing material injury or threat thereof. Therefore, regardless of the merits of any Commerce determination, I do not believe that the Commission can or should look behind it.

This issue was squarely addressed and resolved in *Sprague Electric Co. v. United States.*[48] *In Sprague* the Customs Court remanded an antidumping case to the Commission because, among other reasons, some Commissioners declined to make a threat of injury analysis with respect to imports for which the Department of Commerce had found no less-than-fair-value margins. The court based its determination in *Sprague* on the explicit bifurcation of authority between the administering authority[49] and the Commission, and held that the Commission did not have the authority to effectively exclude from its injury determination imports which the administering authority included in its determination.

The *Sprague* case involved an appeal of the Commission's negative determination in an antidumping investigation concerning *Tantalum Electrolytic Fixed Capacitors from Japan,* investigation No. AA1921–159. In that investigation, the administering authority had not calculated any margins of less-than-fair-value sales on certain capacitors manufactured by Nippon Electric Company. Imports of these same capacitors, however, were included in the affirmative determination of sales made at less-than-fair-value. On the basis of the absence of less-than-fair-value margins for capacitors manufactured by Nippon Electric Co., the Commission (former Commissioner Parker dissenting) did not consider those imports in its injury analysis. The reviewing court remanded the case to the Commission with instructions, inter alia, to include the imports of Nippon Electric Co. capacitors in its analysis. In fact, the court expressly adopted what it characterized as the "cogent" analysis of the dissenting Commissioner that the Commission had no authority to sever or eliminate imports from the less-than-fair-value determination of the administering authority, that this determination "is binding upon the Commission as a matter of law; and "that [the] Commission has no authority to refine or modify the class or kind or merchandise found to be, or likely to be sold at LTFV." [50]

The argument can be made that the holding in the *Sprague* case is distinguishable from the present investigation because it was an antidumping investigation and the plain language of the statutory standard for the administering authority's final determination of dumping is different than that in a countervailing duty investigation. I read the holding in *Sprague* as going to the more basic recognition of bifurcated authority which is as appropriate in a countervailing duty investigation as in an antidumping investigation. Even assuming, arguendo, that the Department of Commerce exceeded its statutory authority by including Olarra in its final affirmative determination, it is clearly an issue for the courts, not the Commission to determine.[51] No artful distinctions can disguise the fact that the colleagues based their determinations upon an examination of less than all of the imports included in the Commerce Department's final

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[44] The basis for my negative determination in this case is distinguishable from the issue of whether the Commission is required to establish a causal link between the net subsidy determined by Commerce and any injury to the domestic industry. For my views on the latter subject, see Certain Steel Products from Spain, Inv. 701–TA–155 thru 163 (Final) (December 1982). The basis for my decision in the instant investigation is the finding of no subsidy by the Department of Commerce. The purpose of the countervailing duty statute is to offset the advantage bestowed on the imported product by any subsidy while still permitting imports of subsidized merchandise into the market. If, as in this case, no subsidy is being provided, there is no statutory basis for any affirmative determination.

[45] 47 FR 51,458 (1982).

[46] *See* General Counsel memorandum GC–F–418 (December 15, 1982).

[47] As a practical matter, imports from Olarra, and therefore virtually all of the hot-rolled bar imports under investigation, have a zero net subsidy, and therefore will not have a countervailing duty assessed against them as long as the net subsidy rate remains at zero. Thus any concern that an affirmative vote by the Commission would be contrary to the basic purpose of the Act, which is limited to offsetting the benefits of subsidization enjoyed by unfairly traded imports, is not warranted.

[48] 488 F. Supp. 910 (Cust. Ct.), *as modified on reh'g,* 84 Cust. Ct. 260 (1980).

[49] In *Sprague,* the administering authority was the Department of the Treasury. Although the investigation conducted by the Commission was authorized by the Antidumping Act of 1921, the same relationship between the administering authority and the Commission exists in the antidumping and countervailing duty provisions of Title VII of the Tariff Act as in the 1921 Act.

[50] 84 Cust. Ct. at 260, 262.

[51] The Department of Commerce's determination has, in fact, been challenged on appeal, not because Olarra was included, but because of the Department's determination that although the producer received subsidies in the past, it is not presently benefitting from subsidies. The zero net subsidy calculation was based upon this determination.

affirmative determination. In my view, such an approach is clearly wrong.

Nor can *Sprague* be distinguished by construing it narrowly to hold that the Commission cannot simply ignore imports which the administering authority includes in its final determination, but that the Commission is nevertheless free to reject certain of these imports providing that it gives them perfunctory recognition. Such a construction of the holding results in a distinction without a difference. It is contrary to the Court's recognition of the fundamental bifurcation of statutory functions which underlies the *Sprague* decision. Accordingly, I have made my analysis on the basis of all imports included in the Department of Commerce's final determination.

While the market share of domestic producers declined substantially to 77 percent in the January-August 1982 period as compared with 89 percent in the corresponding period of 1981, imports of hot-rolled bar from Spain increased in both absolute and relative terms. In 1981, imports from Spain totalled 766 tons. In the January-August 1982 period, imports from Spain almost tripled, to 690 tons as compared with 233 tons in the corresponding period of 1981. Similarly, whereas the ratio of imports from Spain to apparent domestic consumption was 1.6 percent in 1981, in the January-August 1982 period it increased to 2.5 percent as compared with the corresponding period of 1981.

Imports from Spain are also a significant and increasing share of total hot-rolled bar imports. In 1981, imports from Spain accounted for 10.1 percent of total hot-rolled bar imports. In January-August 1982 the percentage increased to 11.2 percent as compared with 6.7 percent in the corresponding period of 1981.

In addition, imports of hot-rolled bar from Spain have undersold the domestic product by margins of underselling ranging from 29 to 45 percent for one product, and from 21 to 36 percent for another product. This underselling has resulted in both lost sales [52] and price suppression.[53]

Therefore, I find that the domestic stainless steel hot-rolled bar industry is materially injured by reason of the imports of hot-rolled stainless steel bar from Spain that were included in the Department of Commerce's final investigation.

II. Cold-Formed Stainless Steel Bar

Condition of the Domestic Industry

Apparent domestic consumption of cold-formed bar decreased by 11 percent between 1979 and 1981, and by 11 percent in the January–August 1982 period as compared to the corresponding period of 1981.[54] Domestic production of cold-formed bar declined by 19 percent between 1979 and 1981.[55] Domestic shipments also declined by 18 percent during this period,[56] with end-of-period inventories increasing from a level equivalent to 26 percent of shipments in 1979 to 40 percent in 1981.[57] In the January–August 1982 period, the situation grew worse. Production declined by 24 percent, and shipments declined by 26 percent. The ratio of inventories to shipments increased to 48 percent compared to 36 percent in the corresponding period of 1981.

Utilization of cold-formed capacity also declined steadily from 84 percent in 1979 to 68 percent in 1981, then fell to 49 percent in the January–August 1982 period as compared with 65 percent in the corresponding period of 1981.[58]

Employment also declined steadily. The average number of production and related workers producing cold-formed bar decreased by 14 percent between 1979 and 1981, and by 15 percent in the January–August 1982 period as compared with the corresponding period of 1981.[59] Similarly, the number of hours paid fell by 21 percent between 1979 and 1981, and by 22 percent in the January–August 1982 period as compared with the corresponding period of 1981.

The ratio of operating profit to net sales increased slightly during this period, from 9.3 percent in 1979 to 10.5 percent in 1981.[60] In the January–August 1982 period, sales, cash flow, the ratio of operating profit to net sales, and other profit margins all fell sharply compared with the indicators for the corresponding period of 1981.[61] For example, in the January–August 1982 period, the ratio of operating profit to net sales declined to a negative 1.6 percent as compared with a positive 10.8 percent in the corresponding period of 1981.[62]

In the January–August 1982 period, five domestic producers reported both operating and net losses compared with only three in the corresponding period of 1981.[63] These financial developments in 1982 demonstrate that the industry is currently experiencing material injury.

ISSUE OF MATERIAL INJURY OR THREAT BY REASON OF IMPORTS FROM SPAIN

Views of Commissioner Paula Stern

A very substantial percentage [64] of imports of stainless steel cold-formed bar from Spain are produced and exported by Olarra, S.A. The Department of Commerce has determined that imports accounted for by Olarra are not presently benefitting from subsidies.[65] Therefore, only a small amount of the imports under investigation are currently subsidized and thus meet the threshold causation test for a determination of material injury or threat thereof.[66]

The small volume of subsidized imports of stainless steel cold-formed bar from Spain [67] is not significant enough to cause or threaten material injury to the domestic industry. Therefore, I found in the negative in this case.

I also note that the subsidized imports benefit from only a small subsidy, while the available information on margins of underselling shows that imports from Spain have been priced substantially below the domestic product.[68] Thus, it is unlikely that the Spanish subsidies have any effect whatsoever on the performance of imports from Spain in the U.S. market.

There is no information on the record which indicates that increases in subsidies, either on an individual producer basis or on a weighted-average product-line basis are "real and imminent." In fact, the information we

[52] Report at A-55.
[53] *Id.* at A-56.
[54] Report at A-38 (Table 23).
[55] *Id.* at A-20 (Table 10).
[56] *Id.* at A-22 (Table 11).
[57] *Id.* at A-23 (Table 12).
[58] *Id. at A-20 (Table 10).*
[59] *Id.* at A-26 (Table 14).
[60] *Id.* at A-28 (Table 16).
[61] *Id.*
[62] *Id.*
[63] *Id.*

[64] The exact figure is based upon confidential information received from the Department of Commerce. The data is for 1981, which is the best information available.
[65] 47 FR 51,459 (1982).
[66] See the preceding discussion on stainless steel hot-rolled bar imports as well as my views on causation in Certain Carbon Steel from Belgium, et al., as incorporated in Carbon Steel Bar and Wire Rod from Brazil and Trinidad and Tobago, Inv. Nos. 731-TA-113 and 114 (Preliminary) USITC Pub. No. 1316 (November 1982) and my views in Certain Steel Products from Spain, Inv. Nos. 701-TA-155 thru 163 (Final) (December 1982).
[67] Some may argue that I have not examined all the imports subject to these bar investigations. This view appears to reflect a difference in opinion on the factors necessary to demonstrate a causal nexus between the imports under investigation and any material injury the domestic industry is or is likely to experience. Given my views on causality, as discussed above and in prior opinions, it should be clear that I examined all the imports, but nevertheless found no causal relationship between the imports subject to the investigation and material injury or threat of injury. I judge that such a causal nexus is required by the statute.
[68] Underselling data is only available based on imports from Olarra. Assuming other Spanish exporters are competitive with Olarra, the above statement is valid. This calculation was not the basis for, but simply reinforced my negative finding.

do have indicates that it is not likely that Olarra, the predominant exporter of bar, will receive or will be eligible to receive countervailable "privileged circuit loans" in the foreseeable future. Furthermore, there is no information on the record indicating that other producers have or will obtain additional countervailable benefits. There is no reason to believe that Olarra's imports will not continue to dominate exports of cold-formed bar to the United States. Therefore, I found in the negative on the question of threat of material injury.

Views of Commissioner Veronica Haggart

As with hot-rolled bar, I have determined that a domestic industry is not being materially injured or threatened with material injury by reason of subsidized imports of cold-formed bar from Spain. More than two-thirds of the imports from Spain are attributable to Olarra, which has been determined by Commerce not to be currently receiving subsidies.[69] In order for an affirmative determination to be made, injury must be by reason of imports which have been determined by Commerce to be subsidized.[70] With respect to the remainder of the cold-formed bar imports, which have been found to be subsidized, the information on the record is insufficient to establish a causal nexus with the injury being experienced by the domestic industry.

Information in the record regarding instances of confirmed price underselling by the Spanish product and confirmed lost sales to the Spanish product is attributable to non-subsidized imports. Therefore, there is no basis for finding that subsidized imports from Spain are a cause of material injury to the domestic industry.

Furthermore, based on the information on the record, there is no threat of material injury by reason of subsidized imports from Spain. As noted with respect to hot-rolled bar, there is no real and imminent threat by reason of imports from Olarra.[71]

Regarding imports from the other Spanish producers, which were found by Commerce to be receiving subsidies, there is no information on the record from which one could conclude that there is a real and imminent threat of an increase in such imports into the U.S. market or of an increase in the capacity of these Spanish producers. Additionally, the availability of other export markets has not been sharply restricted in recent periods.[72]

Views of Chairman Alfred Eckes

As fully explained in my views in the hot-rolled bar investigation, I determine, pursuant to section 705(b) of the Act, that a domestic industry has been materially injured by reason of the imports from Spain which the administering authority has included in its final affirmative determination.

Imports of cold-formed bar from Spain totalled 6,010 tons in 1981.[73] Imports for the January-August 1982 period decreased slightly to 3,730 tons as compared with 4,068 in the corresponding period of 1981.[74] However, the ratio of cold-formed bar imports from Spain to apparent domestic consumption has increased to 5.4 percent in the January-August 1982 period as compared with 5.3 percent in the corresponding period of 1981.[75]

Furthermore, pricing information indicates that Spanish stainless cold-formed bar from Spain has generally undersold the domestic product by substantial margins. Margins of underselling for sales to service centers was mixed. Imports of one product actually oversold the domestic product by 9.4 percent.[76] Imports of the other product undersold the domestic products by margins ranging from 29.2 to 36.7 percent.[77] However margins of underselling to end users were consistently large, ranging from 8.4 percent to 19.8 percent for one product and from 26.4 to 42 percent for the other.[78] In addition, we have confirmed that such underselling has caused price suppression of the domestic product.[79] Therefore, I find that the domestic cold-formed stainless steel bar industry is being materially injured by reason of imports of cold-formed stainless steel bar from Spain.

III. Stainless Steel Wire Rod

Condition of the Domestic Industry

The condition of the domestic stainless steel wire rod industry has declined significantly.[80] Between 1979 and 1981, apparent U.S. consumption of wire rod decreased slightly. In the January-August 1982 period, it decreased by 9 percent as compared to the corresponding period of 1981.[81] Domestic production of wire rod dropped by 18 percent between 1979 and 1981, and by 34 percent in the January-August 1982 period as compared to the corresponding period of 1981.[82] In addition, the ratio of inventories to shipments increased from 9.4 percent in 1979 to 14.9 to 14.8 percent in 1981 and to 17.4 percent in the January-August 1982 period as compared to 15.1 percent in the corresponding period of 1981.[83]

Utilization of wire rod capacity also declined steadily, from 72.4 percent in 1979 to 59.7 percent in 1981, and to 48.5 percent in the January-August 1982 period as compared with 73.3 percent in the corresponding period of 1981.[84]

Employment also declined sharply. The average number of production and related workers producing wire rod declined by 7 percent between 1979 and 1981, and fell by 25 percent in the January-August 1982 period as compared to the corresponding period of 1981.[85] The number of hours paid dropped by 14 percent between 1979 and 1981, and by 25 percent during the January-August 1982 period as compared with the corresponding period of 1981.[86]

In contrast to the hot-rolled bar and cold-formed bar industries, the wire rod industry as a whole has shown signs of substantial weakening of profitability during the period under investigation.[87] Sales declined by 18 percent between 1979 and 1981. Operating profit plunged from $4.8 million in 1979 to a loss of $1.4 million in 1981. A net profit of $4.3 million in 1979 fell to a loss of $454,000 in 1980 and to $2.2 million in 1981. In the same period, the ratio of operating profit to net sales dropped from 6.6 percent in 1979, to a negative 2.3 percent in 1981.

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[69] 45 FR 51,459 (1982). See the discussion of this matter in my views on Hot-Rolled Stainless Steel Bar, *supra*, pp. 12–13.

[70] As with hot-rolled bar, the basis for my negative determination in this case is distinguishable from the issue of whether the Commission is required to establish a causal link between the net subsidy determined by Commerce and any injury to the domestic industry. See the discussion of this matter in my views on Hot-Rolled Stainless Steel Bar, *supra* pp. 12, 13 & note 5.

[71] See the discussion of this matter in my views on Hot-Rolled Stainless Steel Bar, supra pp. 13–14 & note 6.

[72] Petitioners argue that a bilateral agreement between the EC and Spain limiting Spanish exports of steel products to the EC will cause greater exports by Spain to the U.S. This pact places a limit in terms of tons of steel on all steel products combined. No limitation is placed on stainless steel products alone. Therefore, the effect of this limitation on stainless steel products specifically is a matter of conjecture.

[73] Report at A–16 (Table 8).

[74] *Id.*

[75] *Id.* at A–38.

[76] *Id.* A–50 and A–51.

[77] *Id.*

[78] *Id.*

[79] *Id.* at A–55.

[80] Stainless steel wire rod from Spain was first imported into the United States in 1980.

[81] Report at A–39 (Table 24).

[82] *Id.* at A–20 (Table 10).

[83] *Id.* at A–23 (Table 12).

[84] *Id.* at A–20 (Table 10).

[85] *Id.* at A–25 (Table 13).

[86] *Id.*

[87] Our discussion of financial data is based on information contained in the Report at A–30. (Table 17).

This negative trend substantially worsened during the January-August 1982 period. Sales fell by 35 percent in the January-August 1982 period as compared with the corresponding period of 1981. Operating losses increased to $4.2 million as compared with $108,000 in the corresponding period of 1981. Net losses followed a similar trend. The ratio of operating loss to net sales increased to 17.3 percent in the January-August 1982 period as compared with 0.3 percent in the corresponding period of 1981. Furthermore, three domestic producers of wire rod reported operating and net losses in 1981, and four reported both operating and net losses in the January-August 1982 period. Therefore, we find that the stainless steel wire rod industry is experiencing material injury.

Material Injury By Reason of Imports From Spain

While the share of the domestic stainless steel wire rod market held by the domestic industry decreased from 57.5 percent in 1980, to 51 percent in 1981, and to 44 percent in the January-August 1982 period as compared with 55 percent in the corresponding period of 1981,[88] imports of stainless steel wire rod from Spain have increased both in absolute and relative terms.

Imports of stainless steel wire rod from Spain increased from zero tons in 1979 to 1,674 tons in 1980 and 2,763 tons in 1981. Imports for the January-August 1982 period increased to 1,809 tons as compared with 1,520 tons for the corresponding period in 1981.[89]

The ratio of Spanish wire rod imports to apparent domestic consumption has also increased from 3.3 percent in 1980 to 5.4 percent in 1981, and to 6.2 percent in the January-August 1982 period as compared with 4.8 percent in the corresponding period of 1981.[90]

Furthermore, imported wire rod from Spain has undersold the domestic product by significant margins during the 1981–1982 period.[91] [92] The margins of underselling for sales of one product to service center distributors ranged from 1.7 to 18.5 percent in 1981, and from 0.2 to 8.6 percent in the January-August 1982 period. Non-confidential pricing data regarding sales of the same product to end-users indicate margins of underselling ranging from 1.7 percent to 7.1 percent in the January-August 1981 period only. In addition, confidential pricing data indicate that the imported product from Spain steadily undersold the product of one major domestic producer by sizable margins through 1981 and January-February 1982.[93] Also, we have verified that the lower priced wire rod from Spain has caused domestic producers to lower their prices in order to win a sale over competing imports from Spain.[94]

Given the condition of the domestic industry, the existence of underselling, and the increasing market share of imports of wire rod from Spain, we determine that the domestic industry is materially injured by reason of imports of stainless steel wire rod from Spain.

By order of the Commission.

Issued: December 22, 1982.

Kenneth R. Mason,

Secretary.

[FR Doc. 83-217 Filed 1-4-83; 8:45 am]

BILLING CODE 7020-02-M

[88] Report at A-39 (Table 24).

[89] *Id.* at A-17 (Table 9).

[90] *Id.* at A-39 (Table 24).

[91] Six out of eight purchasers that responded to the Commission's questionnaire stated that they had not paid a higher price for the domestic product due to non-price factors such as quality and availability. See *Id.* at A-54. One indicated that it had paid a higher price for quality. Another paid a higher price because of availability.

[92] Commissioner Stern notes that in many quarters the net subsidy either accounted for all or a substantial portion of the margins of underselling.

[93] *Id.* at A-53 (Table 32).

INTERSTATE COMMERCE COMMISSION

[Ex Parte No. 387]

Exemptions for Contract Tariffs

AGENCY: Interstate Commerce Commission.

ACTION: Notices of Provisional Exemptions.

SUMMARY: Provisional exemptions are granted under 49 U.S.C. 10505 from the notice requirements of 49 U.S.C. 10713(e), and the below-listed contract tariffs may become effective on one day's notice. These exemptions may be revoked if protests are filed.

DATES: Protests are due within 15 days of publication in the **Federal Register.**

ADDRESS: An original and 6 copies should be mailed to: Office of the Secretary, Interstate Commerce Commission, Washington, D.C. 20423.

FOR FURTHER INFORMATION CONTACT: Douglas Galloway, (202) 275-7278 or Tom Smerdon, (202) 275-7277.

SUPPLEMENTARY INFORMATION: The 30-day notice requirement is not necessary in these instances to carry out the transportation policy of 49 U.S.C. 10101a or to protect shippers from abuse of market power; moreover, the transaction is of limited scope. Therefore, we find that the exemption requests meet the requirements of 49 U.S.C. 10505(a) and are granted subject to the following conditions:

These grants neither shall be construed to mean that the Commission has approved the contracts for purposes of 49 U.S.C. 10713(e) not that the Commission is deprived of jurisdiction to institute a proceeding on its own initiative or on complaint, to review these contracts and to determine their lawfulness.

Sub-No.	Name of railroad, contract No., and specifics	Review Board [1]	Decided date
516	Southern Pacific Transportation Co., ICC-SP-C-0024, Supplements 4 and 5, (Soda ash)	3	12-28-82
531	Providence and Worcester Railroad Co., ICC-PW-C-0004, (Animal meal)	1	12-28-82
532	Chicago, Milwaukee, St. Paul and Pacific Railroad Co., ICC-MILW-0276, (Wheat)	2	12-28-82
533	The Baltimore and Ohio Railroad Co., ICC-BO-C-0076, Supplement 2, (Sand)	3	12-28-82
534	The Baltimore and Ohio Railroad Co., ICC-BO-C-0098, (Coal)	1	12-28-82
535	Burlington Northern Railroad Co., ICC-BN-C-0232, (Grain and grain products)	2	12-28-82
536	Southern Pacific Transportation Co., ICC-SP-C-0293, (Grain sorghum or corn)	3	12-28-82
537	Consolidated Rail Corp., ICC-CR-C-0237, (Coke)	1	12-28-82
538	Seaboard Coast Line Railroad Co., ICC-SCL-C-0064, (Kaolin and water mixed)	2	12-28-82
539	Southern Pacific Transportation Co., ICC-SP-C-0301, (Vegetable oil), ICC-SP-C-0302, (Paste, tomato), ICC-SP-C-0303, (Canned or preserved foodstuffs)	3	12-28-82
540	Louisville and Nashville Railroad Co., ICC-LN-C-0072, (Cast iron pressure pipe and related fittings)	1	12-28-82
541	Consolidated Rail Corp., ICC-CR-C-0272, (Finished vehicles)	1	12-28-82
542	Consolidated Rail Corp., ICC-CR-C-0264, (Motor vehicles on-tri-level cars and empty tri-level cars)		
543	Consolidated Rail Corp., ICC-CR-C-0220, 0251, 0255, 0252 & 0265, (All commodities with exceptions)	3	12-28-82

[1] Review Board No. 1, Members Parker, Chandler, and Fortier. Member Fortier not participating.
Review Board No. 2, Members Carleton, Williams, and Ewing of the
Review Board No. 3, Members Krock, Joyce, and Dowell.

This action will not significantly affect the quality of the human environment or conservation of energy resources.

49 U.S.C. 10505)

James H. Bayne,

Acting Secretary.

[FR Doc. 83-66 Filed 1-4-83; 8:45 am]

BILLING CODE 7035-01-M

Motor Carriers; Permanent Authority Decisions; Decision-Notice

Motor Common and Contract Carriers of Property (fitness-only); Motor Common Carriers of Passengers (fitness-

only); Motor Contract Carriers of Passengers; Property Brokers (other than household goods).

The following applications for motor common or contract carriage of property and for a broker of property (other than household goods) are governed by Subpart A of Part 1160 of the Commission's General Rules of Practice. See 49 CFR Part 1160, Subpart A, published in the **Federal Register** on November 1, 1982, at 47 FR 49583, which redesignated the regulations at 49 CFR 1100.251, published in the **Federal Register** on December 31, 1980. For compliance procedures, see 49 CFR 1160.19. Persons wishing to oppose an application must follow the rules under 49 CFR Part 1160, Subpart B.

The following applications for motor common or contract carriage of passengers filed on or after November 19, 1982, are governed by Subpart D of the Commission's Rules of Practice. See 49 CFR Part 1160, Subpart D, published in the **Federal Register** on November 24, 1982, at 49 FR 53271. For compliance procedures, see 49 CFR 1160.86. Persons wishing to oppose an application must follow the rules under 49 CFR Part 1160, Subpart E.

These applications may be protested *only* on the grounds that applicant is not fit, willing, and able to provide the transportation service or to comply with the appropriate statutes and Commission regulations.

Applicant's representative is required to mail a copy of an application, including all supporting evidence, within three days of request and upon payment to applicant's representative of $10.00.

Amendments to the request for authority are not allowed. Some of the applications may have been modified prior to publication to conform to the Commission's policy of simplifying grants of operating authority.

Findings

With the exception of those applications involving duly noted problems (e.g., unresolved common control, fitness, or jurisdictional questions) we find, preliminarily, that each applicant has demonstrated that it it fit, willing, and able to perform the service proposed, and to conform to the requirements of Title 49, Subtitle IV, United States Code, and the Commission's regulations. This presumption shall not be deemed to exist where the application is opposed. Except where noted, this decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

In the absence of legally sufficient opposition in the form of verified statements filed on or before 45 days from date of publication, (or, if the application later becomes unopposed) appropriate authorizing documents will be issued to applicants with regulated operations (except those with duly noted problems) and will remain in full effect only as long as the applicant maintains appropriate compliance. The unopposed applications involving new entrants will be subject to the issuance of an effective notice setting forth the compliance requirements which must be satisfied before the authority will be issued. Once this compliance is met, the authority will be issued.

Within 60 days after publication an applicant may file a verified statement in rebuttal to any statement in opposition.

To the extent that any of the authority granted may duplicate an applicant's other authority, the duplication shall be construed as conferring only a single operating right.

Note: All applications are for authority to operate as a motor common carrier in interstate or foreign commerce, over irregular routes unless noted otherwise. Applications for motor contract carrier authority are those where service in for a named shipper "under contract."

Please direct status inquiries to Team 1, (202) 275–7992.

Volume No. OP1–242

Decided: December 28, 1982.

By the Commission, Review Board No. 1, Members Parker, Chandler, and Fortier. (Member Fortier not participating.)

MC 85401 (Sub-4), filed December 17, 1982. Applicant: BELLINGHAM SUMAS STAGES, INC., P.O. Box 648, Sumner, WA 98390. Representative: George LaBissoniere, 15 S. Grady Way, Suite 239, Renton, WA 98055, (206)–228–3807. Transporting *passengers*, in charter and special operations between points in the U.S.

Note.—Applicant seeks to provide privately-funded charter and special transportation.

MC 109780 (Sub-81), filed December 10, 1982. Applicant: TRAILWAYS, INC., 1500 Jackson Street, Dallas, TX 75201. Representative: Rebecca Patton (same address as applicant), (214) 655–7796. *Over regular routes*, transporting *passengers*, between Dewey, AZ, and junction AZ Hwy 169 and Interstate Hwy 17, over AZ Hwy 169, serving all intermediate points.

Note:—Applicant intends to tack the sought rights to its existing authority. Applicant seeks to serve a community not regularly served by an ICC-authorized motor common carrier of passengers.

MC 115891 (Sub-5), filed December 13, 1982. Applicant: INTER-COUNTY MOTOR COACH, INC., 243 Deer Park Ave., Babylon, NY 11702. Representative: Edward L. Nehez, P.O. Box Y, 7 Becker Farm Rd., Roseland, NJ 07068, (201) 992–2200. Transporting *passengers*, in charter and special operations, between points in the U.S. (except AK and HI).

Note:—Applicant seeks to provide privately funded charter and special transportation.

MC 141460 (Sub-6), filed December 17, 1982. Applicant: THE GRAY LINE TOURS COMPANY, 1207 W. Third St., Los Angeles, CA 90017. Representative: Warren N. Grossman, 707 Wilshire Blvd., Suite 1800, Los Angeles, CA 90017, (213) 627–8471. Transporting *passengers* in special and charter operations, between points in the U.S.

Note:—Applicant seeks to provide privately-funded special and charter transportation.

MC 144620 (Sub-1), filed December 16, 1982. Applicant: EXECUTIVE COACH, INC., 207 Willow Valley Square, Lancaster, PA 17602. Representative: J. Bruce Walter, P.O. Box 1146, Harrisburg, PA 17108, (717) 233–5731. Transporting *passengers*, in charter and special operations, beginning and ending at points in PA, NY, NJ, DE, MD, VA, WV, OH, and DC, and extending to points in the U.S.

Note:—Applicant seeks to provide privately funded charter and special transportation.

MC 144630 (Sub-68), filed December 20, 1982. Applicant: STOOPS EXPRESS, INC., P.O. Box 287, Anderson, IN 46015. Representative: Donald W. Smith, P.O. Box 40248, Indianapolis, IN 46240, (317) 846–6655. Transporting for or on behalf of the U.S. Government, *general commodities* (except used household goods, hazardous or secret materials, and sensitive weapons and munitions), between points in the U.S. (except AK and HI).

MC 150691 (Sub-1), filed December 17, 1982. Applicant: CHARLES BURKE LEASING, INC., d.b.a. BURKE CHARTERS, P.O. Box 715, Maiden, NC 28650. Representative: J. G. Dail, Jr., P.O. Box LL, McLean, VA 22101, (703) 893–3050. Transporting *passengers* in charter and special operations, beginning and ending at points in NC and SC, and extending to points in the U.S. (except HI).

Note.—Applicant seeks to provide privately-funded charter and special transportation.

MC 159120 (Sub-1), filed November 30, 1982. Applicant: JOSEPHINE

AVVISATO, d.b.a. JO JO'S TRAVELERS, 1146 Bennett St., Old Forge, PA 18518. Representative: Josephine Avvisato (same address as applicant), (717)–457–7716. Transporting *passengers*, in charter and special operations, beginning and ending at points in PA, NJ and NY, and extending to points in the U.S.

Note.—Applicant seeks to provide privately funded charter and special transportation.

MC 165010, filed December 3, 1982. Applicant: GRANDEUR TOURS, INC., 1914 South "U" St., Fort Smith, AR 72901. Representative: Randy A. Eubanks (same address as applicant), (501) 782–9535. Transporting *passengers* in special and charter operations, between points in the U.S.

Note.—Applicant seeks to provide privately-funded special and charter transportation.

MC 165131, filed December 17, 1982. Applicant: STEVEN CIANCIOTTA, d.b.a. J & S TRUCKING & LEASING CO., 65 Virginia Ave., Lake Ronkonkoma, NY 11779. Representative: Jack L. Schiller, 111–56 76th Dr., Forest Hills, NY 11375, (212) 263–2078. Transporting *food and other edible products and byproducts intended for human consumption* (except alcoholic beverages and drugs), *agricultural limestone and fertilizers and other soil conditioners* by the owner of the motor vehicle in such vehicle, between points in the U.S. (except AK and HI).

MC 165171, filed December 13, 1982. Applicant: JDS BROKERAGE CO., P.O. Box 567, Sioux City, IA 51102. Representative: D. Douglas Titus, 340 Insurance Exchange Bldg., Sioux City, IA 51101, (712)–277–1434. As a *broker* of *general commodities* (except classes A and B explosives and household goods), between points in the U.S. (except AK and HI).

MC 165200, filed December 14, 1982. Applicant: MORRIS DEAN ACKER d.b.a. DEAN ACKER TRUCKING, POB 1233, Pecos, TX 79772. Representative: Earl N. Miles, 3704 Candlewood Dr., Bakersfield, CA 93306, (805)–872–1106. Transporting *food and other edible products and by-products intended for human consumption* (except alcoholic beverages and drugs), *agricultural limestone and fertilizers, and other soil conditioners* by the owner of the motor vehicle in such vehicle, between points in the U.S. (except AK and HI).

MC 165231, filed December 16, 1982. Applicant: TERRY THOMPSON, 9102 W. Thompson Rd., Woodstock, IL 60098. Representative: Terry Thompson (same address as applicant), (815)–338–5408. Transporting *food and other edible products and by-products intended for human consumption* (except alcoholic beverages and drugs), *agricultural limestone and fertilizers, and other soil conditioners*, by the owner of the motor vehicle in such vehicle, between points in the U.S. (except AK and HI).

MC 165240, filed December 16, 1982. Applicant: JAMES S. PATTERSON, d.b.a. LAS VEGAS TOURS, 4152 West 135th Street, Hawthorne, CA 90250. Representative: Eldon M. Johnson, 650 California Street, Suite 2808, San Francisco, CA 94108, (415) 986–8696. Transporting *passengers*, in charter and special operations, between points in the U.S. (except HI).

Note.—Applicant seeks to provide privately-funded charter and special transportation.

MC 165270, filed December 20, 1982. Applicant: CONTENTINENTAL FORWARDING CO., INC, P.O. Box 81222 AMF, Cleveland, OH 44181. Representative: John D. Cioffi (same address as applicant), (216) 243–7100. As a *broker* of *general commodities* (except household goods) between points in the U.S.

For the following, please direct status calls to Team 2 (202) 275–7030.

Volume No. OP2–002

Decided: December 23, 1982.

By the Commission, Review Board No. 1, Members Parker, Chandler, and Fortier. (Member Parker not participating.)

MC 114093 (Sub-2), filed December 9, 1982. Applicant: LAKELAND BUS LINES, INC., 2929 23rd Place, N. Chicago, IL 60064. Representative: Ronald I. Shapss, 450 Seventh Ave., New York, NY 10123, 212–239–4610 Transporting *passengers*, in charter and special operations, between points in the U.S. (except AK and HI).

Note.—Applicant seeks to provide privately-funded charter or special transportation.

MC 136393 (Sub-13), filed December 13, 1982. Applicant: NY., NJ., CONN., FREIGHT & MESSENGER CORP., 351 West 38th St., New York, NY 10018. Representative: Ronald I. Shapss, 450 Seventh Ave., New York, NY 10123, 212–239–4610. Transporting, for or on behalf of the United States Government, *general commodities* (except used household goods, hazardous or secret materials, and sensitive weapons and munitions, between points in the U.S. (except AK and HI).

MC 159323 (Sub-1), filed December 14, 1982. Applicant: CITIZENS BUS LINES, INC., P.O. Box 1504, 72 By-pass West, Greenwood, SC 29648. Representative: James Robert Evans, 145 W. Wisconsin Ave., Neenah, WI 54956, (414) 722–2848. Transporting *passengers*, in special and charter operations, beginning and ending at points in GA and SC, and extending to points in the U.S. (including AK, but excluding HI).

Note.—Applicant seeks to provide privately-funded charter and special transportation.

MC 160453 (Sub-1), filed December 13, 1982. Applicant: SCHROCK, INC., Broderick St., Berlin, PA 15530. Representative: Arthur J. Diskin, 402 Law & Finance Bldg., Pittsburgh, PA 15219, 412–281–9494. Transporting *passengers*, in special and charter operations, beginning and ending at points in PA, MD, and WV, and extending to points in the U.S. (including AK but excluding HI).

Note.—Applicant seeks to provide privately funded charter and special transportation.

MC 165113, filed December 9, 1982. Applicant: GLENNES HAYES, JR. d.b.a. G & L HAYES, 624 North Ryan, Oapopka, FL 32703. Representative: Glennes Hayes, Jr. (same address as applicant), (305) 886–5581. Transporting *food and other edible products and byproducts intended for human consumption* (except alcoholic beverages and drugs), *agricultural limestone and fertilizers, and other soil conditioners* by the owner of the motor vehicle in such vehicle, between points in the U.S. (except AK and HI).

MC 165173, filed December 8, 1982. Applicant: WILLIAM H. HANDY, d.b.a. HANDY'S CHARTER SERVICE, 1915 Spring Hill Rd., Salisbury, MD 21801. Representative: Steven L. Weiman, Suite 200, 444 N. Frederick Ave., Gaithersburg, MD 20877, 217–544–5468. Transporting *passengers*, in charter and special operations, between points in the U.S. (including AK but excluding HI).

Note.—Applicant seeks to provide privately funded charter and special transportation.

MC 165182, Filed December 13, 1982. Applicant: MONTAUK BUS COMPANY, INC., P.O. Box 261, Hampton Bays, NY 11946. Representative: Lawrence E. Lindeman, 4660 Kenmore Ave., Suite 1203, Alexandria, VA 22304, (703) 751–2441. Transporting *passengers*, in charter and special operations, between points in the U.S. (including AK, but excluding HI).

Note.—Applicant seeks to provide privately-funded charter and special transportation.

MC 165212, Filed December 15, 1982. Applicant: SMITH BUS COMPANY, Route 7, Box 314, Annapolis, MD 21403. Representative: Joseph Smith, (same as applicant), (301) 268–5240. Transporting

passengers, in charter and special operations, between points in the U.S. (except AK and HI).

Note.—Applicant seeks to provide privately-funded charter and special transportation.

MC 165243, filed December 16, 1982. Applicant: FREE STATE BUS LINES, INC., 12906 Old Chapel Rd., Bowie, MD 20715. Representative: John M. Ballenger, 123 South Royal St., Alexandria, VA 22314, 703–683–6304. Transporting *passengers*, in charter and special operations, between points in the U.S. (including AK, but excluding HI).

Note.—Applicant seeks to provide privately-funded charter and special transportation.

Volume No. OP2–003

Decided: December 22, 1982.

By the Commission, Review Board No. 1, Members Parker, Chandler, and Fortier. (Member Parker not participating.)

MC 102623, (Sub-5), filed December 10, 1982. Applicant: LEE LINE, INC., 714 Bench St., Red Wing, MN 55066. Representative: Val M. Higgins, 1600 TCF Tower, 121 So. 8th St., Minneapolis, MN 55402, (612) 333–1341. Transporting *passengers*, in charter and special operations, beginning and ending at points in ND, SD, MN, WI, IA, IL, IN and OH, and extending to points in the U.S. (including AK, but excluding HI).

Note.—Applicant seeks to provide privately-funded charter and special transportation.

MC 145992 (Sub-5), filed December 6, 1982. Applicant: FUNBUS SYSTEMS, INC., 304 Katella Way, Anaheim, CA 92802. Representative: William J. Monheim, P.O. Box 1756, Whittier, CA 90609, (213) 945–2745). Transporting *passengers*, in charter and special transportation, between points in the U.S.

Note.—Applicant seeks to provide privately-funded charter and special transportation.

MC 148282 (Sub-1), filed December 13, 1982. Applicant: SOUTH CENTRAL COACHES, INC., 910 Weston Ave., St. James, MN 56081. Representative: Val M. Higgins, 1600 TCF Tower, 121 So. 8th St., Minneapolis, MN 55402, 612–333–1341. Transporting *passengers*, in charter and special operations, beginning and ending at points in MN, IA, SD, ND, WI, MO, OK, TX, AR, LA, and IL, and extending to points in the U.S. (including AK, but excluding HI).

Note.—Applicant seeks to provide privately-funded charter or special transportation.

MC 155643, filed December 13, 1982. Applicant: TRANSPORT LIMOUSINE OF LONG ISLAND, INC., 1600 Locust Ave., Bohemia, NY 11716. Representative: James Robert Evans, 145 West Wisconsin Ave., Neenah, WI 54956, 414–722–2848. Transporting *passengers*, in charter and special operations, between points in the U.S. (except AK and HI).

Note.—Applicant seeks to provide privately-funded charter and special transportation.

MC 164992, filed December 3, 1982. Applicant: CHESAPEAKE MOTOR COACH, INC., 12 W. Montgomery St., Baltimore, MD 21230. Representative: Mark Pestronk, 805 King St., Box 1417 A–40, Alexandria, VA 22313, (703) 549–8666. Transporting *passengers*, in charter and special operations, beginning and ending at DC and points in MD, and extending to points in the U.S. (except AK and HI).

Note.—Applicant seeks to provide privately-funded charter and special transportation.

MC 165082, filed December 7, 1982. Applicant: ANTHONY SCIACOVELLI d.b.a., AMERICAN TRANSPORTATION SERVICES, 112 Decker Avenue, Staten Island, NY 10303. Representative: Arthur Wagner, 342 Madison Ave., New York, NY 10173, (212) 755–9500. Transporting *passengers* in charter and special operations, between points in the U.S. (except AK and HI).

Note.—Applicant seeks to provide privately-funded charter and special transportation.

Volume No. OP2–006

Decided: December 27, 1982.

By the Commission, Review Board No. 1, Members Parker, Chandler, and Fortier.

MC 165072, filed December 7, 1982. Applicant: TARANTO BUS CORP., 4 Seventh St., Englewood Cliffs, NJ 07632. Representative: Ronald L. Shapss; 450 Seventh Ave., New York, NY 10123, (212) 239–4610. Transporting *passengers*, in special and charter operations, between points in the U.S. (except AK and HI).

Note.—Applicant seeks to provide privately-funded charter and special transportation.

MC 165103, filed December 9, 1982. Applicant: JAMES L. CRAFT, d.b.a., SENIOR TRANSPORTATION, 3011 San Luis, Richmond, CA 94804. Representative: James L. Craft, (same address as applicant), 415–222–5582. As a *broker* of *general commodities* (except household goods), between points in the U.S. (except AK and HI).

MC 165233, filed December 16, 1982. Applicant: WORLD'S FAIR TOURS BY ROGER Q, INC., d.b.a., ROGER Q TRANSPORTATION, 6721 Albunda Drive, Knoxville, TN 37919. Representative: Charles J. Williams, P.O. Box 186, Scotch Plains, NJ 07076, (201) 322–5030. Transporting *passengers*, in special and charter operations, between points in the U.S. (including AK, but excluding HI).

Note.—Applicant seeks to provide privately-funded charter and special transportation.

MC 165262, filed December 17, 1982. Applicant: THE NEW MACEDONIA BAPTIST CHURCH, 4200 Massachusetts Ave., SE, Washington, DC 20019. Representative: Thomas Ferguson (same address as applicant), (202) 583–5555. Transporting *passengers*, in charter and special operations, between points in the U.S. (except AK and HI).

Note.—Applicant seeks to provide privately-funded charter and special transportation.

MC 165283, filed December 20, 1982. Applicant: TOWNE BUS CORP., 42 E Carl St., Hicksville, NY 11801. Representative: Lawrence E. Lindeman, 4660 Kenmore Ave., Suite 1203, Alexandria, VA 22304, (703) 751–2441. Transporting *passengers*, in charter and special operations, between points in the U.S. (including AK, but excluding HI).

Note.—Applicant seeks to provide privately-funded charter and special transportation.

For the following, please direct status inquiries to Team 4 at 202–275–7669.

Volume No. OP4–095

Decided: December 29, 1982.

By the Commission, Review Board No. 2, Members Carleton, Williams, and Ewing.

MC 3217 (Sub-5), filed December 21, 1982. Applicant: SCENIC STAGE LINE, INC., 606 Portland Ave., Morrison, IL 61270. Representative: Marshall D. Becker, Suite 610, 7171 Mercy Rd., Omaha, NE 68106, (402) 392–1220. Transporting *passengers*, in charter and special operations, between points in the U.S. (except HI).

Note.—Applicant seeks privately-funded charter and special transportation.

MC 165246, filed December 17, 1982. Applicant: EMERALD EMPIRE TRANSPORTATION SYSTEM, INC., 9000 W. Washington Blvd., Culver City, CA 90230. Representative: Warren N. Grossman, 707 Wilshire Blvd.—#1800, Los Angeles, CA 90017, (213) 627–8471. Transporting *passengers*, in special and charter operations, between points in the U.S.

Note.—Applicant seeks to provide privately-funded charter and special transportation.

MC 165276, filed December 20, 1982. Applicant: S AND J COMMUTER BUS SERVICE, INC., 3410 Kem Drive, Winston-Salem, NC 27106. Representative: Archie W. Andrews, P.O. Box 1166, Eden, NC 27288, (919) 635–4711. Transporting *Passengers*, in charter and special operations, beginning and ending at points in NC and VA, and extending to points in the U.S. (except HI).

Note.—Applicant seeks to provide privately-funded charter and special transportation.

MC 165286, filed December 20, 1982. Applicant: COAST COUNTIES CHARTER, 690 Parkdale Dr., Campbell, CA 95008. Representative: Lawrence E. Lindeman, 4660 Kenmore Ave., Suite 1203, Alexandria, VA 22304, (703) 751–2441. Transporting *passengers*, in charter and special operations, between points in the U.S. (except HI).

Note.—Applicant seeks to provide privately-funded charter and special transportation.

For the Following, please direct Status Calls to Team 5 at 202–275–7289.

Volume No. OP5–299

Decided: December 21, 1982.

By the Commission, Review Board No. 3, Members Krock, Joyce, and Dowell.

MC 128209 (Sub-1), filed December 13, 1982. Applicant: VOIGT BUS SERVICE, INC., Route 3, St. Cloud, MN 56301. Representative: Val M. Higgins, 1600 TCF Tower 121 So. 8th St., Minneapolis, MN 55402, (612) 333–1341; Transporting *passengers*, in charter and special operations, (1) between points in MN, WI, ND, SD, and IA, and (2) beginning and ending at points shown in (1) above, and entending to points in the U.S. (except HI).

Note.—Applicant seeks to provide privately-funded charter and special transportation.

MC 130278 (Sub-1), filed December 13, 1982. Applicant: HEIMANN'S BUS TOURS, INC., 99 Wilson St., Brooklyn, NY 11211. Representative: Ronald I. Shapss, 450 Seventh Ave., New York, NY 10123, (212) 239–4610. Transporting *passengers*, in special and charter operations, between points in the U.S. (except AK and HI).

Note.—Applicant seeks to provide privately-funded charter and special transportation.

MC 133058 (Sub-4), filed December 13, 1982. Applicant: CENTRAL CAB COMPANY, 285 South East St., Waynesburg, PA 15370. Representative: Arthur J. Diskin, 402 Law & Finance Bldg., Pittsburgh, PA 15219, (412) 281–9494. Transporting *passengers*, in special and charter operations, between points in the U.S. (except HI).

Note.—Applicant seeks to provide privately-funded charter and special transportation.

MC 138278 (Sub-2), filed December 10, 1982. Applicant: KOCH BUS SERVICE, INC., 308 South Birch St., Waconia, MN 55387. Representative: Val M. Higgins, 1600 TCF Tower, 121 So. 8th St., Minneapolis, MN 55402, (612) 333–1341. Transporting *passengers*, in charter and special operations, beginning and ending at points in MN, IA, WI, ND, and SD, and extending to points in the U.S. (except HI).

Note.—Applicant seeks to provide privately-funded charter and special transportation.

MC 139508 (Sub-1), filed December 7, 1982. Applicant: AIR BROOK LIMOUSINE, INC., 115 West Passaic St., Rochelle Park, NJ 07662. Representative: Arthur Wagner, 342 Madison Ave., New York, NY 10173, 212–755–9500. Transporting *passengers* in charter and special operations, between points in the U.S. (except HI).

Note.—Applicant seeks to provide privately-funded charter and special transportation.

MC 141858 (Sub-1), filed December 7, 1982. Applicant: ZOBRIST BUS LINES, INC., Rural Route 2, Highland, IL 62249. Representative: Bruce E. Mitchell, Suite 520, 3390 Peachtree Road, NE, Atlanta, GA 30326, (404) 262–7855. Transporting *passengers*, in charter and special operations, between points in the U.S. (except AK and HI).

Note.—Applicant seeks to provide privately-funded charter and special transportation.

MC 157338 (Sub-1), filed December 10, 1982. Applicant: SHUTTLEJECK, INC., P.O. Box 5793, Santa Fe, NM 87501. Representative: Andrew J. Carraway, Suite 1301, 1600 Wilson Blvd., Arlington, VA 22209, (703) 522–0900. Transporting *passengers*, in charter and special operations, between points in the U.S. (except HI).

Note.—Applicant seeks to provide privately-funded charter and special transportation.

MC 160158, filed December 7, 1982. Applicant: EDWIN J. PINA, SR. AND SON, INC., 227 Bumps River Rd., Osterville, MA 02655. Representative: Arthur M. White, 281 Pleasant St., P.O. Box 2547, Framingham, MA 01701, (617) 879–5000. Transporting *passengers*, in charter operations, beginning and ending at points in Barnstable County, MA, and extending to points in the U.S. (except AK and HI).

Note.—Applicant seeks to provide privately-funded charter transportation.

MC 165099, filed December 9, 1982. Applicant: ELEGUA LIMOUSINE SERVICE, INC., 614 West 49th St., New York, NY 10019. Representative: Bruce J. Robbins, 18 East 48th St., New York, NY 10017, (212) 755–9400. Transporting *passengers*, in special and charter operations, between points in the U.S. (except AK and HI).

Note.—Applicant seeks to provide privately-funded charter and special transportation.

MC 165109, filed December 9, 1982. Applicant: BUDSON COMPANY, INC., 1705 Ship Ave., Anchorage, AK 99501. Representative: J. G. Dail, Jr., P.O. Box LL, McLean, VA 22101, (703) 893–3050. Transporting *general commodities* (except household goods), between points in AK and WA. Condition: Any certificate issued in this proceeding to the extent it authorizes the transportation of classes A and B explosives, shall be limited in point of time, to a period expiring five years from the date of service.

MC 165129, filed December 10, 1982. Applicant: PIONEER DIESEL REPAIR, d/b/a/ PIONEER TRANSPORT, 244 Dayton Ave., Union, NJ 07083. Representative: Charles J. Williams, P.O. Box 186, Scotch Plains, NJ 07076, (201) 322–5030. Transporting *passengers*, in special and charter operations, between points in the U.S. (except HI).

Note.—Applicant seeks to provide privately-funded charter and special transportation.

MC 165148, filed December 10, 1982. Applicant: LOUIE JAMES WYNNE, d/b/a NATIONAL RATE AND BROKERAGE SERVICES, 3133 N.W. St. Helens Rd., Portland, OR 97210. Representative: Louis James Wynne (same address as applicant), (503) 224–5042. To operate as a *broker* of *general commodities* (except household goods, between points) in the U.S.

James H. Bayne,

Acting Secretary.

[FR Doc. 83-163 Filed 1-4-83; 8:45 am]

BILLING CODE 7035-01-M

Motor Carriers; Permanent Authority Decisions; Decision-Notice

Motor Common and Contract Carriers of Property (except fitness-only); Motor Common Carriers of Passengers (public interest); Freight Forwarders; Water Carriers; Household Goods Brokers.

The following applications for motor common or contract carriers of property, water carriage, freight forwarders, and household goods brokers are governed by Subpart A of Part 1160 of the Commission's General Rules of Practice.

See 49 CFR Part 1160, Subpart A, published in the **Federal Register** on November 1, 1982, at 47 FR 49583, which redesignated the regulations at 49 CFR 1100.251, published in the **Federal Register** December 31, 1980. For compliance procedures, see 49 CFR 1160.19. Persons wishing to oppose an application must follow the rules under 49 CFR Part 1160, Subpart B.

The following applications for motor common carriage of passengers, filed on or after November 19, 1982, are governed by Subpart D of 49 CFR Part 1160, published in the **Federal Register** on November 24, 1982 at 47 FR 53271. For compliance procedures, see 49 CFR 1160.86. Carriers operating pursuant to an intrastate certificate also must comply with 49 U.S.C. 19022(c)(2)(E). Persons wishing to oppose an application must follow the rules under 49 CFR Part 1160, Subpart E. In addition to fitness grounds, these applications may be opposed on the grounds that the transportation to be authorized is not consistent with the public interest.

Applicant's representative is required to mail a copy of an application, including all supporting evidence, within three days of a request and upon payment to applicant's representative of $10.00.

Amendments to the request for authority are not allowed. Some of the applications may have been modified prior to publication to conform to the Commission's policy of simplifying grants of operating authority.

Findings

With the exception of those applications involving duly noted problems (e.g., unresolved common control, fitness, water carrier dual operations, or jurisdictional questions) we find, preliminarily, that each applicant has demonstrated that it is fit, willing, and able to perform the service proposed, and to conform to the requirements of Title 49, Subtitle IV, United States Code, and the Commission's regulations.

We make an additional preliminary finding with respect to each of the following types of applications as indicated: common carrier of property—that the service proposed will serve a useful public purpose, responsive to a public demand or need; water common carrier—that the transportation to be provided under the certificate is or will be required by the public convenience and necessity; water contract carrier, motor contract carrier of property, freight forwarder, and household goods broker—that the transportation will be consistent with the public interest and the transportation policy of section 10101 of chapter 101 of Title 49 of the United States Code.

These presumptions shall not be deemed to exist where the application is opposed. Except where noted, this decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

In the absence of legally sufficient opposition in the form of verified statements filed on or before 45 days from date of publication, (or, if the application later becomes unopposed) appropriate authorizing documents will be issued to applicants with regulated operations (except those with duly noted problems) and will remain in full effect only as long as the applicant maintains appropriate compliance. The unopposed applications involving new entrants will be subject to the issuance of an effective notice setting forth the compliance requirements which must be satisfied before the authority will be issued. Once this compliance is met, the authority will be issued.

Within 60 days after publication an applicant may file a verified statement in rebuttal to any statement in opposition.

To the extent that any of the authority granted may duplicate an applicant's other authority, the duplication shall be construed as conferring only a single operating right.

Note.—All applications are for authority to operate as a motor common carrier in interstate or foreign commerce over irregular routes, unless noted otherwise. Applications for motor contract carrier authority are those where service is for a named shipper "under contract." Applications filed under 49 U.S.C. 10922(c)(2)(B) to operate in intrastate commerce over regular routes as a motor common carrier of passengers are duly.

Please direct status inquiries to Team One at (202) 275-7992.

Volume No. OP1-241

Decided: December 28, 1982.

By the Commission, Review Board No. 1, Members Parker, Chandler, and Fortier. (Member Fortier not participating.)

FF-640, filed December 17, 1982. Applicant: GATEWAY FORWARDERS, INC., 661 Knocknaboul, San Rafael, CA 94903. Representative: George Y. Takahashi (same address as applicant), (415)-499-1047. As a *freight forwarder* in connection with the transportation of *household goods, baggage and automobiles*, between points in the U.S.

MC 28060 (Sub-68), filed December 15, 1982. Applicant: WILLERS, INC. d/b/a WILLERS TRUCK SERVICE, 1400 North Cliff Avenue, Sioux Falls, SD 57101. Representative: Roger A. Kirschenbaum, Suite 520, 3390 Peachtree Rd., N.E., Atlanta, GA 30326, (404)-262-7855. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in AR, CO, IA, IL, IN, KS, MI, MO, MN, MT, ND, NE, OH, OK, TX, SD, WI and WY, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 61440 (Sub-223), filed December 20, 1982. Applicant: LEE WAY MOTOR FREIGHT, INC., P.O. Box 12750, Oklahoma City, OK 73157. Representative: T. M. Brown (same address as applicant) (405) 840-7579. Transporting *juice concentrates and fruit products*, between Chicago, IL, on the one hand, and, on the other, points in FL and TX.

MC 109780 (Sub-80), filed December 10, 1982. Applicant: TRAILWAYS, INC., 1500 Jackson St., Dallas, TX 75201. Representative: George W. Hanthorn (same address as applicant), (214) 655-7711. Over regular routes, transporting *passengers*, between Greenville, TX, and Texarkana, AR, over Interstate Hwy 30, serving all intermediate points.

Note.—Applicant seeks to provide regular-route service in interstate or foreign commerce and in intrastate commerce under 49 U.S.C. 10922(c)(2)(B) over the same route.

MC 113861 (Sub-88), filed December 17, 1982. Applicant: WOOTEN TRANSPORTS, INC., 153 Gaston Ave., Memphis, TN 38106. Representative: Dale Woodall, 6077 Primacy Parkway, Suite 209, Memphis, TN 38119, (910) 683-5400. Transporting *commodities in bulk*, between points in GA, NC, and TN.

MC 121470 (Sub-90), filed December 13, 1982. Applicant: TANKSLEY TRANSFER COMPANY, 801 Cowan St., Nashville, TN 37207. Representative: Helen Jones (same address as applicant), (615)-244-7417. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in the U.S. (except AK and HI).

MC 124111 (Sub-73), filed December 20, 1982. Applicant: OHIO EASTERN EXPRESS, INC., 300 W. Perkins Ave., Sandusky, OH 44870. Representative: David A. Turano, 100 E. Broad St., Columbus, OH 43215, (614)-228-1541. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in the U.S. (except AK and HI), under continuing contract(s) with Certified Brokerage Services, Inc., of Hagerstown, MD.

MC 143501 (Sub-14), filed December 16, 1982. Applicant: R.G.C. CARGO CARRIERS, INC., 16651 S. Vincennes

Rd., P.O. Box 523, South Holland, IL 60473. Representative: Dean N. Wolfe, Suite 200, 444 N. Frederick Ave., Gaithersburg, MD 20877, (301)–840–8565. Transporting *foodstuffs*, between points in the U.S. (except AK and HI), under continuing contract(s) with Fearn International, Inc., of Franklin Park, IL.

MC 146121 (Sub-3), filed December 10, 1982. Applicant: BAY CARTAGE CO., 1122 Barney Ave., Muskegon, MI 49444. Representative: Edward Malinzak, 900 Old Kent Bldg., Grand Rapids, MI 49503, (616)–459–6121. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in the U.S. (except AK and HI), under continuing contract(s) with Clarke Division of McGraw Edison Co., of Muskegon, MI.

MC 148540 (Sub-3), filed December 17, 1982. Applicant: DIXIE GAS, INC., P.O. Box 40, Marks, MS 38646. Representative: Harold D. Miller, Jr., 17th Floor, Deposit Guaranty Plaza, P.O. Box 22567, Jackson, MS 39205, (601) 948–5711. Transporting *anhydrous ammonia*, between points in Mississippi County, AR, on the one hand, and, on the other, points in KY, LA, MS, MO, and TN.

MC 148970 (Sub-1), filed December 20, 1982. Applicant: BEACH PARK FREIGHT LINES, INC., 38433 North Holdridge Ave., Waukegan, IL 60085. Representative: Paul D. Borghesani, Suite 300, Communicana Bldg., 421 South Second St., Elkhart, IN 46516. Transporting *construction materials* and *such commoditiews* as are dealt in or used in the manufacture, distribution, and application of construction materials, between points in the U.S. (except AK and HI), under continuing contract(s) with CertainTeed Corporation, of Valley Forge, PA.

MC 156121 (Sub-2), filed December 13, 1982. Applicant: KOPF TRUCKING, INC., 18470 Victoria Drive, Goshen, IN 46526. Representative: Theodore Polydoroff, Suite 301, 1307 Dolley Madison Blvd., McLean, VA 22101, (703)–893–4924. Transporting (1) *furniture, fixtures and related products*, between points in the U.S. (except AK and HI), under continuing contract(s) with Foremost Enterprises, Inc., of Elkhart, IN, (2) *machinery and metal products*, between points in the U.S. (except AK and HI), under continuing contract(s) with Thunander Corporation, of Elkhart, IN, and (3) *metal and metal products*, between points in the U.S. (except AK and HI), under continuing contract(s) with Dakat, Inc., Sailor Manufacturing, Inc. and Shrock Manufacturing, Inc., each of Elkhart, IN.

MC 157140 (Sub-2), filed December 16, 1982. Applicant: TRICO EQUIPMENT INC., P.O. Box 669, Ahoski, NC 27910. Representative: Carroll B. Jackson, 1810 Vincennes Rd., Richmond, VA 23229, (804)–282–3809. Transporting (1) *metal and metal products and* (2) *lumber and wood products*, between Baltimore, MD, Philadelphia, PA, points in NC, SC and VA, and points in Chester County, PA, on the one hand, and, on the other, those points in ands east of MN, LA, MO, AR and LA.

MC 158651 (Sub-6), filed December 17, 1982. Applicant: GRAEBEL VAN LINES, INC., 719 North Third Ave., Wausau, WI 54401. Representative: Roger Will (same address as applicant), (715) 675–9481. Transporting *household goods*, between points in the U.S., under continuing contract(s) with Employers Insurance of Wausau, A Mutual Company, of Wausau, WI.

MC 159011 (Sub-1), filed December 17, 1982. Applicant: DICK GASSER & SONS TRUCKING, LIMITED, 4055 E. 64th St., Commerce City, CO 80022. Representative: Robert W. Wright, Jr., 5711 Ammons St., Arvada, CO 80002, (303) 424–1761. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in the U.S. (except AK and HI), under continuing contract(s) with Navajo Shippers, Inc., of Denver, CO.

MC 161970, filed December 20, 1982. Applicant: LARRY'S CARTAGE CO., INC., P.O. Box 2009, Bridgeview, IL 60455. Representative: Larry Denton, 7732 W. 96th Place, Hickory Hills, IL 60457, (312)–430–5652. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between Chicago, IL, on the one hand, and, on the other, points in IL, IN, MI, OH, WI, IA and MO.

MC 162460 (Sub-1), filed December 14, 1982. Applicant: B. J. EXPRESS, INC., P.O. Box 4601, Spencer, IA 51301. Representative: William L. Fairbank, 2400 Financial Center, Des Moines, IA 50309, (515)–282–3525. Transporting *food and related products*, between points in the U.S. (except AK and HI), under continuing contract(s) with IBP, Inc., of Dakota City, NE.

MC 163471, filed December 17, 1982. Applicant: PATTI DELIVERY, INC., 5758 West Dakin St., Chicago, IL 60634. Representative: Edward G. Finnegan, 134 North La Salle St., Suite 1016, Chicago, IL 60602, (312) 782–9500. Transporting (1) *paper*, (2) *printed matter*, (3) *empty skids*, and (4) *graphic art and supplies*, between points in IL, WI, MN, MI, IN, IA and MO.

MC 165120, filed December 10, 1982. Applicant: THORNDIKE TRUCKING, INC., Box 903, Oroville, WA 98844. Representative: Donald J. Thorndike, (same address as applicant), (509) 476–2501. Transporting (A)(1) *farm products*, and (2) *food and related products*, between points in the U.S. (except AK and HI), and (B)(1) *Forest products*, (2) *lumber and wood products*, (3) *pulp, paper and related products*, (4) *chemicals and related products*, (5) *rubber and plastic products*, (6) *clay, concrete, glass or stone products*, (7) *metal products*, and (8) *machinery*, between points in AZ, AR, CA, CO, FL, ID, IL, IN, MT, NM, OH, OK, OR, TX, UT, WI, WA, and WY.

MC 165131 (Sub-1), filed December 17, 1982. Applicant: STEVEN CIANCIOTTA, d.b.a. J&S TRUCKING & LEASING CO., 65 Virginia Ave., Lake Ronkonkoma, NY 11779. Representative: Jack L. Schiller, 111–56 76th Dr., Forest Hills, NY 11375, (212) 263–2078. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in the U.S. (except AK and HI), under continuing contract(s) with Knomark, Inc., of Jamaica, NY, and Strauss Brothers Packing, of Hales Corner, WI.

MC 165241, filed December 16, 1982. Applicant: ASSOCIATED FOOD STORES, INC., 1810 South Empire Road, Salt Lake City, UT 84104. Representative: Irene Warr, 311 S. State St., Suite 280, Salt Lake City, UT 84111, (801) 531–1300. Transporting *general commodities* (except classes A and B explosives, and household goods), between points in the U.S. (except AK and HI), under continuing contract(s) with Ralston Purina Company, of St. Louis, Mo.

MC 165251, filed December 20, 1982. Applicant: CENTRAL CITIES FREIGHT LINES, INC., P.O. Box 241, Columbia City, IN 46725. Representative: Robert B. Herbert, Suite 1600, One Indiana Square, Indianapolis, IN 46204, (317) 632–6262. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between Chicago, IL, and points in Huntington, Whitley, Wabash,

Kosciusko, Noble, LaGrange, Allen and Dekalb Counties, IL, on the one hand, and on the other, points in IL, IN, KY, MI, and OH.

MC 165280, filed December 20, 1982. Applicant: JOSEPH W. ("BILL") HAYMAN, d.b.a. HAYMAN TRUCKING, R.R. #1 Little York, IL 61453. Representative: Robert T. Lawley, 300 Reisch Bldg., Springfield, IL 62701, (217) 544–5468. Transporting (1) *general commodities* (except classes A and B explosives and household goods), between points in the U.S. (except AK and HI), under continuing contract(s) with Agmart, Inc., of Monmouth, IL, and (2) *food and related products*, between points in the U.S. (except AK and HI), under continuing contract(s) with Midwest Biscuit Company, of Burlington, IA.

MC 165291, filed December 20, 1982. Applicant: CARPET WORLD, INC., P.O. Box 12087, Oklahoma City, OK 73157. Representative: David B. Schneider, 210 W. Park Ave., Suite 1120, Oklahoma City, OK 73102. Transporting *general commodities* (except classes A and B explosives, used household goods, and commodities in bulk), between points in the U.S. (except AK and HI), under continuing contract(s) with (1) Chemical Products Development Corporation, (2) CRL Limited, (3) Durashield II, Inc., and (4) Bill's Wholesale, Inc., all of Oklahoma City, OK.

For the following, please direct status calls to Team 2 (202) 275–7030.

Volume No. OP 2-004

Decided: December 22, 1982.

By the Commission, Review Board No. 1, Members Parker, Chandler, and Fortier. (Member Parker not participating.)

MC 46313 (Sub-16), filed December 9, 1982. Applicant: SUHR TRANSPORT, Box 1727, Great Falls, MT 59403. Representative: Fred R. Covington, 2150 Franklin St., Suite 554, Oakland, CA 94612, 415–893–4102. Transporting *waste or scrap materials not identified by industry producing, forest products, lumber and wood products, metal products, food and related products,* and *such commodities* as are dealt in by hardware stores, between points in AZ, CA, CO, ID, MT, ND, OR, NV, NM, SD, TX, UT, WA, and WY.

MC 72243 (Sub-77), filed December 10, 1982. Applicant: THE AETNA FREIGHT LINES, INC., 2507 Youngstown Rd, SE, P.O. Box 350, Warren OH 44482. Representative: Paul F. Beery, 275 E. State St., Columbus, OH 43215, (614) 228–8575. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in the U.S., in and east of MT, WY, CO and NM.

MC 87113 (Sub-30), filed December 9, 1982. Applicant: WHEAT VAN LINES, INC., 8010 Castleton Rd., Indianapolis, IN 46250. Representative: Alan F. Wohlstetter, 1700 K St., NW, Washington, DC 20006, (202) 833–8884. Transporting *household goods*, between points in the U.S., under continuing contract(s) with Merrill Lynch Relocation Management, Inc., of White Plains, NY.

MC 121572 (Sub-2), filed November 19, 1982. Applicant: TRANS STATE BUS, INC., Route 1, Hwy 156, Larned, KS 67550. Representative: Eugene W. Hiatt, 207 Casson Bldg., 603 Topeka Blvd., Topeka, KS 66603, 913–232–7263. Transporting *passengers*, (1) over regular routes, between Dalhart, TX and Liberal, KS, over U.S. Hwy 54, serving all intermediate points; and (2) over irregular routes, in charter and special operations, beginning and ending at points in KS, those in Dallam, Hartley, and Sherman Counties, TX, and Beaver, Cimarron, and Texas Counties, OK, and extending to points in the U.S. (including AK, but excluding HI).

Note.—(1) Applicant seeks to provide regular-route service only in interstate or foreign commerce, (2) applicant may tack this authority with existing authority, and (3) applicant seeks to provide privately-funded charter or special transportation.

MC 121572 (Sub-4), filed November 29 1982. Applicant: TRANS STATE BUS, INC., Rte. 1, Hwy 156, Larned, KS 67550. Representative: Eugene W. Hiatt, 627 S. Topeka Blvd., Topeka, KS 66603, 913–232–7263. Transporting *passengers* (1) between Manhattan, KS, and junction U.S. Hwy 77 and KS Hwy 150: from Manhattan over KS Hwy 18 to military post road, then over military post road to U.S. Hwy 77, then over U.S. Hwy 77 to junction KS Hwy 150, and return over the same route, serving all intermediate points, (2) between Junction City, KS, and junction Interstate Hwy 135 and U.S. Hwy 56: from Junction City over Interstate Hwy 70 to junction Interstate Hwy 135, then over Interstate Hwy 135 to junction U.S. Hwy 56, and return over the same route, serving all intermediate points, and (3) between Hillsboro, KS and junction U.S. Hwy 50 and Interstate Hwy 135: from Hillsboro over unnumbered county road to U.S. Hwy 50, then over U.S. Hwy 50 to junction Interstate Hwy 135, then over Interstate Hwy 135 to junction KS Hwy 96, then over KS Hwy 96 to junction U.S. Hwy 50, serving the off route point of Halstead, KS, and return over the same route, serving all intermediate points.

Note.—(1) Applicant seeks to provide regular-route service in intrastate commerce under 49 U.S.C. 10922(c)(2)(B); (2) Applicant seeks to provide privately-funded charter and special transportation; and (3) Applicant may tack this authority with its existing authority.

MC 133133 (Sub-23), filed December 10, 1982. Applicant: FULLER MOTOR DELIVERY CO., 802 Plum St., Cincinnati, OH 45202. Representative: Norbert B. Flick, 2250 Beechmont Ave., Cincinnati, OH 45230, 513–231–4831. Transporting *general commodities* (except classes A and B explosives and household goods), between points in IL, IN, KY, MD, MI, MO, OH, PA, TN, VA, and WV.

MC 151583 (Sub-6), filed December 12, 1982. Applicant: UTF CARRIERS, INC., Benson Road, Middlebury, CT 06749. Representative: James M. Burns, 1365 Main St., Suite 403, Springfield, MA 01103, (413) 781–8205. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in the U.S. (except AK and HI), under a continuing contract(s) with Tarkett, Inc., of Parsippany, NJ.

MC 163372, filed December 7, 1982. Applicant: TRANS-CARRIERS, INC., 1013 Camelot Cove, West Memphis, AR 72301. Representative: R. Connor Wiggins, Jr., 100 N. Main Bldg., Suite 909, Memphis, TN 38103, 901–526–4114. Transporting (1) *such commodities* as are dealt in or used by manufacturers and distributors of (a) medical supplies, (b) foods and related products, (c) glass and glass products, (d) drugs, (e) toilet articles, (f) paper products, (g) health care articles, (h) cosmetics, and (i) home repair supplies, and (2) *such commodities* as are dealt in or used by wholesale, retail, and discount stores, between points in the U.S. (except AK and HI).

MC 164923, filed November 30, 1982. Applicant: HOWARD TRANSPORTATION, INC., Airport Industrial Park, Laurel, MS 39440. Representative: Michael F. Morrone, 1150 17th St., NW, Suite 1000, Washington, DC 20036, 202–457–1124. Transporting (1) *electrical transformers, electrical testers for transformers, transformer oil, and components and parts* used in the manufacture, sale, and distribution of electrical transformers, between points in the U.S. (except AK and HI), under continuing contract(s) with Howard Industries, Inc., (2) *such commodities* as are dealt in or used by manufacturers and distributors of walk-in refrigeration equipment, between points in the U.S. (except AK and HI), under continuing contract(s) with Mid South Industries, Inc., (3) *lubrication oil and diesel fuel, automotive chemicals*

and automotive accessories, between points in the U.S. (except AK and HI), under continuing contract(s) with Oil Distributors, Inc., (4) *tires, tubes and rubber* used in recapping tires, between points in the U.S. (except AK and HI), under continuing contract(s) with Laurel A-1 Tire Centers, Inc., (5) *canned foods, cosmetics, juices, paper and paper products, and chemicals and brushes*, between points in the U.S. (except AK and HI), under continuing contract(s) with Crumbley Paper Co., Inc., (6) *such commodities* as are sold by discount department stores, between points in the U.S. (except AK and HI), under continuing contract(s) with Martin Merchandising Co., Inc.—Division of Gibson Prod. Co., of Laurel, Inc., all of Laurel, MS, (7) *fiberboard, hardboard, particleboard, wallboard, paint, lumber, vinyl, paper products, and equipment* used in the fabrication of wood products, between points in the U.S. (except AK and HI), under continuing contract(s) with Masonite Corp., Custom Components Division, of High Point, NC, and (8) *such commodities* as are sold in food and department stores, between points in the U.S. (except AK and HI), under continuing contract(s) with Hudson Salvage Centers, Inc., of Gulfport, MS.

MC 156493 (Sub-1), filed December 10, 1982. Applicant: BOYD MESSER TRANSFER, INC., P.O. Box 19, Fulton, KS 66738. Representative: Eugene W. Hiatt, 207 Casson Building, 603 Topeka Blvd., Topeka, KS 66603, (913) 232-7263. Transporting *petroleum, natural gas and their products*, between points in KS, OK and MO.

Volume No. OP2-005

Decided: December 28, 1982.

By the Commission, Review Board No. 1, Members Parker, Chandler, and Fortier. (Member Fortier not participating.)

MC 143503 (Sub-39), filed December 20, 1982. Applicant: MERCHANTS HOME DELIVERY SERVICE, INC., P.O. Box 5067, Oxnard, CA 93031. Representative: David B. Schneider, 210 W. Park Ave., Suite 1120, Oklahoma City, OK 73102, 405-232-9990. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in the U.S. (except AK and HI), under continuing contract(s) with Goodwin's Carriage House, Inc., of Auburn, MA.

MC 165292, filed December 20, 1982. Applicant: SUN-UP TRUCK LINE, INC., 350 Thistle Dr., Bolingbrook IL 60439. Representative: Albert A. Andrin, 180 North La Salle St., Chicago, IL 60601, 312-332-5106. Transporting *general commodities* (except classes A and B explosives, commodities in bulk, and household goods), between those points in the U.S. in and east of ND, SD, NE, KS, OK, and TX.

MC 165293, filed December 20, 1982. Applicant: C&H ADCOCK TRUCKING, Rte 1, Box 224, Hayden, AL 35079. Representative: Don Garrison, P.O. Box 1065, Fayetteville, AR 72702, (501) 521-8121. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in the U.S. (except AK and HI), under continuing contract(s) with Charles McAlpin Brokerage, Inc., of Decatur, AL.

Volume No. OP 2-007

Decided: December 27, 1982.

By the Commission, Review Board No. 1, Members Parker, Chandler, and Fortier.

MC 46612 (Sub-2), filed December 13, 1982. Applicant: HENDERSON TRANSFER CO. INC., P.O. Box 15, Vincennes, IN 47591. Representative: Norman R. Garvin, 1301 Merchants Plaza, Indianapolis, IN 46204, 317-638-1301. Transporting *household goods*, between points in IL, IN, and KY, on the one hand, and, on the other, points in AL, AR, FL, GA, IN, IL, IA, KS, KY, LA, MD, MI, MS, MO, NC, OH, OK, PA, SC, TN, TX, VA, WI, WV, and DC.

MC 151293 (Sub-3), filed December 13, 1982. Applicant: HUTCHENS TRUCKING COMPANY, INC., 615 Roseann Dr., Winston-Salem, NC 27104. Representative: Terrell Price, 800 Briar Creek Rd., Rm. DD-504, Charlotte, NC 28205, 704-372-8212. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in the U.S. (except AK and HI), under continuing contract(s) with General Electric Company, of Ft. Wayne, IN.

MC 165183, filed December 14, 1982. Applicant: FLEETWOOD TRANSIT, INC., 3388 South 127, Omaha, NE 68144. Representative: Arlyn L. Westergren, Suite 201, 9202 W. Dodge Rd., Omaha, NE 68114, 402-397-7033. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in IA and NE, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 165252, filed December 16, 1982. Applicant: CLEM MILLER TRUCKING COMPANY, 920 South Caroline St., Baltimore, MD 21231. Representative: Edward N. Button, 635 Oak Hill Ave., Hagerstown, MD 21740, (301) 739-4860. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between Baltimore, MD, New York, NY, and Norfolk, VA, on the one hand, and, on the other, those points in the U.S., in and east of MN, IA, MO, AR AND LA.

For the following, please direct status inquiries to Team 4 at 202-275-7669.

Volume No. OP4-094

Decided: December 29, 1982.

By the Commission, Review Board No. 2, Members Carleton, Williams, and Ewing.

MC 107 (Sub-14), filed December 20, 1982. Applicant: BORO BUSSES COMPANY, 445 Shrewsbury Ave., Shrewsbury, NJ 07701. Representative: William L. Russell, Jr., P.O. Box 263, Little Silver, NJ 07739, (201) 741-2000. Transporting *passengers*, in charter and special operations, between points in the U.S.

Note:—Applicant receives governmental financial assistance for the purchase or operation of buses, or is an operator for such a recipient.

MC 59856 (Sub-94), filed December 17, 1982. Applicant: SALT CREEK FREIGHTWAYS, 3333 W. Yellowstone, Casper, WY 82601. Representative: Joseph F. Sloan, 6540 Washington St., Denver, CO 80229, (303) 287-3231. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in the U.S. (except AK and HI).

MC 138466 (Sub-4), filed December 17, 1982. Applicant: RMK TRUCKING, INC., Suite 595, 500 Skokie Blvd., Northbrook, IL 60062. Representative: Paul M. Daniell, P.O. Box 872, Atlanta, GA 30301, (404) 522-2322. Transporting *general comodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in the U.S. (except AK and HI), under continuing contract(s) with James River Corporation, of Richmond, VA.

MC 144927 (Sub-51), filed December 20, 1982. Applicant: REMINGTON FREIGHT LINES, INC., Box 315, U.S. 24 West, Remington, IN 47977. Representative: Steve Martin (same address as applicant), (219) 261-3461. Transporting *glassware*, between points in Cumberland County, NJ, on the one hand, and, on the other, points in AL, OH, MI, IN, KY, MO, OK, TX, MS, CA, TN, MA, IL, GA, VA, OR, PA, NY, and DC.

MC 152137 (Sub-3), filed December 20, 1982. Applicant: A. M. COX, d.b.a. AMCO TRANSPORTATION, 1305 Wildbriar St., Lufkin, TX 75901. Representative: Billy R. Reid, 1721 Carl St., Ft. Worth, TX 76103, (817) 332-4718). Transporting *such commodities* as are

dealt in or used by grocery business houses, between points in TX and LA, on the one hand, and, on the other, points in U.S. (except AK and HI).

MC 159106 (Sub-1), filed December 20, 1982. Applicant: SOUTHWEST FREIGHT LINES, INC., 1400 Kansas Ave., Kansas City, KS 66110–0277. Representative: Michael P. Zell, 110 Ionia Ave., NW, Suite 7000, Grand Rapids, MI 49503, (616) 774–0400. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in the U.S. (except AK and HI).

MC 159346 (Sub-2), filed December 21, 1982. Applicant: DON LINMAN d.b.a. LINMAN TRUCKING, Monmouth, IL 61462. Representative: Robert T. Lawley, 300 Reisch Bldg., Springfield, IL 62701, (217) 544–5468. Transporting (1) *food and related products*, between points in the U.S. (except AK and HI), under continuing contract(s) with G & M Distributors, Inc., of Galesburg, IL; and (2) *farm machinery and farm implements*, between points in the U.S. (except AK and HI), under continuing contract(s) with Sampson Implement Co., of Galesburg, IL.

MC 164367, filed December 20, 1982. Applicant: STAPLES TRUCK LINE, INC., 4th and Dowey, P.O. Box 216, Blackwell, OK 74631. Representative: G. Timothy Armstrong, 200 N. Choctaw, P.O. Box 1124, El Reno, OK 73036, (405) 262–1322. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in Garfield, Kay, Tulsa and Oklahoma Counties, OK, on the one hand, and, on the other, points in KS, MO and TX.

MC 165277, filed December 20, 1982. Applicant: PURDY BROS. TRUCKING CO., INC., Rt. 40, Box 288, Loudon, TN 37774. Representative: James P. Purdy (same address as applicant), (615) 458–4642. Transporting *general commodities* (except classes A and B explosives and household goods), between points in the U.S. (except AK and HI), under continuing contract(s) with the Ralston Purina Company, of St. Louis, MO.

MC 165287, filed December 20, 1982. Applicant: ALASKA OILFIELD SPECIALITIES, INC., P.O. Box 74650, Fairbanks, AK 99707. Representative: Clifton D. Firestone, SRA Box 1629–W, Anchorage, AK 99507, (907) 345–2423. Transporting/(1) *cement*, (2) *oilwell drilling commodities*, and (3) *oilwell machinery and equipment*, between points in AK, under continuing contract(s) with Dowell Company, Division of Dow Chemical, of Houston, TX.

MC 165296, filed December 20, 1982. Applicant: TRAIL BLAZER TRANSPORTATION, 33 NE Middlefield Rd., Suite 111, Portland, OR 97211. Representative: John M. Pugh, 16225 SE Talwood Lane, Milwaukie, OR 97222, (503) 659–5490. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in the U.S., under continuing contract(s) with JWS Enterprises, Inc., of Portland, OR.

MC 165297, filed December 20, 1982. Applicant: AUTO WHOLESALERS & TRANSPORT, INC., 965 County Rd. 18 N., Plymouth, MN 55441. Representative: Samuel Rubenstein, P.O. Box 5, Minneapolis, MN 55440 (612) 542–1121. Transporting *motor vehicles*, between points in the U.S. (except AK and HI).

For the following, please direct status inquiries to Team 5 at 202–275–7289.

Volume No. OP5–300

Decided: December 21, 1982.

By the Commission, Review Board No. 3, Members Krock, Joyce, and Dowell.

MC 22988 (Sub-21), filed December 13, 1982. Applicant: K. G. MOORE, INC., 116 Washington Street, Plainville, MA 02762. Representative: Robert G. Parks, 20 Walnut Street, Wellesley Hills, MA 02181, (617) 235–5571. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in the U.S. (except AK and HI). Condition: Issuance of a Certificate of Public Convenience and Necessity is subject to the coincidental cancellation, at applicant's written request, of its Certificate No. MC–20988 (Sub-Nos. 13 and 15).

MC 79658 (Sub-42), filed December 13, 1982. Applicant: ATLAS VAN LINES, INC., 1212 St. George Rd., P.O. Box 509, Evansville, IN 47711. Representative: Robert C. Mills (same address as above), (812) 424–2222. Transporting *general commodities* (except classes A and B explosives and commodities in bulk), between points in the U.S. (except AK and HI), under continuing contract(s) with Motorola, Inc. GEG, of Scottsdale, AZ.

MC 120249 (Sub-10), filed December 10, 1982. Applicant: GEORGE A. HORTON, dba. ASHLAND-HARLO FREIGHT LINES, 640 St. Johns Ave. Billings, MT 59102. Representative: George A. Horton (same address as applicant), 406–259–6504. Transporting *general commodities* (except classes A and B explosives and commodities in bulk), between Glendive, Sidney and Circle, MT, over regular routes, (1) between Glendive and Sidney, MT over MT Hwy 16, (2) between Sidney and Circle, MT over MT Hwy 200, and (3) between Circle and Glendive MT, over MT Hwy 200S, serving all intermediate points on routes (1) thru (3).

MC 144879 (Sub-12), filed December 10, 1982. Applicant: D & J TRANSFER CO., Sherburn, MN 56171. Representative: Richard A. Peterson, P.O. Box 81849, Lincoln, NE 68501 (402) 476–1144. Transporting *food and related products*, between points in the U.S. (except AK and HI), under continuing contract(s) with Swift & Company, of Chicago, IL.

MC 150498 (Sub-4), filed December 9, 1982. Applicant: PACIFIC INLAND TRANSPORT, INC., 3093 Citrus Circle, Suite 145, Walnut Creek, CA 94598. Representative: Robert S. Burch (same address as applicant), (415) 945–8777. Transporting *general commodities* (except classes A and B explosives and commodities in bulk), between points in the U.S. (except AK and HI).

MC 151619 (Sub-2), filed December 9, 1982. Applicant: WESTERN CAROLINA EXPRESS, INC., P.O. Box 2523, Hickory, NC 28603. Representative: Ralph McDonald, P.O. Box 2246, Raleigh, NC 27602, (919) 828–0731. Transporting *new furniture*, between points in GA, NC, and SC.

MC 156818 (Sub-1), filed December 10, 1982. Applicant: CURRY ICE & COAL, INC., R.R. #2, Box 229A, Carlinville, IL 62626. Representative: Robert T. Lawley, 300 Reisch Bldg., Springfield, IL 62701, (217) 544–5468. Transporting (1) *fertilizer*, and (2) *grain and fertilizer handling equipment*, between points in the U.S. (except AK and HI).

MC 159428 (Sub-1), filed December 7, 1982. Applicant: LOREN J. VERBURG AND DAVID E. FOWLER, d.b.a. EXCELLENT TRUCKING CO., P.O. Box 41, Zeeland, MI 49464. Representative: Abraham A. Diamond, 29 South La Salle St., Chicago, IL 60603, 312–236–0548. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in the U.S. under continuing contract(s) with Greene Companies International, Inc. of Oak Brook, IL, and its subsidiaries.

MC 163509 (Sub-1), filed December 9, 1982. Applicant: DELTA FREIGHT, INC., R.D. 2, Box 4, Parkesburg, PA 19365. Representative: Dixie C. Newhouse, 1329 Pennsylvania Ave., P.O. Box 1417, Hagerstown, MD 21740, (301) 797–6060. Transporting (1) *such commodities* as are dealt in or used by grocery and food business houses and agricultural feed business houses, between those points in the U.S. in and east of MN, IA, MO,

KS, OK, and TX, (2) *building materials* between points in Wadena County, MN, Broome County, NY, Franklin County, OH, and PA, on the one hand, and, on the other, those points in the U.S. in and east of WI, IL, KY, TN, and MS, and (3) *such commodities* as are dealt in by hardware stores, between Greenville, SC, and points in Coles County, IL, Hampden County, MA, and PA, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 165139, filed December 10, 1982. Applicant: NORTHERN UTAH DRYWALL EQUIPMENT & SUPPLY, INC., d.b.a. NUDES, 2211 N. Redwood Rd., Salt Lake City, UT 84116. Representative: Rick J. Hall, P.O. Box 2465, Salt Lake City, UT 84110, (801) 531-1777. Transporting (1) *building materials*, (2) *clay, concrete, glass or stone products*, (3) *chemicals and related products*, (4) *pulp, paper and related products*, and (5) *lumber and wood products*, between those points in the U.S. in and west of MT, WY, CO, and NM (except AK and HI).

James H. Bayne,

Acting Secretary.

[FR Doc. 83-164 Filed 1-4-83; 8:45 am]

BILLING CODE 7035-01-M

[Volume No. 319]

Motor Carriers; Permanent Authority Decisions; Restriction Removals; Decision-Notice

Decided: December 28, 1982.

The following restriction removal applications, filed after December 28, 1980, are governed by 49 CFR Part 1137. Part 1137 was published in the **Federal Register** of December 31, 1980, at 45 FR 86747.

Persons wishing to file a comment to an application must follow the rules under 49 CFR 1137.12. A copy of any application can be obtained from any applicant upon request and payment to applicant of $10.00.

Amendments to the restriction removal applications are not allowed.

Some of the applications may have been modified prior to publication to conform to the special provisions applicable to restriction removal.

Findings

We find, preliminarily, that each applicant has demonstrated that its requested removal of restrictions or broadening of unduly narrow authority is consistent with the criteria set forth in 49 U.S.C. 10922(h).

In the absence of comments filed within 25 days of publication of this decision-notice, appropriate reformed authority will be issued to each applicant. Prior to beginning operations under the newly issued authority, compliance must be made with the normal statutory and regulatory requirements for common and contract carriers.

By the Commission, Review Board No. 2, Members Carleton, Williams, and Ewing.

Agatha L. Mergenovich,

Secretary.

MC 37656 (Sub-17)X, filed October 28, 1982. Applicant: DOYLE TRUCKING CORPORATION, 91 Monmouth St., Red Bank, NJ 07701. Representative: Edward L. Nehez, P.O. Box Y, 7 Becker Farm Rd., Roseland, NJ 07068. Lead and Sub 3 permits: broaden to (1) "furniture and fixtures, textile mill products, metal products, pulp, paper and related products, machinery, rubber and plastic products, lumber and wood products, and clay, concrete, glass or stone products" from (a) home furnishings, Sub 3; and (b) new furniture, and such supplies, materials, machinery and equipment as are used in the manufacture, display or sale of furniture, lead; and (2) "between points in the U.S.", under continuing contract(s) with a specified class of shippers, both Subs.

MC 106036 (Sub-1)X, filed November 29, 1982. Applicant: WILLIAM B. REYNOLDS, d.b.a. WM. REYNOLDS TRUCK CO., 3395 Miller Park Rd., Akron, OH 44312. Representative: John P. McMahon, 100 E. Broad St., Columbus, OH 43215. Lead permit: Broaden the territorial description to between points in the U.S. (except Alaska and Hawaii), under continuing contract(s).

MC 108460 (Sub-76)X, filed November 15, 1982. Applicant: PETROLEUM CARRIERS COMPANY, P.O. Box 762, 5104 W. 14th, Sioux Falls, SD 57101. Representative: Leonard R. Kofkin, Ste. 1515, 140 S. Dearborn, Chicago, IL 60603. Sub 71F certificate: broaden (1) from concrete block, pipe, beams, prestressed panels and prestressed products, and concrete products, and materials and supplies used in the manufacturing of above commodities to "clay, concrete, or stone products and commodities which by reason of size or weight require special equipment or special handling"; and (2) to radial authority.

MC 110581 (Sub-11)X, filed November 29, 1982. Applicant: G & H MOTOR FREIGHT LINES, INC., 118 S.E. Jackson St., Greenfield, IA 50849. Representative: James F. Crosby & Associates, 7363 Pacific St., Suite 210B, Omaha, NE 68114. MC-48603 (Subs 1, 2, and 3), purchased in MC-FC 80059: (A) Sub 1, remove the restriction to traffic having a prior or subsequent movement by rail; (B) Subs 2 and 3, broaden the general commodities authority by removing exceptions to "those of unusual value, commodities requiring special equipment, those injurious or contaminating to other lading, and livestock;" (C) Sub 2, regular-route authority, (a) authorize service at all intermediate points, and (b) broaden off-route points to countywide as follows: Cass County, IA (Lewis); Shelby, Harrison and Pottawattamie Counties, IA (Shelby); Pottawattamie, Cass and Shelby Counties, IA (Hancock, Oakland, Marne, and Walnut); Shelby County, IA (Corley); and (D) Sub 3, broaden irregular-route points to: Washington, Douglas, Sarpy and Cass Counties, NE, and Pottawattamie and Mills Counties, IA (Omaha, NE); Pottawattamie, Mills, Montgomery and Cass Counties, IA, and Douglas and Sarpy Counties, NE (Council Bluffs, Treynor, Carson, Macedonia, Kemling, Elliott, and Griswold, IA).

MC 140125 (Sub-4)X, filed December 6, 1982. Applicant: SCHUSTER GRAIN COMPANY, INC., P.O. Box 616, Le Mars, IA 51031. Representative: Bradford E. Kistler, P.O. Box 82028, Lincoln, NE 68501. Certificates No. MC-126489 (Sub-Nos. 25 and 31), acquired in MC-FC-79937. Broaden (1) commodity descriptions to authorize: (a) Sub 25, chemicals and related products (dry feed ingredients, except those which are petroleum-based); and (b) Sub 31, food and related products (dog food, except in bulk); (2) named point and facilities location to countywide authority: Sub 25, Reno County, KS (facilities near Hutchinson), and Sub 31, Reno County, KS (Hutchinson); and, (3) one-way service to radial authority, in both certificates.

MC 146111 (Sub-9)X, filed November 24, 1982. Applicant: INDUSTRIAL TRANSPORT, INC., 11910 Harvard Ave., Cleveland, OH 44105. Representative: Brian S. Stern, 5411-D Backlick Rd., Springfield, VA 22151. Lead and Subs 2F, 3F, 4F, and 5F certificates, and No. MC-144075 and Subs 2F and 7 permits: (1) Broaden to (a) "metal products" from sheet metal products used in the manufacture . . . air conditioning systems, and coil steel, in lead permit; (b) "transportation equipment" from transit expressway vehicles, in Sub 2F permit; (c) "machinery" from electric stairways, electric walks, elevators, and materials, equipment, and supplies used in the maufacture and installation of these commodities, in Sub 7 permit; (d) "metal products" from aluminum articles, and aluminum and aluminum products, in lead and Subs 4F and 5F

certificates; (e) "food and related products" from foodstuffs and animal foods, in Sub 2F certificate; (f) "chemicals and related products" from paint and paint products, in Sub 3F. (2) expand territorial description to between points in the U.S. (except Alaska and Hawaii), under continuing contract(s) with named shipper(s), in all permits. (3) remove facilities limitations and expand cities to counties (a) Ravenswood, WV (Jackson County) in lead certificate; (b) Napoleon, OH (Henry County) in Sub 2F certificate: (c) Delaware, OH (Delaware County), Atlanta, GA (Cobb, Dekalb, Fulton, Clayton, Douglas, Fayette, Henry, Rockdale, and Gwinnett Counties); New Orleans, LA (Orleans, St. Bernard, Placquemines, Jefferson, St. Charles, St. John the Baptist, Lafourche, and St. Tammany Parishes, LA, and Hancock County, MS); Detroit, MI (Wayne, Oakland, Macomb, Washtenaw, St. Clair, and Livingston Counties); St. Louis, MO (Monroe, Madison, and St. Clair Counties, IL, and St. Charles, St. Louis and Jefferson Counties, MO, and St. Louis, MO); Kansas City, MO (Cass, Jackson, Clay, and Platte Counties, Mo, and Wyandotte, Johnson, and Leavenworth Counties, KS); Philadelphia, PA (Montgomery, Philadelphia, Bucks, Chester, and Delaware Counties, PA, Salem, Gloucester, Burlington, Camden, Mercer, Hunterdon, and Monmouth Counties NJ, and New Castle County, DE); Memphis, TN (Shelby, Fayette, and Tipton Counties, TN, Crittenden County, AR, and DeSoto County, MS); Dallas, TX (Dallas, Collin, Rockwall, Kaufman, Ellis, Tarrant, Denton, Johnson, and Hunt Counties, TX); East Point, GA (Fulton County); Dover, DE (Kent County), in Sub 3F; (d) Heath, OH (Licking County); Cincinnati, OH (Hamilton, Butler, Clermont, and Warren Counties, OH, and Boone, Kenton, and Campbell Counties, KY); Toledo, OH (Lucas, Ottawa, and Wood Counties, OH and Monroe and Lenawee Counties, MI), Belpre, OH (Washington County), in Sub 4F; (e) Chalmette, LA (St. Bernard Parish), in Sub 5F. (4) change one-way to radial authority, in all certificates. (5) remove: commodities in bulk exception, in Sub 2F permit and subs 2F and 3F certificates; in containers limitation, and originating at and destined to restriction, in Sub 2F certificate.

MC 149585 (sub-3)X, filed December 3, 1982. Applicant: SCHMIDT BROTHERS TRANSPORT, INC., Box 37, R.R. #3, Augusta, WI 54722. Representative: James E. Ballenthin, 1016 Conwed Towers, 444 Cedar St., St Paul, MN 55101. Sub 1 permit: (1) broaden dairy products, cheese, cottage cheese, cheese dip, butter, powdered milk, cream, new empty containers used in retail sales of cottage cheese and cheese dip, orange juice, fruit juices, and fruit drink to "food and related products; and (2) change the territorial description to between points in the U.S. (except Alaska and Hawaii), under continuing contract(s) with named shipper.

MC 163160 (Sub-1)X, filed December 10, 1982. Applicant: HOWARD BELL, JR., d.b.a. BELL READY MIX, R.R. #1, Box 4, Columbus Junction, IA 52738. Representative: Larry D. Knox, 600 Hubbell Bldg., Des Moines, IA 50309. MC-5227 Subs 5 and 51F acquired thru FC-79927: (1) broaden (a) metal buildings metal grain bins, and accessories and parts to "metal products and machinery" in Sub 5 and (b) iron and steel articles to "metal products" in Sub 51F; (2) broaden Galesburg, IL to Knox and Warren Counties, IL, and Kansas City, MO to Platte, Jackson, Clay, and Cass Counties, MO and Leavenworth, Wyandotte, and Johnson Counties, KS in Sub 5; and St. Louis, MO to St. Louis, MO and Jefferson, St. Louis, and St. Charles Counties, MO, and Madison, Saint Clair and Monroe Counties, IL, and Muscatine, IA to Muscatine County, IA and Rock Island County, IL, in Sub 51F; and (3) change one-way to radial authority, both subs.

[FR Doc. 83-102 Filed 1-4-83; 8:45 am]

BILLING CODE 7035-01-M

Motor Carrier Temporary Authority Application

The following are notices of filing of applications for temporary authority under Section 10928 of the Interstate Commerce Act and in accordance with the provisions of 49 CFR 1131.3. These rules provide that an original and two (2) copies of protests to an application may be filed with the Regional Office named in the **Federal Register** publication no later than the 15th calendar day after the date the notice of the filing of the application is published in the **Federal Register**. One copy of the protest must be served on the applicant, or its authorized representative, if any, and the protestant must certify that such service has been made. The protest must identify the operating authority upon which it is predicated, specifying the "MC" docket and "Sub" number and quoting the particular portion of authority upon which it relies. Also, the protestant shall specify the service it can and will provide and that amount and type of equipment it will make available for use in connection with the service contemplated by the TA application. The weight accorded a protest shall be governed by the completeness and pertinence of the protestant's information.

Except as otherwise specifically noted, each applicant states that there will be no significant effect on the quality of the human environment resulting from approval of its application.

A copy of the application is on file, and can be examined at the ICC Regional Office to which protests are to be transmitted.

Note.—All applications seek authority to operate as a common carrier over irregular routes except as otherwise noted.

Motor Carriers of Property

Notice No. F-227

The following applications were filed in region 4: Send protests to: ICC, Complaint and Authority Branch, P.O. Box 2980, Chicago, IL 60604.

MC 134518 (Sub-4TA), filed December 20, 1982. Applicant: CHEESE HAULING, INC., P.O. Box 1973, Bismarck, ND 58501. Representative: Carl E. Munson, 469 Fischer Building, P.O. Box 796, Dubuque, IA 52001. *Paper and paper products,* from points in Eau Claire, Marinette and Winnebago Counties, WI, to points in Burleigh County, ND. Supporting shipper: Super Value Stores Inc., P.O. Box 1397, Bismarck, ND 58502.

MC 150368 (Sub-4-6)X, filed December 20, 1982. Applicant: BURKLUND TRANSPORTATION, INC., Route 1, Vulcan, MI 49892. Representative: Nancy J. Johnson, Attorney, 103 East Washington Street, Box 218, Crandon, WI 54520. *Foodstuffs* from Corning, Gilroy, Merced, San Jose, Stockton, Sunnyvale, Thorton, San Francisco (and its Commercial Zone), and Sacramento (and its Commercial Zone), CA to points in the Upper Penninsula of Michigan. There are two supporting shippers.

MC 152995 (Sub-4-3TA), filed December 20, 1982. Applicant: JAMES THOMAS TRUCKING, INC., 17708 Stonebridge Dr., Hazel Crest, IL. 60429. Representative: James Thomas (same address as applicant). Transporting *general commodities,* (except Classes A and B explosives, household goods, and commodities in bulk), between points in AR, CA, IL, IN, KY, MI, MN, MO, NJ, NY, OH, OK, PA, TN, TX, WI, and, points in AL, AZ, AR, CA, CO, FL, GA, IL, IN, IA, KS, KY, LA, MI, MN, MS, MO, NE, NM, NV, NJ, NY, NC, OH, OK, PA, SC, TN, TX, UT, VA, WV, WI AND WY. Supporting shipper(s): Alberto Culver Co., Melrose Park, IL., and Combined Warehouse, Inc., Chicago, IL.

MC 162610 (Sub-4–8TA), filed December 20, 1982. Applicant: JETM DISTRIBUTION SYSTEMS, INC., 8424 West 47th Street, Lyons, IL 60534. Representative: Thomas M. O'Brien, Sullivan & Associates, Ltd., 180 North Michigan Avenue, Suite 1700, Chicago, IL 60601. *Such commodities* as are dealt in by manufacturers and distributors of cleaning products and food products, (1) from the facilities of Purex Corporation in the Chicago, IL Commerical Zone, St. Charles and Ashton, IL to Auburndale, FL, and (2) from the facilities of Purex Corporation in St. Louis, MO to points in AL, AR, CO, FL, GA, IA, IL, IN, KS, KY, LA, MI, MN, MS, NE, OH, TN, and TX. Supporting shipper: Purex Corporation, 2500 South 25th Avenue, Broadview, IL 60153.

MC 165086 (Sub-4–1TA), filed December 20, 1982. Applicant: FRANK S. MORSKI d.b.a. MORSKI TRUCK LINES, 503 South Lincoln, O'Fallon, IL 62269. Representative: Irwin D. Rozner, 134 North LaSalle St., Chicago, IL 60602. *Contract* irregular: *Empty trash containers, empty tube trailers,* between O'Fallon, IL, on the one hand, and, on the other, points in United States. Underlying ETA was filed. Supporting shipper: (Hamilton-Buell, Inc.) d.b.a. Magna-Fab Ltd., P.O. Box 308, O'Fallon, IL 62269.

MC 165275 (Sub-4–1TA), filed December 20, 1982. Applicant: SHEEHY MAIL CONTRACTORS, INC., 644 11th Ave. North, Onalaska, WI 54650. Representative: Joseph E. Ludden, 2707 South Ave., P.O. Box 1567, La Crosse, WI 54601. *Contract* irregular: Books, catalogs, catalog parts or section, magazines and/or periodicals and printed articles and supplies between points in Jefferson, Dane, and Sauk Counties, WI, on the one hand, and, on the other, points in the states of MN, IA, MD, IL, IN and OH. Restricted to traffic moving under continuing contract with Perry Printing Corporation. Supporting shipper: Perry Printing Corporation, 240 West Madison Street, Waterloo, WI 53594.

MC 165273 (Sub-4–1TA), filed December 20, 1982. Applicant: THOMAS J. LESKO, d.b.a. LESKO TRANSPORTATION, 6615 7th Street, Kenosha, WI 43142. Representative: Richard C. Alexander, 710 North Plankinton Ave., Milwaukee, WI 53203. *Contract: irregular. Inedible beef by-products for the mink and pet food industries,* from Kenosha, WI, to the facilities of General Foods at or near Kankakee, IL, under continuing contract(s) with Bydalek Farms, Ltd., of Kenosha, WI. An underlying ETA seeks 120 days authority. Supporting shipper: Bydalek Farms, Ltd., 5830 6th Place, Kenosha, WI 53142.

MC 165311 (Sub-4–1TA), filed December 21, 1982. Applicant: DMJ LEASING & TRUCKING, INC., 1985 Anson Drive, Melrose Park, IL 60160. Representative: Abraham A. Diamond, 29 South La Salle Street, Chicago, IL 60603. *Contract,* irregular: *Shampoo and Toilet Preparations, in bulk, in tank vehicles,* between Plant Site of Helene Curtis Industries, Inc. at Chicago, IL and Plant Site of Per Pak, Inc. at Foresman, IN under continuing contract with Helene Curtis Industries, Inc. Supporting shipper: Helene Curtis Industries, Inc., 4401 West North Avenue, Chicago, IL 60639.

MC 165312 (Sub-No. 4–1TA), filed December 21, 1982. Applicant: McKENNA TRUCKING, INC., Sheldon Street, Gratiot, WI 53541. Representative: James A. Spiegel, Attorney, Olde Towne Office Park, 6333 Odana Road, Madison, WI 53719. *Such commodities as are dealt in by manufacturers, distributors, and users of feeds, seeds, and farm supplies and farm structures* between Jo Davies and Stephenson Counties, IL, Grant, Iowa, and Lafayette Counties, WI, on the one hand, and on the other hand, points in IA and IL. Supporting shippers: There are five supporting shippers.

The following applications were filed in Region 5. Send protest to: CONSUMER ASSISTANCE CENTER, Interstate Commerce Commission, 411 West 7th Street, Suite 500, Fort Worth, TX 76102.

MC 79658 (Sub-5–8TA), filed 12–20–82. Applicant: ATLAS VAN LINES, INC., Post Office Box 509, Evansville, IN 47711. Representatives: Robert C. Mills, Michael L. Harvey (same as above). *Contract, irregular; household goods, computers, displays and exhibits, energy, avionic, aeronautical, medical, building control, communication, and analog/digital text systems and equipment; and parts, materials and supplies used in the manufacture, distribution, sale and maintenance of these commodities* between points in the U.S. under continuing contracts with Honeywell Inc., Minneapolis, MN. Supporting shipper: Honeywell, Inc., Minneapolis, MN.

MC 141995 (Sub-5–1TA), filed December 19, 1982. Applicant: International Ex-Air Transport Co., Inc., 220 Guadalupe St., Laredo, TX 78040. Representative: Eduardo Pena, Jr., Solar Bldg., 1000 16th St., N.W., Suite LL50, Washington, DC 20036. *General Commodities (except HHG's and Classes A & B explosives)* between ports of entry on the United States-Republic of Mexico border in TX and points in TX. Supporting shipper(s): Barrenechea, Inc., Laredo, TX, Xuniga Freight Services, Inc., Laredo, TX, Quintanilla & Co., Inc., Laredo, TX, Goyan-Tex International, Inc., Laredo, TX.

Note.—Applicant intends to tack to existing authority.

MC 146853 (Sub-5–15TA), filed December 20, 1982. Applicant: FRANK F. SLOAN, d.b.a. HAWKEYE WOODSHAVINGS, Route 1, Runnells, IA. Representative: Richard D. Howe, 600 Hubbell Building, Des Moines, IA 50309. *Food and related products,* between Des Moines, IA; Seattle and Vancouver, WA. on the one hand, and, on the other, points in IL, IA, MN, MO, ND, NE, TN, and WI. Supporting shipper: HAR Trading Company, Des Moines, IA.

MC 151381 (Sub-5–2TA), filed December 20, 1982. Applicant: SUNBELT FREIGHT, Division of Sunbelt Holding Corporation, 2455 E. 51st Street, Tulsa, OK 74105. Representative: John Buchan, 5520 West Channel Road, Catoosa, OK 74015. Steel pipe, between the Port of Catoosa (near Tulsa), OK, on the one hand, and, on the other, points in the U.S. except AR, CO, KS, LA, MO, NE, NM, OK, TN, and TX. AK and HI. Supporting shipper: American Challenge Threading & Service, Inc., Castoosa, OK.

MC 160785 (Sub-5–4TA), filed December 20, 1982. Applicant: CASTAR TRUCKING, INC., 7840 "F" Street, Omaha, NE 68127. Representative: James F. Crosby & Associates, 7363 Pacific Street, Suite 210B, Omaha, NE 68114. *(1) Telephone equipment, and materials and supplies used in the construction and maintenance of telephone systems,* between points in MN, IA, ND, SD, NE, MT, WY, CO, NM, ID, UT, and AZ, on the one hand, and, on the other, points in the U.S. (except AK and HI); (2) *Printed matter,* between points in the U.S. (except AK and HI), for the account of Western Electric Company, Inc. Supporting shipper: Western Electric Company, Inc., Aurora, CO.

MC 162577 (Sub-5–2TA), filed December 20, 1982. Applicant: Triffany Truck Lines LTD., 4921 Camp Street, New Orleans, La. 70115. Representative: Timothy E. Jilek (Same as above). *General Commodities (except Class A & B Explosives),* between MO, on the one hand, and New Orleans, LA and Gulfpost, MS on the other, and further restricted to prior or subsequent movement by rail or water. Supporting

shipper: McTeer Int'l Freight Forwarding Co., Savannah, GA.

MC 163503 (Sub-5–8TA), filed December 20, 1982. Applicant: NATIONAL FREIGHT SYSTEM, INC., 2305 Oak Lane, Suite 115, Grand Prairie, TX 75051. Representative: Stephen W. Mitchell (same as above). *Food or Kindred Products* between LA, OK, TN and TX on the one hand, and, on the other, points in CA, CO, LA, GA, FL, OK, AR, PA, NY, OH, NJ, IA, IL, MI, WI, MN, ND, SD, WA, WY, NM, KS, MI. Supporting shipper(s): 8.

MC 165271 (Sub-5–1TA), filed December 20, 1982. Applicant: CLINTON L. THOMPSON, P.O. Box 78, Osage City, KS 66523. Representative: Erle W. Francis, Esq., 719 Capitol Federal Bldg., Topeka, KS 66603. *Telephone Equipment and Supplies,* between Kansas City, Mo. on the one hand, and, on the other, points and places in the State of KS. Supporting shipper: ConTel Supply & Service, Kansas City, MO.

MC 165279 (Sub-5–1TA), filed December 20, 1982. Applicant: L. O. GREER, 1111 Gibbs St., Houston, TX 77009. Representative: L. O. Greer (same as above). *Oilfield tools and equipment in hot shot service* between points in TX, NM, OK, and LA. Supporting shipper: MWL Tool Co., Midland, TX.

MC 61440 (Sub-5–18TA), filed December 23, 1982. Applicant: LEE WAY MOTOR FREIGHT, INC., P.O. Box 12750, Oklahoma City, OK 73157. Representative: T. M. Brown (same as above). Contract irregular; *General Commodities (except classes A&B explosives, HHG's, and commodities in bulk)* between points in the U.S. (except AK and HI) under continuing contract with E. I. duPont de Nemours and Co. of Wilmington, DE and its subsidiaries: Remington Arms Co., Inc., Endo Labs, Inc., Endo, Inc., Endo Pharmaceuticals, Inc., New England Nuclear Corp., Conoco Inc., Fairmont Supply Co., Douglas Oil Co. of CA, Continental Carbo Co., Kayo Oil Co., Pitts-Concol Chemical Co., Western Oil and Fuel Co.

MC 142033 (Sub-5–1TA), filed December 23, 1982. Applicant: HATHORN TRANSFER & STORAGE CO., INC., 620 Elliott Street, Alexandria, Louisiana 71301. Representative: William D. Hathorn (same as above). *Used household goods* to the account of the U.S. Government incident to the performance of a pack and crate service on behalf of the Departmenmt of the Defense, between points in Rapids Parish, LA, on the one hand, and, on the other, points in LA parishes of Caldwell, East Carroll, Franklin, Madison, Morehouse, Richland, West Carroll, Winn & Tensas and counties in the State of MS of Adams, Amite, Claiborne, Franklin, Jefferson & Wilkinson. Supporting shipper: U.S. Army Legal Services Agency, Falls Church, VA.

MC 146336 (Sub-5–21TA), filed December 22, 1982. Applicant: WESTERN TRANSPORTATION SYSTEMS, INC., 1609 109th Street, Grand Prairie, TX 75050. Representative: D. PAUL STAFFORD, P.O. Box 45538, Dallas, TX 75245. Contract; Irregular; *Personal computer Systems* (1) between Carrollton, TX on the one hand, and, on the other, Sunnyvale, Irvine, Oakland and San Jose, CA; Rolling Meadows, IL; Charlotte, NC and Marlboro, MA (2) from Sunnyvale and Oakland, CA to Rolling Meadows, IL, Charlotte, NC and Marlboro, MA and Carrollton, TX under continuing contract with Apple Computer, Inc. Supporting shipper(s): Apple Computer, Inc., Cupertino, CA.

MC No. 148852 (Sub-5–3TA), filed December 23, 1982. Applicant: LINDSEY ROBISON, d.b.a. MIDWEST CARPET CARRIERS, 1219 A East Division, Springfield, MO 65803. Representative: William B. Barker, P.O. Box 1979, Topeka, KS 66601. Floor and Wall Coverings, (a) between Dillon and Pickens Counties, S.C.; Laurens and Whitfield Counties, GA; Washington County, MS and Dallas, TX, on the one hand, and on the other, points in IA, NE, CO, and WY; (b) Between Dallas, TX, on the one hand, and on the other, points in KS, MO, OK, AR, MS, TN, AL, GA, and SC. Supporting shippers: Lowy Enterprises, St. Louis, MO, and Mohasco Corp., Atlanta, Mo.

Docket No. MC 152117(Sub-5–5TA), filed December 22, 1982. Applicant: Little Ginny Transport Systems, Inc., 1112 29th Avenue, S.W., Cedar Rapids, IA 52408. Representative: Virginia A. Wilson (same). (1) *Machinery and metal products* between Cedar Rapids, IA and points in the U.S. excluding AK and HI. (2) *Pulp, Paper and Related Products, Printed Matter, Rubber and Plastic Products, Petroleum, Natural Gas and their Products* between points in AL, AR, IL, IA, and WI, on the one hand, and, on the other, points in the U.S. excluding AK and HI. Supporting shippers: 7.

MC 65195 (Sub-5–1TA), filed December 22, 1982. Applicant: KELLEY COMPANY INC., P.O. Box 8838, Dallas, TX 75216. Representative: Les Humphrey (same as above). *Forest Products and Building Materials* from points in AR, LA, MS and OK to points in TX. Supporting shipper(s): Brand Forest Products Inc., Mansfield, TX.

MC 165195 (Sub-5–2TA), filed December 22, 1982. Applicant: KELLEY COMPANY INC., P.O. Box 8838, Dallas, TX 75216. Representative: Les Humphrey (same as above). *Forest Products and Building Materials* from points in OK to points in TX, ARK, LA, and MS. Supporting Shipper(s): Honeywell Lumber Company, Bokchito, OK.

MC 165272 (Sub-5–1TA), filed December 22, 1982. Applicant: HUGHES & ROYAL, INC., P.O. Box 2206, Ardmore, OK 73401. Representative: JAMES F. CROSBY & ASSOCIATES, 7363 Pacific Street, Suite 210B, Omaha, NE 68114. *Metal products,* from Madill, OK (and points in its commercial zone) to points in U.S. (except AK and HI). Supporting shipper: Oklahoma Steel Wire Co., Inc. Madill, OK.

MC 165307 (Sub-5–1TA), filed: December 22, 1982. Applicant: ARKANSAS ELECTRIC COOPERATIVES, INC., 8000 Scott Hamilton Drive, Little Rock, AR 72219. Representative: J. Mark Davis, Esq., 2200 Worthen Bank Building, Little Rock, AR 72201. Contract, irregular: *Electrical equipment* containing hazardous waste substances, between points in AL, AR, LA, MO, MS, OK and TN, under continuing contracts with: (1) Sand Mountain Electric Cooperative, Rainsville, AL; (2) Concordia Electric Cooperative, Inc., Ferriday, LA; (3) Northeast Louisiana Power Coop, Winnsboro, LA; (4) Claiborne Electric Cooperative, Homer, LA; (5) Southwest Mississippi Electric Power Association, Lorman, MS; (6) Ozark Border Electric Cooperative, Poplar Bluff, MO; (7) Grundy Electric Cooperative, Trenton, MO; (8) Ralls Electric Cooperative, New London, MO; (9) Southeast Electric Cooperative, Durant, OK; (10) Kiamichi Electric Cooperative, Wilburton, OK; (11) Alfalfa Electric Cooperative, Cherokee, OK; (12) Twin County Electric Power Association, Hollandale, MS; (13) Environmental International, Inc., Springfield, MO; and (14) Volunteer Electric Cooperative, Decatur, TN. Supporting shippers: 14.

MC 165346 (Sub-5–1TA), filed December 23, 1982. Applicant: INLAND TRANSPORTATION SYSTEMS, INC., 2905 Haddock, Muskogee, OK 74401. Representative: G. Timothy Armstrong, P.O. Box 1124, El Reno, OK 73036. *General commodities (except classes A and B explosives, household goods and commodities in bulk) having a prior or subsequent movement by water,* between the Port of Muskogee, OK, on the one hand, and, on the other, points in OK. Supporting shipper: Wilbros

Terminal Co., Rt. 6 Port 50, Muskogee, OK 74401.

James H. Bayne,

Acting Secretary.

[FR Doc. 83-181 Filed 1-4-83; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 30062]

Burlington Northern Railroad Co.—Construction Exemption

AGENCY: Interstate Commerce Commission.

ACTION: Notice of Exemption.

SUMMARY: The Interstate Commerce Commission exempts from the requirements of prior approval under 49 U.S.C. 10901 the construction by Burlington Northern Railroad Company (BN) of 2800 feet of rail line in and near Spokane, WA. The construction will effectuate the supplemental trackage rights agreement between BN and Union Pacific Railroad Company and Oregon-Washington Railroad & Navigation Company exempted in Finance Docket No. 27011 (Sub-No. 1).

DATES: This exemption is effective on February 4, 1983. Petitions for reconsideration must be filed by January 25, 1983. Petitions for stay must be filed by January 17, 1983.

ADDRESSES: Send pleadings to:

(1) Rail Section, Room 5349, Interstate Commerce Commission, Washington, DC 20423

(2) Petitioner's representative: Douglas J. Babb, 176 East Fifth Street, St. Paul, MN 55101

Pleadings should refer to Finance Docket No. 30062.

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer, (202) 275-7245.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision contact: TS Infosystems, Inc., Room 2227, 12th & Constitution Ave., NW., Washington, DC 20423, (202) 289-4357—DC metropolitan area, (800) 424-5403—Toll free for outside the DC area.

Decided: December 28, 1982.

By the Commission, Chairman Taylor, Vice Chairman Gilliam, Commissioners Sterrett, Andre, Simmons, and Gradison. Vice Chairman Gilliam was absent and did not participate

Agatha L. Mergenovich,

Secretary.

[FR Doc. 83-158 Filed 1-4-83; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 27011 (Sub-1)]

Union Pacific Railroad Co., and Oregon-Washington Railroad and Navigation Co.—Trackage Rights Exemption

AGENCY: Interstate Commerce Commission.

ACTION: Notice of Exemption.

SUMMARY: The Interstate Commerce Commission exempts from the requirements of prior approval under 49 U.S.C. 11343 the acquisition by Union Pacific Railroad Company and Oregon-Washington Railroad and Navigation Company of trackage rights over 2,800 feet of the rail line of the Burlington Northern Railroad Company (the construction is being exempted in Finance Docket No. 30062), in and near Spokane, WA, subject to labor protective conditions.

DATES: This exemption is effective on February 4, 1983. Petitions for reconsiderations must be filed by January 25, 1983. Petitions for stay must be filed January 17, 1983.

ADDRESSES: Send pleadings to:

(1) Rail Section, Room 5349, Interstate Commerce Commission, Washington, DC 20423

(2) Petitioner's representative: Joseph D. Anthofer, 1416 Dodge Street, Omaha, NE 68179

Pleadings should refer to Finance Docket No. 27011 (Sub-No. 1).

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer, (202) 275-7245.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision contact: TS Infosystems, Inc., Room 2227, 12th & Constitution Ave., NW., Washington, DC 20423, (202) 289-4357—DC Metropolitan area, (800) 424-5403—Toll free for outside the DC area.

Decided: December 28, 1983.

By the Commission, Chairman Taylor, Vice Chairman Gilliam, Commissioners Sterrett, Andre, Simmons, and Gradison. Vice Chairman Gilliam was absent and did not participate.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 83-157 Filed 1-4-83; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 30079]

Wyandotte Terminal Railroad Co.—Abandonment Exemption—Wyandotte, MI

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Commission exempts from the requirement of prior approval under 49 U.S.C. 10903 *et seq.*, the abandonment by the Wyandotte Terminal Railroad Company of 8.93 miles of track in Wyandotte, MI.

DATES: This exemption will be effective on December 30, 1982. Petitions to reopen must be filed by January 19, 1983.

ADDRESSES: Send pleadings to:

Rail Section Room 5349, Interstate Commerce Commission, Washington, DC 20423

Petitioner's representative: Edwin L. Stenzel, 1609 Biddle Avenue, Wyandotte, MI

Pleadings should refer to Finance Docket No. 30079.

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer, (202) 275-7245.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision contact: TS Infosystems, Inc., Room 2227, 12th & Constitution Ave., NW., Washington, DC 20423, (202) 289-4357—DC metropolitan area, (800) 424-5403—toll free for outside the DC area.

Decided: December 27, 1982.

By the Commission, Chairman Taylor, Vice Chairman Gilliam, Commissioners Sterrett, Andre, Simmons, and Gradison. Vice Chairman Gilliam and Commissioner Andre were absent and did not participate.

James H. Bayne,

Acting Secretary.

[FR Doc. 83-156 Filed 1-4-83; 8:45 am]

BILLING CODE 7035-01-M

LEGAL SERVICES CORPORATION

Recipient Fund Balances; Instruction

AGENCY: Legal Services Corporation.

ACTION: Instruction on Recipient Fund Balances.

SUMMARY: The Legal Services Corporation was established pursuant to the Legal Services Corporation Act of 1974, Pub. L. 93-355(a) 88 Statute 378, 42 U.S.C. 2996 et. seq., as amended, Pub. L. 95-222 (December 28, 1977). Section 1008(e) of the Legal Services Corporation Act provides:

(e) The Corporation shall afford notice and reasonable opportunity for comment to interested parties prior to issuing rules, regulations, and guidelines, and it shall publish in the **Federal Register** at least 30 days prior to guidelines, and instructions.

The Legal Services Corporation hereby publishes its Instruction on Recipient Fund Balances.

EFFECTIVE DATE: February 4, 1983.

FOR FURTHER INFORMATION CONTACT: Hulett H. Askew, Acting Director, Office of Field Services, Legal Services Corporation, 733 15th Street, NW., Washington, D.C. 20005, (202) 272–4080.

Donald P. Bogard,
President.

Instruction

I. Purpose

The purpose of this instruction is to provide notice and direction to recipients of Legal Services Corporation funding in meeting the terms of a Special condition regarding recipient fund balances to be placed upon 1983 grant awards. The objective is to ensure the timely allocation of Corporation funds for the effective and economical provision of high quality legal assistance to eligible clients. To that end recipients will henceforth be permitted to maintain and reprogram from year to year fund balances of no more than 10% of their Legal Services Corporation funding.

A waiver of this provision to a maximum of 25% may be obtained upon a satisfactory showing of good cause by the recipient. Funds carried over in excess of 10% or the level permitted by a specific waiver will be set-off against the succeeding year's grant award.

II. Special Condition

The Special Condition to be placed upon all 1983 annualized grant awards will provide:

Consistent with the Instruction on Recipient Fund Balances to be published by the Corporation, unexpended funds in excess of 10% of the recipient's 1982 support from the Legal Services Corporation, carried forward as a fund balance at the close of the recipient's 1982 fiscal year shall be set off against this grant award.

A waiver of this provision to a maximum of 25% may be sought by application to the appropriate Regional Office within 90 days of the close of the recipient's fiscal year.

III. Definitions

A. For purposes of this instruction the term "fund balance" shall be as defined on page 2–11 of the Corporation's *Audit and Accounting Guide for Recipients and Auditors*, to wit:

"Any excess of support over expenses represents, as a general policy, a fund balance to be carried over to the next period or returned to LSC if grant or contract conditions are not complied with or if funding is terminated."

B. "Support" shall be defined as the sum of: (1) The recipient's LSC fund balance, if any, carried forward from the previous period; (2) its annualized LSC grant award for the period in question; and (3) any investment income attributable to such funds.

C. The "fund balance amount" shall be determined solely by reference to the recipient's annual audit and shall be limited to LSC support (as defined in (B) above) and LSC expenses.

D. The "*fund balance percentage*" shall be determined by expressing the fund balance amount as a percentage of the recipient's LSC support for the period in question (as defined in (B) above *except that it shall exclude the recipient's fund balance, if any, carried forward from the previous period).*

IV. Policy

A. In the absence of a waiver from the Corporation, any fund balance amount in excess of 10% shall be set off against the recipient's annualized grant award for the next period by pro rata deductions from the remaining monthly allocations to the recipient.

B. After receipt and review of the recipient's annual audit, written notice regarding any such deduction shall be provided to the recipient 30 days prior to such deduction being made.

C. In no way shall any such deduction be construed to affect the annualized funding level of such recipient.

D. A waiver of the 10% ceiling may be sought where the recipient can show good cause that a higher level should be permitted. Such waivers may be granted by the Regional Office to a maximum of 25%.

V. Process

A. Not later than 90 days after the close of its fiscal year, a recipient shall determine (pursuant to Section III(D) of this Instruction) and submit to the appropriate Regional Office of the Corporation a statement of the fund balance which has to occurred according to the annual audit required by Section 1009(c)(1) of the Legal Services Act, as amended.

B. Should the recipient expect its audit figures to show a fund balance in excess of 10% of its Corporation support during the previous fiscal year it may, not later than 90 days after the close of its fiscal year, apply to the appropriate Regional Office for a waiver of the 10% ceiling.

Such application must specify:

(1) The fund balance amount which is expected to occur according to the recipient's annual audit;

(2) The reason that such level has been maintained;

(3) The recipient's plan for the disposition or reserve of such fund balance amount; and,

(4) The level of fund balance projected to be carried forward at the close of the recipient's then current period.

C. The decision of the Regional Office regarding the granting of a waiver shall be guided by the statutory mandate requiring the provision of the highest quality services in the most effective and economical manner. In addition, the Regional Office shall consider:

(1) Emergencies, unusual occurrences, or other circumstances giving rise to the existence of a short-term fund balance in excess of 10%;

(2) Management decisions related to the general funding of the recipient, the dictates of professional responsibility in the jurisdiction(s) within which the recipient operates, or other factors giving rise to the need to maintain operating or contingent reserves in excess of 10%; and/or,

(3) The special needs of eligible clients in the recipient's service area giving rise to the need to extend the spend down of a recipient's excess fund balance into the succeeding period.

D. The decision of the Regional Office shall be communicated to the recipient within 30 days of the receipt of the request for a waiver and shall set forth the level of fund balance amount in excess of 10%, which shall not be subject to the set off provision of this policy.

E. The decision of the Regional Office may be appealed to the Director of the Office of Field Services who, upon independent inquiry and consideration of the criteria set out above, shall make the final decision, after consultation with the President of LSC.

[FR Doc. 83-167 Filed 1-4-83; 8:45 am]
BILLING CODE 6820-35-M

NUCLEAR REGULATORY COMMISSION

Abnormal Occurrence Report; Section 208 Report Submitted to the Congress

Notice is hereby given that pursuant to the requirements of Section 208 of the Energy Reorganization Act of 1974, as amended, the Nuclear Regulatory Commission (NRC) has published and issued the periodic report to Congress on abnormal occurrences (NUREG–0090, Vol. 5, No. 2).

Under the Energy Reorganization Act of 1974, which created the NRC, an abnormal occurrence is defined as "an unscheduled incident or event which the Commission (NRC) determines is significant from the standpoint of public health or safety." The NRC has made a determination, based on criteria

published in the Federal Register (42 FR 10950) on February 24, 1977, that events involving an actual loss or significant reduction in the degree of protection against radioactive properties of source, special nuclear, and byproduct materials are abnormal occurrences.

This report to Congress is for the second calendar quarter of 1982. The report identifies the occurrences or events that the Commission determined to be significant and reportable; the remedial actions that were undertaken are also described. The report states that there were no abnormal occurrences at the nuclear power plants licensed to operate. There were no abnormal occurrences for the other NRC licensees. The Agreement States reported no abnormal occurences to the NRC.

The report also contains information updating some previously reported abnormal occurences. Some of the updates have been given more generalized titles (as compared to their former specific titles) to include some new events which are associated in some respects to previously reported abnormal occurrences.

Interested persons may review the report at the NRC's Public Document Room, 1717 H Street, NW., Washington, D.C., or at any of the nuclear power plant Local Public Document Rooms throughout the country. Single copies of the report, designated NUREG–0090, Vol. 5, No. 2, may be purchased from the National Technical Information Service, Springfield, Va. 22161.

A year's subscription to the NUREG–0090 series publication, which consists of four issues, is available from the NRC/GPO Sales Program, Division of Technical Information and Document Control, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. Microfiche of single copies of the publication are also available from this source.

Dated at Washington, D.C., this 30th day of December, 1982.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 83-233 Filed 1-4-83; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-369 and 50-370]

Duke Power Co.; Granting of Relief From Certain Requirements of ASME Code Section XI Inservice (Testing) Requirements

The U.S. Nuclear Regulatory Commission (the Commission) has granted relief from certain requirememts of the ASME Code, Section XI, "Rules and Inservice Inspection of Nuclear Power Plant Components" to the Duke Power Company (the licensee). The relief relates to the preservice hydrostatic tests for the McGuire Nuclear Station, Units 1 and 2 (the facilities) located in Mecklenburg County, North Carolina. The ASME Code requirements are incorporated by reference into the Commission's rules and regulations in 10 CFR Part 50. The relief is effective as of its date of issuance.

The relief relates to certain preservice examination requirements, pursuant to the Commission's regulations in 10 CFR 50.55a(g)(6)(i) for Unit 1 and 10 CFR 50.55a(a)(2)(i) for Unit 2. In lieu of hydrostatic tests, the licensee will perform nondestructive examinations consisting of radiography, ultrasonic testing, and surface examination of the welds.

The requests for relief comply with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the related Safety Evaluation Report.

The Commission has determined that the granting of relief will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of this action.

For further details with respect to this action, see (1) the licensee's letters dated September 14 and October 19, 1982, (2) the Commission's letter to the licensee dated December 29, 1982, and, (3) the Commission's related Safety Evaluation Report. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C. 20555 and at the Atkins Library, University of North Carolina, Charlotte, UNCC Station, North Carolina 28223. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing.

Dated at Bethesda, Maryland, this 29th day of December 1982.

For the Nuclear Regulatory Commission.

Elinor G. Adensam,

Chief, Licensing Branch No. 4, Division of Licensing.

[FR Doc. 83-234 Filed 1-4-83; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-334]

Duquesne Light Co., Ohio Edison Co., and Pennsylvania Power Co.; Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 60 to Facility Operating License No. DPR–66 issued to Duquesne Light Company, Ohio Edison Company, and Pennsylvania Power Company (the licensees), which revised Technical Specifications for operation of the Beaver Valley Power Station, Unit No. 1 (the facility) located in Beaver County, Pennsylvania. The amendment is effective as of the date of issuance.

The amendment modifies Table 3.3–10 to reflect the fire detection instruments that have been added to Beaver Valley Unit No. 1.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment. Prior public notice of this amendment was not required since this amendment does not involve a significant hazards consideration.

The Commission has determined that the issuance of this amendment will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) and environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of this amendment.

For further details with respect to this action, see (1) the application for amendment dated February 11, 1982, (2) Amendment No. 60 to License No. DPR–66 and (3) the Commission's related Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C. and at the B. F. Jones Memorial Library, 663 Aliquippa, Pa. 15001. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing.

Dated at Bethesda, Maryland, this 28th day of December 1982.

For the Nuclear Regulatory Commission.

Steven A. Varga,

Chief, Operating Reactors Branch No. 1, Division of Licensing.

[FR Doc. 83-235 Filed 1-4-83; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-250 and 50-251]

Florida Power and Light Co.; Issuance of Amendment to Facility Operating Licenses

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 90 to Facility Operating License No. DPR-31, and Amendment No. 84 to Facility Operating License No. DPR-41 issued to Florida Power and Light Company (the licensee), which revised Technical Specifications for operation of Turkey Point Plant, Unit Nos. 3 and 4 (the facilities) located in Dade County, Florida. The amendments are effective as of the date of issuance.

The amendments modify the required flow rate of the auxiliary feedwater system from 600 gpm to 373 gpm for the new model 44F steam generators.

The application for the amendments complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendments. Prior public notice of these amendments was not required since the amendments do not involve a significant hazards consideration.

The Commission has determined that the issuance of these amendments will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of these amendments.

For further details with respect to this action, see (1) the application for amendments dated November 5, 1982, (2) Amendment Nos. 90 and 84 to License Nos. DPR-31 and DPR-41, and (3) the Commission's related Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C. and at the Environmental and Urban Affairs Library, Florida International University, Miami, Fla. 33199. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing.

Dated at Bethesda, Maryland, this 28th day of December, 1982.

For the Nuclear Regulatory Commission.

Steven A. Varga,

Chief, Operating Reactors Branch No. 1, Division of Licensing.

[FR Doc. 83-236 Filed 1-4-83; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. P-564A; ASLBP 73-334-07 AN]

Pacific Gas & Electric Co.; (Stanislaus)

Pursuant to the authority contained in 10 CFR 2.105 (effective November 6, 1981), the Atomic Safety and Licensing Board for Pacific Gas & Electric Company (Stanislaus), Docket No. P-564-A, is hereby reconstituted by appointing Administrative Law Judge Morton B. Margulies to serve as presiding officer. Administrative Law Judge James A. Laurenson was the presiding officer but will not be able to continue to preside because of a schedule conflict.

All correspondence, documents and other materials shall be filed with Judge Margulies in accordance with 10 CFR 2.701 (1980). His address is: Administrative Law Judge Morton B. Margulies, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555.

Issued at Bethesda, Maryland, this 28th day of December 1982.

B. Paul Cotter, Jr.,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 83-237 Filed 1-4-83; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-272]

Public Service Electric and Gas Co., Philadelphia Electric Co., Delmarva Power and Light Co., and Atlantic City Electric Co.; Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 50 to Facility Operating License No. DPR-70, issued to Public Service Electric and Gas Co., Philadelphia Electric Co., Delmarva Power and Light Co., and Atlantic City Electric Co. (the licensees), which revised Technical Specifications for operation of the Salem Nuclear Generating Station, Unit No. 1 (the facility) located in Salem County, New Jersey. The amendment is effective as of the date of issuance.

The amendment revises the Technical Specifications pertaining to borated water systems, the refueling water tank, and the spray additive system to bring these specifications into agreement with those for Salem Unit 2 and with the requirements of NRC/IE bulletin 77-04.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment. Prior public notice of this amendment was not required since the amendment does not involve a significant hazards consideration.

The Commission has determined that the issuance of this amendment will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of this amendment.

For further details with respect to this action, see (1) the application for amendment dated October 5, 1982, (2) Amendment No. 50 to License No. DPR-70, and (3) the Commission's related Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C. and at the Salem Free Public Library, 112 West Broadway, Salem, N.J. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing.

Dated at Bethesda, Maryland, this 27th day of December, 1982.

For the Nuclear Regulatory Commission.

Steven A. Varga,

Chief, Operating Reactors Branch No. 1, Division of Licensing.

[FR Doc. 83-238 Filed 1-4-83; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-244]

Rochester Gas & Electric Corp.; Systematic Evaluation Program; Availability of Final Integrated Plant Safety Assessment Report for the R. E. Ginna Nuclear Power Plant

The Nuclear Regulatory Commission's (NRC) Office of Nuclear Reactor Regulation (NRR) has published its Final Integrated Plant Safety Assessment Report (IPSAR) (NUREG-0821) related

to the Rochester Gas & Electric Corporation's (licensee) R. E. Ginna Nuclear Power Plant located in Wayne County, New York.

The Systematic Evaluation Program (SEP) was initiated by the NRC to review the design of older operating nuclear reactor plants to reconfirm and document their safety. This report documents the review completed under the Systematic Evaluation Program for the Ginna plant. Areas in the report identified as requiring further analysis or evaluation and required modifications for which design descriptions have not yet been provided by the licensee to the NRC will be reviewed as part of the operating license conversion review. Supplements to the Final IPSAR will be issued addressing items requiring further analysis and review. The review has provided for (1) an assessment of the significance of differences between current technical positions on selected safety issues and those that existed when the Ginna plant was licensed, (2) a basis for deciding on how these differences should be resolved in an integrated plant review, and (3) a documented evaluation of plant safety when all supplements to the IPSAR and the Safety Evaluation report for converting the license from a provisional to a full-term license have been issued. Equipment and procedural changes have been identified as a result of the review. The report also addresses the comments and recommendations made by the Advisory Committee on Reactor Safeguards (ACRS) in connection with its review of the Draft Report, issued in May 1982. These comments and recommendations, as contained in a report by the ACRS dated August 18, 1982, and the NRC staff's related responses are included in Appendix H of the report.

The Final IPSAR and its supplements will form part of the bases for considering the conversion of the existing provisional operating license to a full-term operating license.

Pursuant to 10 CFR 50.71(e)(3)(ii), the licensee is required within 24 months after receipt of the letter dated December 9, 1982, from the Director of the Office of Nuclear Reactor Regulation to the licensee transmitting the Final IPSAR, to file a complete Final Safety Analysis Report (FSAR), which is up to date as of a maximum of six months prior to the date of filing the revision.

The Final IPSAR is being made available at the NRC's Public Document Room, 1717 H Street, NW., Washington, D.C. 20555 and at the Rochester Public Library, 115 South Avenue, Rochester, N.Y. 14627 for inspection and copying. Copies of this Final Report (Document No. NUREG–0821) may be purchased at current rates from the National Technical Information Service, Department of Commerce, 5285 Port Royal Road, Springfield, Va. 22161, and from the Sales Office, U.S. Nuclear Regulatory Commission, Director, Division of Technical Information and Document Control, Washington, D.C. 20555, Attention: Publications Unit.

Dated at Bethesda, Maryland, this 9th day of December, 1982.

For the Nuclear Regulatory Commission.

Walter A. Paulson,

Acting Chief, Operating Reactors Branch No. 5, Division of Licensing.

[FR Doc. 83-1230 Filed 1-4-83; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF SCIENCE AND TECHNOLOGY POLICY

Executive Office of the President; White House Science Council (WHSC); Meeting

The White House Science Council, the purpose of which is to advise the Director, Office of Science and Technology Policy (OSTP), will meet on January 20 and 21, 1983, in Room 305, Old Executive Office Building, Washington, D.C. The meeting will begin at 7:00 p.m. on January 20, recess and reconvene at 8:00 a.m. on January 21. Following the proposed agenda for the meeting:

(1) Briefing of the Council, by the Assistant Directors of OSTP, on the current activities of OSTP.

(2) Briefing of the Council by OSTP personnel and personnel of other agencies on proposed, ongoing, and completed panel studies.

(3) Discussion of composition of panels to conduct studies.

The January 20 session and a portion of the January 21 session will be closed to the public.

The briefing on some of the current activities of OSTP necessarily will involve discussion of material that is formally classified in the interest of national defense or for foreign policy reasons. This is also true for a portion of the briefing on panel studies. As well, a portion of both of these briefings will require discussion of internal personnel procedures of the Executive Office of the President and information which, if prematurely disclosed, would significantly frustrate the implementation of decisions made requiring agency action. These portions of the meeting will be closed to the public pursuant to 5 U.S.C. 552b(c) (1), (2), and 9(B).

A portion of the discussion of panel composition will necessitate the disclosure of information of a personal nature, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. Accordingly, this portion of the meeting will also be closed to the public, pursuant to 5 U.S.C. 552b(c)(6).

The portion of the meeting open to the public will begin at 10:00 a.m. Because of the security in the Old Executive Office Building, persons wishing to attend the open portion of the meeting should contact Jerry Jennings, Executive Director of the Office of Science and Technology Policy at (202) 456–7740, prior to 3:00 p.m. on January 20. Mr. Jennings is also available to provide further information regarding this meeting.

Dated: December 29, 1982.

Jerry D. Jennings,

Executive Director, Office of Science and Technology Policy.

[FR Doc. 83-140 Filed 1-4-83; 8:45 am]

BILLING CODE 3170-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 22803; 70–6706]

New England Electric System; Proposal To Refinance Short-Term Note

In the matter of New England Electric System, Manchester Electric Co., 25 Research Drive, Westborough, Massachusetts 01581.

The New England Electric System ("NEES"), a registered holding company, and one of its subsidiaries, Manchester Electric Company ("Manchester"), have filed with this Commission a post-effective amendment to the application-declaration in this proceeding pursuant to Sections 6(a), 7, 9(a), 10, and 12 of the Public Utility Holding Company Act of 1935 ("Act") and Rules 42(a), 43, 45(a), and 50 promulgated thereunder.

By orders dated March 31, 1982, April 28, 1982, and October 22, 1982 (HCAR Nos. 22438, 22476, and 22681 respectively), five of NEES' subsidiaries were authorized to borrow, through March 31, 1983, from NEES, banks, and a money-pool system currently in operation, and/or to issue commercial paper. The proceeds of the borrowings are to be used to repay existing short-term debt and to provide new money for capitalizable expenditures.

By order dated November 8, 1982 (HCAR No. 22699), the Commission authorized NEES to acquire Manchester.

Pursuant to this authorization, NEES acquired over 80% of Manchester's stock on December 10, 1982, thereby making Manchester a subsidiary of NEES and subject to the Act.

Prior to said acquisition, Manchester had a short-term note outstanding in the amount of $150,000 with the Cape Ann Bank and Trust Company ("Cape Ann Bank"). This note comes due on January 25, 1983. Manchester proposes to refinance the note in the same principal amount of $150,000, by the issue of another short-term note, with a maturity not to exceed 270 days, to the Cape Ann Bank or to one of the lending banks listed in said application-declaration. Based on the current prime rate of 11½%, it is expected that the effective interest rate of the borrowing will be no greater than 14.4%.

The application-declaration, as amended by the post-effective amendment, and any further amendments are available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by January 20, 1983, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the applicants-declarants at the address specified above. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date, the application-declaration, as now amended or as it may be further amended, may be granted and permitted to become effective.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 83-176 Filed 1-4-83; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan #2072; Amendment #1]

Arkansas; Declaration of Disaster Loan Area

Declaration #2072 (See 47 FR 57185) is amended in accordance with FEMA's declaration of December 20, 1982, to include Baxter, Cleburne, Crawford, Fulton, Howard, Izard, Little River, Perry, Pike, Stone, Woodruff and Yell Counties in the State of Arkansas. The termination date for filing applications for physical damage is close of business on February 11, 1983, and for economic injury until close of business on September 13, 1983, for eligible victims in the declared counties.

(Catalog of Federal Domestic Assistance Programs Nos. 59002 and 59008)

Date: December 22, 1982.

Heriberto Herrera,

Acting Administrator.

[FR Doc. 83-230 Filed 1-4-83; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan No. 2070; Amendment No. 1]

Hawaii; Declaration of Disaster Loan Area

The above numbered declaration (See 47 FR 55358) is amended by adding the adjacent counties of Maui and Hawaii as a result of damage caused by a hurricane beginning on November 23, 1982. All other information remains the same, i.e., the termination date for filing applications for physical damage is close of business on January 26, 1983, and for economic injury until the close of business on August 27, 1983.

(Catalog of Federal Domestic Assistance Programs Nos. 59002 and 59008)

Dated: December 23, 1982.

Heriberto Herrera,

Acting Administrator.

[FR Doc. 83-231 Filed 1-4-83; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan #2071; Amendment #1]

Missouri; Declaration of Disaster Loan Area

The above numbered declaration (See 47 FR 57185) is amended by adding the adjacent counties of Butler, Maries, Oregon, Reynolds and Texas as a result of damage caused by severe storms, tornadoes and flooding beginning on December 1, 1982. All other information remains the same, i.e., the termination dates for filing applications for physical damage is close of business on February 10, 1983, and for economic injury until the close of business on September 12, 1983.

(Catalog of Federal Domestic Assistance Programs Nos. 59002 and 59008)

Dated: December 23, 1982.

Heriberto Herrera,

Acting Administrator.

[FR Doc. 83-232 Filed 1-4-83; 8:45 am]

BILLING CODE 8025-01-M

TENNESSEE VALLEY AUTHORITY

Privacy Act of 1974; Proposed Revision of Systems of Records

AGENCY: Tennessee Valley Authority.

ACTION: Proposed revision of routine use for system TVA-26, Retirement System Records-TVA.

SUMMARY: This publication gives notice, as required by the Privacy Act, of TVA's intention to establish a new routine use for system TVA-26, Retirement System Records-TVA. Details of the proposed routine use are described below under the heading, "**SUPPLEMENTARY INFORMATION.**"

DATES: Written comments on the proposed routine use must be received by February 4, 1983.

ADDRESS: Send comments to Privacy Act Coordinator, Division of Personnel, Tennessee Valley Authority, Knoxville, Tennessee 37902.

All comments received will be available for public inspection at the TVA Technical Library, 400 West Summit Hill Drive, E2B7, Knoxville, Tennessee 37902, during normal business hours.

FOR FURTHER INFORMATION CONTACT: Thomas E. Cressler II, Division of Personnel, Tennessee Valley Authority, Knoxville, Tennessee 37902, (615) 632-2170.

SUPPLEMENTARY INFORMATION: To assist members of the TVA Retirement System in corresponding with each other for their mutual aid and support, TVA proposes to establish a new routine use for system TVA-26, Retirement System Records-TVA. The new routine use would permit disclosure "To provide the TVA Retirees Association, retired members of the TVA Retirement System, and retired former TVA employees who are covered by the Civil Service Retirement System, with names and mailing addresses of other retired members and retired employees." All comments received by the end of the above comment period will be considered in the final adoption of this proposal.

Dated: December 27, 1982.

W. F. Willis,

General Manager.

[FR Doc. 83-194 Filed 1-4-83; 8:45 am]

BILLING CODE 6120-01-M

DEPARTMENT OF THE TREASURY

Office of the Secretary

Privacy Act of 1974; Proposed Revision of a System of Records

AGENCY: Office of the Secretary, Office of the General Counsel, Treasury.

ACTION: Notice of Proposed revision of a system of records.

SUMMARY: Pursuant to the requirements of the Privacy Act of 1974, 5 U.S.C. 552a, the Office of the Secretary, Office of the General Counsel, gives notice of the proposed revision of the system of records, Treasury/OS 00.144–Civil Litigation Records, 46 FR 16480 (March 12, 1981). The revised system of records is retitled "Treasury/OS 00.144–Treasury Interagency Automated Litigation System (TRIALS)."

The existing system, Civil Litigation Records, consists of a manual index and related files. The revised system, TRIALS, consists of a computer index and related files. Thus, TRIALS augments the Citil Litigation Records system by computerizing its index.

The computerized portion of TRIALS is a case-management index that provides summary data on Treasury Department civil litigation and administrative proceedings, except for IRS tax litigation. It enhances the ability of attorneys and managers to track litigation-related activities and administrative proceedings. Information in the system is to be retrieved by type of case, docket number, action dates, legal issues, and the names of parties, attorneys, witnesses, judges and/or hearing officers. TRIALS thus provides for the more efficient use of information already maintained within the Treasury Department Legal Division's litigation files.

Pursuant to 5 U.S.C. 552a(d)(5), (j)(2), and (k), TRIALS contains records which are exempt from certain provisions of the Privacy Act of 19745. TRIALS contains information related to litigation and administrative proceedings involving or concerning the Department of the Treasury or its officials and includes pending, active and closed files. The system contains information concerning pleadings, investigative reports, and data compiled in reasonable anticipation of a civil action or proceeding.

DATE: Comments must be received on or before March 7, 1983. If no comments are received, this system of records will become effective March 7, 1983.

ADDRESS: Comments should be sent to: Assistant General Counsel (Enforcement & Operations), Room 2310, Main Treasury, 1500 Pennsylvania Ave., N.W., Washington, D.C. 20220.

FOR FURTHER INFORMATION CONTACT: Stephanie Dick, Office of the Assistant General Counsel (Enforcement & Operations), Room 2000, Main Treasury, 1500 Pennsylvania Ave., N.W., Washington, D.C. 20220.

Dated: December 16, 1982.

Cora P. Beebe,

Assistant Secretary (Administration).

Treasury/OS 00.144

SYSTEM NAME:

Treasury Interagency Automated Litigation System (TRIALS), Treasury/OS 00.144.

SYSTEM LOCATION:

U.S. Treasury Department, Office of the General Counsel, 1500 Pennsylvania Ave., N.W., Washington, D.C. 20220, and through computer terminals at various national and regional Treasury Bureau locations.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons who are parties, plaintiff or defendant, in civil litigation or administrative proceedings with the Treasury Department.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system of records contains information or documents related to litigation or administrative proceedings involving or concerning the Treasury Department or its officials. The hard-copy records consist of pleadings, investigative reports, legal memoranda, and related correspondence. The computerized index consists of information describing and categorizing litigation and administrative proceedings, including type of case, docket number, action dates, legal issues, and the names of parties, attorneys, witnesses, judges and/or hearing officers.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 31 U.S.C. 301

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records are used to prosecute, defend, track and index court cases or administrative proceedings related to certain general civil litigation. The records are also routinely used to provide cooperation to the U.S. Department of Justice in marshalling facts, correlating evidence, and preparing pleadings and briefs. The system can be used only by authorized employees within the Treasury's Legal Division. For additional routine uses see Appendix AA.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The hard copy records are maintained in file folders with index cards. The computerized records are maintained in computer data banks, tapes and printouts.

RETRIEVABILITY:

All records are indexed on a variety of data fields including case name and location, type of case, relief sought, responsible attorney, and date.

SAFEGUARDS:

Access is limited to employees who have a need for such records in the course of their work. Background checks are made on employees. All facilities where records are stored have access limited to authorized personnel. Only employees within the Treasury Department with proper user identification have access to the computer banks.

RETENTION AND DISPOSAL:

The records are maintained during the pendency of the litigation. Approximately two years thereafter the hard-copy records are transferred to the Federal Records Center, Suitland, Maryland, the hard-copy records are destroyed by the Federal Records Center, when the records are seven years old. The computer index will be maintained for 5 years thereafter, and then retired to magnetic tape, and maintained an additional 5 years.

SYSTEM MANAGER(S) AND ADDRESS:

Administrative Officer, Room 3006, Office of the General Counsel, 1500 Pennsylvania Ave., N.W., Washington, D.C. 20220.

NOTIFICATION PROCEDURE:

Individuals wishing to be notified they are named in this system of records, or gain access to records maintained in this system must submit a written request containing the following elements: (1) Identity of the record system, (2) identity of the category and type or records sought, (3) at least two types of secondary information (date of birth, employee identification number, dates

of employment or similar information.) The system contains records which are exempt under 31 CFR 1.36; 5 U.S.C. 552a(j)(2); 5 U.S.C. 552a(k)(2); or 5 U.S.C. 552a(d)(5). Address inquiries to Chief, Disclosure Branch, Department of the Treasury, Room 5423, 1500 Pennsylvania Ave., N.W., Washington, D.C. 20220.

RECORD ACCESS PROCEDURES:

Chief, Disclosure Branch, Department of the Treasury, Room 5423, 1500 Pennsylvania Ave., N.W., Washington, D.C. 20220.

CONTESTING RECORD PROCEDURES:

See Access above.

RECORD SOURCE CATEGORIES:

Treasury Department Legal Division, Department of Justice Legal Division.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

Exempt under 31 CFR 1.36, 5 U.S.C. 552a(j)(2); 5 U.S.C. 552a(k)(2).

[FR Doc. 83-165 Filed 1-4-83; 8:45 am]

BILLING CODE 4810-25-M

Sunshine Act Meetings

Federal Register
Vol. 48, No. 3
Wednesday, January 5, 1983

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

CONTENTS

1

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 2:00 p.m. on Monday, January 10, 1983, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Disposition of the minutes of previous meetings.

Reports of committees and officers:

Minutes of actions approved by the standing committees of the Corporation pursuant to authority delegated by the Board of Directors.

Reports of the Division of Bank Supervision with respect to applications or requests approved by the Director or Associate Director of the Division and the various Regional Directors pursuant to authority delegated by the Board of Directors.

Discussion Agenda:

No matters scheduled.

The meeting will be held in the Board Room on the sixth floor of the FDIC building located at 550 17th Street, N.W., Washington, D.C.

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 389-4425.

Dated: January 3, 1983.
Federal Deposit Insurance Corporation.
Hoyle L. Robinson,
Executive Secretary.
[S-2-83 Filed 1-3-83; 3:43 pm]
BILLING CODE 6714-01-M

2

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 2:30 p.m. on Monday, January 10, 1983, the Federal Deposit Insurance Corporation's Board of Directors will meet in closed session, by vote of the Board of Directors pursuant to sections 552b(c)(2), (c)(6), (c)(8), and (c)(9)(A)(ii) of Title 5, United States Code, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Recommendations with respect to the initiation, termination, or conduct of administrative enforcement proceedings (cease-and-desist proceedings, termination-of-insurance proceedings, suspension or removal proceedings, or assessment of civil money penalties) against certain insured banks or officers, directors, employees, agents or other persons participating in the conduct of the affairs thereof:

Names of persons and names and locations of banks authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(6), (c)(8), and (c)(9)(A)(ii)).

Note.—Some matters falling within this category may be placed on the discussion agenda without further public notice if it becomes likely that substantive discussion of those matters will occur at the meeting.

Discussion Agenda:

Personnel actions regarding appointments, promotions, administrative pay increases, reassignments, retirements, separations, removals, etc.:

Names of employees authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(2) and (c)(6) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2) and (c)(6)).

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550 17th Street, N.W., Washington, D.C.

Requests for information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation at (202) 389-4425.

Dated: January 3, 1983.
Federal Deposit Insurance Corporation.
Hoyle L. Robinson,
Executive Secretary.
[S-3-83 Filed 1-3-83; 3:43 pm]
BILLING CODE 6714-01-M

3

SECURITIES AND EXCHANGE COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 47 FR 57818, December 28, 1982.

STATUS: Closed/open meeting.

PLACE: 450 5th Street, N.W., Washington, D.C., Room 1C30.

DATE PREVIOUSLY ANNOUNCED: Thursday, December 23, 1982.

CHANGES IN THE MEETING: Additional items. The following additional items will be considered at a closed meeting scheduled for Tuesday, January 4, 1982, at 10:00 a.m.

Settlement of administrative proceeding of an enforcement nature.
Institution of injunctive actions.
Litigation matter.
Regulatory matter regarding financial institution.

The following additional item will be considered at an open meeting scheduled for Thursday, January 6, 1982, at 10:00 a.m.

Consideration of whether to grant the request of Krys, Boyle, Golz & Keithley for a waiver of imputed disqualification pursuant to 17 CFR 200.735-8(d). For further information, please contact Myrna Siegel at (202) 272-2430.

Commissioner Evans, as duty officer, determined that Commission business required the above changes and that no earlier notice thereof was possible.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any matters have been added, deleted or postponed, please contact: Catherine McGuire at (202) 272-2401.

December 30, 1982.
[S-1-83 Filed 1-3-83; 11:22 am]
BILLING CODE 8010-01-M

federal register

Wednesday
January 5, 1983

Part II

Environmental Protection Agency

Standards for Remedial Actions at Inactive Uranium Processing Sites

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 192

[A-FRL 2211-8a]

Standards for Remedial Actions at Inactive Uranium Processing Sites

AGENCY: U.S. Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: We are issuing final health and environmental standards to govern stabilization, control, and cleanup of residual radioactive materials (primarily mill tailings) at inactive uranium processing sites. These standards were developed pursuant to Section 275 of the Atomic Energy Act (42 U.S.C. 2022), as added by Section 206 of the Uranium Mill Tailings Radiation Control Act of 1978 (Pub. L. 95-604), and were proposed in April 1980 and January 1981.

The standards apply to tailings at locations that qualify for remedial action under Title I of Pub. L. 95-604. The standards for control provide that the tailings be stabilized in a way that gives reasonable assurance that the health hazards associated with the tailings will be controlled and limited for a long period of time. They also establish a requirement to control releases of radon from tailings piles. The standards for cleanup set limits on the radon decay-product concentration and gamma radiation levels in buildings affected by tailings and on the radium-226 concentration in contaminated land.

In response to comments on the proposed standards for disposal and for cleanup, we have evaluated a number of alternatives in terms of their costs and the reductions achievable in potential health effects. A number of changes have been made, including raising some of the numerical limits and eliminating some requirements. The purpose of most of these changes is to make implementation easier and less costly. The changes should not result in any substantial loss of health or environmental protection over that which would have been provided by the proposed standards.

EFFECTIVE DATE: The final standards take effect on March 7, 1983.

ADDRESSES: *Final Environmental Impact Statement.* Background information is given in the *Final Environmental Impact Statement for Remedial Action Standards for Inactive Uranium Processing Sites.* (FEIS), EPA Report 520/4-82-013-1. Single copies of the FEIS, as available, may be obtained from the Program Management Office (ANR-458), Office of Radiation Programs, U.S. Environmental Protection Agency, Washington, D.C. 20460; telephone number 703-557-9351.

Docket. Docket Number A-79-25 contains the rulemaking record. The docket is available for public inspection between 8:00 a.m. and 4:00 p.m., Monday through Friday, at EPA's Central Docket Section (A-130), West Tower Lobby, 401 M Street, S.W., Washington, D.C. 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Dr. Stanley Lichtman, Guides and Criteria Branch (ANR-460), Office of Radiation Programs, U.S. Environmental Protection Agency, Washington, D.C. 20460; telephone number 703-557-8927.

SUPPLEMENTARY INFORMATION:

I. Introduction

On November 8, 1978, Congress enacted the Uranium Mill Tailings Radiation Control Act of 1978, Pub. L. 95-604 (henceforth designated "the Act"). In the Act, Congress stated its finding that uranium mill tailings ". . . may pose a potential and significant radiation health hazard to the public, . . . and . . . that every reasonable effort should be made to provide for stabilization, disposal, and control in a safe and environmentally sound manner of such tailings in order to prevent or minimize radon diffusion into the environment and to prevent or minimize other environmental hazards from such tailings." The Administrator of the Environmental Protection Agency (EPA) was directed to set ". . . standards of general application for the protection of the public health, safety, and the environment . . ." to govern this process of stabilization, disposal, and control.

The Act directs the Department of Energy (DOE) to conduct necessary remedial actions at designated inactive uranium processing sites to achieve compliance with the standards established by EPA. Standards are required for two types of remedial actions: control and cleanup. Control is the operation which places the tailings piles in a condition that will minimize the risk to man for a long time. Cleanup is the operation which reduces the potential health consequences of tailings that have been dispersed from tailings piles by natural forces or removed by man and used elsewhere in buildings or land.

In April 1980, we proposed standards for cleanup of tailings (45 FR 27370, April 22, 1980) and made them effective immediately as interim standards (45 FR 27366, April 22, 1980). We took this action to allow DOE to begin remedial work immediately at some contaminated buildings which posed a high level of risk. In January 1981, we proposed standards for control of tailings piles (46 FR 2556, January 9, 1981) and issued a Draft Environmental Impact Statement (DEIS) covering both the control and cleanup standards. Public hearings on the standards were held in Salt Lake City, Utah, on April 24-25, 1981; in Durango, Colorado, on April 27-28, 1981; and in Washington, D.C., on May 14-15, 1981.

We received a wide range of responses to the proposed standards and the DEIS. Sixty-eight substantive comment letters were received and twenty-three individuals testified or submitted comments at the public hearings. Comments were received from a broad spectrum of participants, including private citizens, public interest groups, members of the scientific community, representatives of industry, and State and Federal agencies. We have carefully reviewed and considered these comments in preparing the FEIS and in promulgating these final standards. The written comments are reproduced in the FEIS, which also contains our detailed responses. The major issues raised in public comments, our response to them, and the detailed changes in the standards are given in Sections III and IV. Below we simply summarize the major conclusions reached as a result of our review.

These standards are established to satisfy the purposes of the Act to ". . . stabilize and control . . . tailings in a safe and environmentally sound manner and to minimize or eliminate radiation health hazards to the public." The Act does not provide specific criteria to be used in determining that these purposes have been satisfied. We have therefore made it our objective to establish standards that take account of the tradeoffs between costs and benefits in a way that assures adequate protection of the public health, safety, and the environment; that can be implemented using presently available techniques and measuring instruments; and that are reasonable in terms of overall costs and benefits. We have been especially cognizant of the need to differentiate what would be desirable from what we believe to be necessary to achieve the purposes of the Act.

Substantial dissatisfaction with the proposed standards was expressed in written comments and at the public hearings. In response to these views, we carefully evaluated a number of alternatives with respect to the above factors. Details of each of the alternative control and cleanup standards we

considered are given in the FEIS. Selected results of our analysis that are pertinent to our choices for each part of the final standard are given in Section III of this Notice. The following table contains a summary of the alternative standards we considered for control of tailings piles.

ALTERNATIVE STANDARDS FOR CONTROL OF URANIUM MILL TAILINGS PILES

Alternative	Principal requirements		
	Minimum time that controls should prevent erosion and misuse (years)	For radon emission from top of pile (pCi/m^2s)	For water quality protection
No standards	None (radioactivity decays to 10 percent in 265,000 yr).	No limit (The average emission is 500 pCi/m^2s).	None (Toxic chemicals in tailings at concentrations 100 times background).
EPA proposed standard	1,000	2 above background	No increased concentration of toxic chemicals.
Alternative A	1,000 to 10,000	2 above background	No degradation that would prevent present uses.
Alternative B	200 to 1,000	20	Guidance, based on water quality criteria.
Alternative C	Indefinite, long-term	100	Guidance, based on water quality criteria.
Alternative D	Durable cover; 100-yr institutional control; discourage moving of piles.	No requirement	Prevent significant erosion of tailings to surface water or ground water; or treat water before use.
Alternative E	Minimal cover to prevent wind-blown erosion only; 100- to 200-yr institutional control; move only piles in immediate danger due to floods.	No requirement	No protection required.

The alternative cleanup and control standards can be generally categorized as:

(1) *Least cost* alternatives which provide minimum acceptable health protection, and depend upon the use of institutional methods of control;

(2) *Optimized cost-benefit* alternatives which provide longer term health protection, without reliance on institutional controls, but at somewhat higher costs; and

(3) *Nondegradation* alternatives which attempt to achieve close to the same environmental consequences as might occur if the ore had not been mined; these entail much higher costs, and could result in some undesirable environmental consequences.

Our analysis was based on assuming that remedial actions to satisfy "least cost" tailings pile control standards would entail applying a thin earthen cover and little or no reinforcement of relatively steep side slopes. Integrity of the cover would be assured through active maintenance for 100 years. Only minimal flood protection measures would be applied, and as few as one pile would be moved to a more stable location. Covers would be progressively thicker and less dependent upon care under the more stringent alternatives, with more gradual slopes and greater use of rock for reinforcement. Under the "nondegradation" alternatives, up to half of the piles would be moved to satisfy either water protection or longevity requirements.

The alternative cleanup standards would require progressively more complete removal of tailings from more buildings. Remedial methods that do not involve tailings removal may be used on a limited basis under all but "nondegradation" alternatives.

The more stringent land cleanup alternatives require more complete removal of contaminated material, implying that larger areas may be cleaned up at each contaminated location and somewhat greater numbers of sites qualify for cleanup.

We concluded that the standards we originally proposed approach a "nondegradation" alternative that would, in at least some cases, be difficult to implement, since they specify cleanup and control limits close to background levels. More importantly, the small incremental health benefits, when compared to the benefits for less stringent alternatives, do not appear to justify the large additional costs.

We selected an "optimized cost-benefit" rather than a "least cost" alternative for the final standards, in part because it provides much greater protection of health at only a small increase above the least cost alternatives, and in part because it does not place primary reliance on institutional methods of control. The final standards provide for:

(1) *Control systems for tailings piles*—Control and stabilization which will ensure, to the extent reasonably achievable, an effective life of 1000 years, and in any case, for at least 200 years. This control and stabilization will be designed to provide a barrier which will effectively minimize the potential for misuse and spread of the tailings, limit the average radon emission from the surface of tailings piles to no more than 20 pCi/m^2s,[1] protect against flooding, and protect from wind and water erosion. We have also provided an alternative equivalent to the radon emission limit that is stated in terms of the maximum radon concentration in air at locations off the pile.

(2) *Flood control*—Diking or other flood protection controls given first consideration, rather than moving piles, when there is a risk from floods.

(3) *Control of waterborne pollutants*—DOE should assess each site and establish any corrective or preventive programs found necessary to meet relevant State and Federal Water Quality Standards and to be consistent, to the maximum extent practicable, with the Solid Waste Disposal Act, as amended.

(4) *Cleanup of buildings*—An objective for reduction of radon decay products of 0.02 WL,[2] with a maximum limit of 0.03 WL.

(5) *Cleanup of dispersed tailings*—Limitations of soil radium content to 5 pCi/g (above background) averaged over the top 15 centimeters of soil, and to 15 pCi/g averaged over any 15 centimeters of soil below this.

(6) *Cleanup of off-site land*—Remedial actions applied only to situations that constitute a hazard; in those cases, cleanup equivalent to the above standard for dispersed tailings.

The Table below provides a summary comparison of the proposed and final standards. The following sections provide a more detailed discussion of the basis for the final standards.

[1] A curie is the amount of radioactive material that produces 37 billion nuclear transformations (e.g., decays of radium into radon) per second. A picocurie (pCi) is a trillionth of a curie. One picocurie of material produces just over two transformations per minute. pCi/m^2s is a unit for the release rate of radioactivity from a surface (m = meter, s = second). pCi/g is a unit for the radioactivity concentration in a mass of material (g = gram).

[2] A "working level" (WL) is any combination of short-lived radon decay products in one liter of air that will result in the ultimate emission of alpha particles with a total energy of 130 billion electron volts. Working level is a measure of the concentration of radioactivity in the air, not of how much radiation a person actually receives.

SUMMARY COMPARISON OF PROPOSED AND FINAL STANDARDS

	Proposed	Final
Control of Tailings Piles:		
1. Longevity	At least 1000 years	Up to 1000 years, to the extent reasonably achievable, but at least 200 years.
2. Radon emissions from disposal site.	2 pCi/m²s; equivalent to about 99.6% reduction.	20 pCi/m²s, *or* 0.5 pCi/l in air outside the disposal site; equivalent to about 96% reduction.
3. Water protection	Specific limits for a number of toxic and radioactive contaminants in groundwater; nondegradation of surface water.	Use existing State and Federal standards; apply site-specific measures where needed.
Cleanup of Buildings:		
1. Indoor radon decay products	Shall not exceed 0.015 WL	Shall not exceed 0.03 WL; to the extent practicable, achieve 0.02 WL.
2. Indoor gamma radiation	20 microR/hr	Unchanged.
Cleanup of Land:		
1. Surface	5 pCi/g in any 5 cm layer within one foot of surface.	5 pCi/g in the 15 cm surface layer.
2. Buried	5 pCi/g in any 15 cm layer below one foot.	15 pCi/g in any 15 cm layer below the surface layer.
Exceptions:		
1. Procedure	Site-specific exception procedures	Supplemental standards (may be applied on generic or site-specific basis).
2. Applicability	Where health and safety would be endangered, or where costs clearly outweigh benefits.	Same as proposed; criteria also provided to avoid cleanup of small amounts of tailings and inaccessible tailings posing minimal hazards.

It should be noted that these standards in no way are intended to establish precedents for other situations or regulations involving similar environmental objectives, but with different economic and/or technological circumstances. For example, our forthcoming proposed standards for active uranium mills will be based on an independent analysis of operating and future mills, which may result in different standards. Similarly, our remedial action standard for contaminated buildings should not be taken as an appropriate design goal for indoor radon decay product concentration in new housing, or as a remedial action goal appropriate for all circumstances.

II. Summary of Background Information

Beginning in the 1940's, the U.S. Government purchased uranium for defense purposes. As a result, large quantities of tailings were created by the uranium milling industry. These tailings are a sand-like material, and are attractive for use in construction and soil conditioning. Most of these mills are now inactive, and the ultimate disposal of their tailings has not yet taken place. In addition, tailings have been dispersed from the piles at most of the sites by natural forces, or have been removed by man for use in or around buildings, or on land. The Act provides for the cleanup of these offsite tailings as well as for the long-term control of the tailings piles.

Congress designated twenty-two inactive sites, and the Department of Energy has added two more. The sites are located in the West, predominantly in arid areas, except for a single site at Canonsburg, Pa. Tailings piles at these sites range in area from 5 to 150 acres and in height from a few feet to as much as 230 feet. The amount of tailings at each site ranges from only residual contamination to 2.7 million tons. The twenty-four designated sites combined contain about 26 million tons of tailings covering a total of about 1,000 acres.

The most important hazardous constituent of uranium mill tailings is radium, which is radioactive. We estimate that these tailings contain a total of about 15,000 curies of radium. Radium, in addition to being hazardous itself, produces radon, a radioactive gas whose decay products can cause lung cancer. The amount of radium in tailings, and, therefore, the rate at which radon is produced, will decay to about 10% of the current amount in several hundred thousand years. Other potentially hazardous constituents of tailings include arsenic, molybdenum, selenium, uranium, and, usually in lesser amounts, a variety of other toxic substances. The concentrations of these materials vary from pile to pile.

Radiation and toxic materials may cause a variety of cancers, and other diseases, as well as genetic damage and teratogenic effects. Tailings are hazardous to man because: (1) decay products of radon may be inhaled and increase the risk of lung cancer; (2) individuals may be exposed to gamma radiation from the radioactivity in tailings; and (3) radioactive and toxic materials from tailings may be ingested with food or water. We believe the first of these hazards is clearly the most important.

The radiation hazard from tailings lasts for many hundreds of thousands of years, and some nonradioactive toxic chemicals persist indefinitely. The hazard from uranium tailings therefore must be viewed in two ways. In themselves, the tailings pose a present hazard to human health. Beyond this immediate, but generally limited, health threat, the tailings are vulnerable to human misuse and to dispersal by natural forces for an essentially indefinite period. In the long run, this threat of expanded, indefinite contamination overshadows the present dangers to public health. The Congressional report accompanying the Act expressed the view that the methods used for remedial actions should not be effective for only a short period of time. It stated: "The committee believes that uranium mill tailings should be treated . . . in accordance with the substantial hazard they will present until long after existing institutions can be expected to last in their present forms," and, that "The Committee does not want to visit this problem again with additional aid. The remedial action must be done right the first time." (H.R. Rep. No. 1480, 95th Cong., 2nd Sess., Pt. I, p. 17, and Pt. II, p. 40 (1978).)

For the purpose of establishing standards for the protection of health, we assume a linear, nonthreshold dose-effect relationship as a reasonable basis for estimating risks to the general public from radiation. This means we assume that any radiation dose poses some risk and that the risk of low doses is directly proportional to the risk that has been demonstrated at higher doses. We recognize that the data available preclude neither a threshold for some types of damage below which there are no harmful effects, nor the possibility that low doses of gamma radiation may be less harmful to people than the linear model implies. However, the major radiation hazard from tailings arises from alpha radiation, and the National Academy of Sciences' Advisory Committee on the Biological Effects of Ionizing Radiation (the BEIR Committee) stated in their 1980 report that for ". . . radiation, such as from internally deposited alpha-emitting radionuclides, the application of the linear hypothesis is less likely to lead to overestimates of risk, and may, in fact, lead to underestimates."

Our quantitative estimates of radiation risk are based on our review of epidemiological studies, conducted in the United States and in other countries, of underground miners of uranium and other metals who have been exposed to

radon decay products, and on three reports: *The Effects on Populations of Exposure to Low Levels of Ionizing Radiation* (1972) and *Health Effects of Alpha Emitting Particles in the Respiratory Tract* (1976) by the BEIR Committee, and the report of the United Nations Scientific Committee on the Effects of Atomic Radiation entitled *Sources and Effects of Ionizing Radiation* (1977). Details of our risk estimates are provided in *Indoor Radiation Exposure Due to Radium-226 in Florida Phosphate Lands* (EPA 520/4–78–013) and in the FEIS.

Although the studies of underground miners show that there is a significant risk of lung cancer from exposure to radon decay products, there is some uncertainty about its magnitude. Exposures of miners are estimated from the time spent in each location in a mine and the measured radon decay product levels at those locations. However, radon decay product measurements were infrequent and often nonexistent for exposures of miners prior to the 1960's. The uncertainty increases when data for miners are used to estimate risk to the general population because there are differences in age, physiology, exposure conditions, and other factors between the two populations. Nevertheless, we believe the information available provides an estimate of risk which is probably reliable within a factor of two or three, and that this constitutes an adequate basis for these standards.

It is not possible to reduce the risk to zero for people exposed to radiation or, for that matter, to many other hazardous materials. In order to decide on an appropriate level of a small residual risk, we evaluated the costs and benefits of different levels of control. We also considered technical difficulties associated with implementing different levels of control.

The legislative record shows that Congress intended that EPA set general standards and not specify any particular method of control. Therefore, our analyses of control methods, costs, risks, and other pertinent factors emphasize the general characteristics of uranium mill tailings and the designated sites. The Act gives other agencies of the Federal Government the responsibility to decide how to satisfy these standards at specific sites. They will issue site-specific Environmental Impact Statements or Environmental Assessments, as appropriate, covering such matters.

The information upon which we based these health and environmental standards for control and cleanup of tailings from inactive uranium processing sites is summarized below. Additional background information and more complete presentations are given in our notices of proposed rulemaking (45 FR 27370, April 22, 1980, and 46 FR 2556, January 9, 1981) and in the FEIS.

A. The Risks from Tailings

Uranium mill tailings can affect man through four principal environmental pathways:

- *Diffusion of radon-222, the decay product of radium-226, from tailings into indoor air.* Breathing radon-222, an inert gas, and its short half-life decay products, which attach to tiny dust particles, exposes the lungs to alpha radiation (principally from polonium-218 and polonium-214). The exposures involved may be large for persons who have tailings in or around their houses, or who live very close to tailings piles. Additional, but smaller, exposures to alpha radiation may result from long-lived radon-222 decay products (principally lead-210 and polonium-210). Exposure due to radon from tailings in or around buildings is best estimated from direct measurements of its decay products in indoor air.
- *Direct exposure to gamma radiation.* Many of the radioactive decay products in tailings produce gamma radiation. The most important are lead-214, bismuth-214, and thallium-210. Hazards from gamma radiation are limited to persons in the immediate vicinity of piles or removed tailings. Exposure due to gamma radiation from tailings is readily estimated from direct measurements.
- *Dispersal of small particles of tailings material in the air.* Wind erosion of unstabilized tailings piles creates airborne tailings material. The predominant dose is to the bones from eating foods contaminated by thorium-230, radium-226, and lead-210, and is small. Exposure due to airborne transport of radon and particulates from a pile usually cannot be directly measured, but may be estimated using meteorological transport models.
- *Waterborne transport of radioactive and toxic material.* Dispersal of unstabilized tailings by wind or water, or leaching, can carry radioactive and other toxic materials to surface or ground water. Current levels of contamination appear to be low or nonexistent. However, some long-term future contamination of surface and ground water and consequent intake by man and animals is possible. Potential exposures due to the transport of waterborne contaminants are highly site-specific and can generally only be determined by a careful survey program.

The following discussion of risks focuses largely on current biological effects; however, these current effects could be expanded by future misuse of tailings by man and by uncontrolled effects of natural forces. Our standards reflect consideration of both current and future impacts of tailings.

1. Air Pathways. We estimated the hazards posed by radon emissions to air from uranium mill tailings piles and from tailings used in and around houses. For the first case we used meteorological models and considered people in the neighborhood of the pile, the population in the local region, and the remainder of the national population. For the second, we drew largely upon experience from contaminated houses in Grand Junction, Colorado. Four sources of exposure were considered: inhaled short-lived radon decay products, gamma radiation, the long-lived radon decay products, and airborne tailings.

From our analysis we conclude:

(a) Lung cancer caused by the short-lived decay products of radon is the dominant radiation hazard from tailings. Effects of gamma radiation, of long-lived radon decay products, and of airborne tailings from the piles are generally much less significant, although high gamma radiation doses may sometimes occur.

(b) Individuals who have tailings in or around their houses often have large exposures to indoor radon and hence high risks of lung cancer. For example, in 50% of a sample of 190 houses with tailings in Grand Junction, Colorado, we estimate that the lifetime excess risk due to exposure to short-lived radon decay products prior to remediation may have been greater than 4 chances in 100.

(c) Individuals living near an uncontrolled tailings pile are also subjected to high risks from short-lived radon decay products. For example, we estimate that people living continuously next to some of the piles may have lifetime excess lung cancer risks as high as 4 chances in 100.

(d) Based on models for the cumulative risk to all exposed populations, we estimate that, without remedial action, the radon from all the inactive sites considered together could cause about 170 to 240 potential excess lung cancer deaths per century. Of these, 55% to 80% are projected to occur among persons living less than 50 miles from a pile.

There is a substantial uncertainty in these estimates because of uncertainties in the rate of release of radon from tailings piles, the exposure people will receive from its decay products, and

from our incomplete knowledge of the effects on people of these exposures. In addition, our estimates are based upon current sizes and geographical distributions of populations. If populations increase in the future, the estimated impact would be larger.

We concluded that a primary objective of standards for *cleanup* of tailings should be to remove or reduce existing and potential risks due to radon decay products indoors. Such risks from indoor radon decay products arise in two ways—in existing buildings where tailings were used in construction and cause elevated levels, and from land contaminated sufficiently to cause elevated levels in new construction. A secondary objective should be to reduce high exposures to gamma radiation due to tailings in buildings or on land away from the tailings piles.

We concluded that a primary objective of standards for *control* of tailings should be isolation and stabilization to prevent their misuse by man and dispersal by natural forces, such as wind, rain, and flood waters. A second objective should be to reduce radon emissions from tailings piles. A third objective should be the elimination of significant exposure to gamma radiation from tailings piles.

2. Water Pathways. Although water contamination does not now appear to be a significant source of immediate radiation exposure at the piles, both radionuclides and nonradioactive toxic substances, such as arsenic, molybdenum, and selenium, could be leached or otherwise removed from tailings and contaminate water resources. If this occurred, it could then affect crops, animals, and people. Such contamination could, in principle, be caused by either past or future releases from the tailings. Tailings piles at inactive sites have already lost most of the water deposited in them during mill operations through evaporation and seepage. However, elevated concentrations of radioactive or toxic substances in ground water have been observed at only a few of the designated sites (four are identified in the FEIS), and in some standing water ponds (but not in running water). Any future water contamination would arise from the effects of rain or through flooding of a pile, from penetration of a pile from below by ground water, or from leaching of tailings transported off a pile.

A theoretical analysis performed for the Nuclear Regulatory Commission (NRC) of a larger model pile showed that contamination of ground water by selenium, sulfate, manganese, and iron might exceed current drinking water standards over an area 2 kilometers wide and 8 to 30 kilometers long. However, more than 95% of this projected contamination was attributable to initial seepage of process water discharged to the pile during mill operations. The movement of contaminants through a pile and subsoil to ground water depends on a combination of complex chemical and physical properties, as well as on local precipitation and evaporation rates. Chemical and physical processes can effectively remove or retard the flow of many toxic substances passing through subsoil. However, some contaminants such as arsenic, molybdenum, and selenium, can occur in forms that are not removed. Typically, ground water can move as slowly as a few feet per year, and only in coarse or cracked materials does the speed exceed one mile per year. For these reasons, contaminants from tailings may not affect the quality of nearby water supply wells for decades or longer after they are released. However, once contaminated, the quality of water supplies cannot usually be easily restored simply by eliminating the source (although, in some cases removing or isolating the tailings may contribute to improving water quality).

Based on results from the NRC generic model for mill tailings piles, it is likely that the few observed cases of ground water contamination resulted from seepage of the original liquid waste discharges from the mill. Additional future contamination of ground water should be much smaller, and in most cases would be expected to be minimized by measures required to control misuse of tailings by man and dispersal by wind, rain, and flood waters. These measures should also effectively eliminate the threat of contamination of surface water by runoff or from leaching of tailings transported off piles, and provide reasonable protection of surface and ground water from contamination by flooding. However, at a few specific sites, especially in areas of high rainfall or where ground water tables intersect the piles, special consideration of possible future contamination of ground water may be needed.

Though a few sites appear to have some existing contamination due to the presence of tailings, we believe it will usually not be feasible or practical to remove the contaminants from subsoil or ground water. Whether or not it is feasible or practical to restore an aquifer and to what degree will depend on site-specific factors, such as the ability to restore the aquifer in its hydrogeologic setting, the cost, the present and future value of the aquifer as a water resource, the availability of alternative supplies, and the degree to which human exposure is likely to occur.

We concluded that potential contamination of surface and ground water at the inactive sites must be considered on a site-specific basis. The remedial program should provide for adequate hydrological and geochemical surveys of each site as a basis for determining whether specific water protection or cleanup measures should be applied. In many cases, the control measures needed for other purposes should reduce any potential for contamination.

In addition to the available information upon which we based our conclusion, hydrological and geochemical studies are presently being conducted or planned at a number of sites. The purpose of these studies is to gather additional information so as to more fully assess any actual or potential ground water contamination and to better understand the mechanism of contaminant movement. The studies will identify the extent and character of contaminants remaining in the piles, as well as the direction, rate of movement and degree of attenuation of any contaminants already released. In particular, attention is being given to identifying the likelihood of contaminants reaching an actual or potential water supply source. We are currently reviewing current studies and will review future studies assessing the site-specific factors related to potential ground water contamination.

As stated previously in this Section II, site-specific Environmental Assessments (EAs) or Environmental Impact Analyses (EIAs) will be prepared for each site. We will review the information generated as part of those. The EAs or EIAs would gather data on a site-specific basis which would either characterize the site completely or confirm the use of general models in determining potential mechanisms for impact or lack of impact on ground water.

We believe that it is important to conclude these studies as quickly as possible. These studies will provide a more complete data and analytical base to allow us to reevaluate the decision not to set ground water protection standards. Information to be obtained as a part of the studies will include the response of the tailings and interstitial fluids to water table and precipitation stimuli; distribution of radionuclides and other contaminants within the tailings pile; identification of mobile constituents within the tailings and

ground water system; and analyses of the mechanisms for the release and transport of the contaminants both to the surface and downward to ground water.

To date, the results of more recent studies than those we described in our FEIS strongly support our decision not to issue general numerical water protection standards. We intend to continue to review additional information as it becomes available, and will reconsider our decision if the need to do so becomes apparent.

B. Cleanup and Control of Tailings

1. Control of Tailings Piles. The objectives of tailings control and stabilization efforts are to prevent their misuse by man, to reduce radon emissions (and gamma radiation exposure), and to avoid the contamination of land and water by preventing erosion by natural processes. The longevity (i.e., long-term integrity) of control is particularly important. This is affected by the potential for disruption by man; by the probability of occurrence of such natural phenomena as earthquakes, floods, windstorms, and glaciers; and by chemical and mechanical processes in the piles. Prediction of the long-term integrity of control methods becomes less certain as the period of concern increases. Beyond several thousand years, long-term geological processes and climatic change become the dominant factors.

Methods to prevent misuse by man and disruption by natural phenomena may be divided into those whose integrity depends upon man and his institutions ("active" controls) and those that do not ("passive" controls). Examples of active controls are fences, warning signs, restrictions on land use, and inspection and repair of semi-permanent tailings covers, temporary dikes, and drainage courses. Examples of passive controls are thick earthen covers, rock covers, massive earth and rock dikes, burial below grade, and moving piles out of locations highly subject to erosion, such as unstable river banks.

Erosion of tailings by wind, rain, and flooding can be inhibited by contouring the pile and its cover, by stabilizing the surface (with rock, for example) to make it resistant to erosion, and by constructing dikes. If necessary, erosion can be inhibited by burying tailings in a shallow pit or moving them away from a particularly flood-prone or otherwise geologically unstable site.

Methods to control release of radon range from applying a simple barrier (such as an earthen cover) to such ambitious treatments as embedding tailings in cement or processing them to remove radium, the precursor of radon. Covering tailings with a permeable (porous) barrier, such as earth, delays radon diffusion so that most of it decays and is effectively retained in the cover. In addition to simple earthen covers, other less permeable materials such as asphalt, clay, or soil cement, usually in combination with earthen covers, may be used. The more permeable the covering material, the thicker it must be to achieve a given reduction in radon release. However, maintaining the integrity of very thin impermeable covers, such as plastic sheets, even over a period as short as several decades is unlikely given the chemical and physical stresses present at piles.

The most likely constituents of covers for use to control tailings are locally available earthen materials. The effectiveness of an earthen cover as a barrier to radon depends most strongly on its moisture content. Typical clay soils in the uranium milling regions of the west exhibit ambient moisture contents of 9% to 12%. For nonclay soils ambient moisture contents range from 6% to 10%. The following table provides, as an example, the cover thicknesses that would be required to reduce the radon emission to 20 pCi/m^2s for the above ranges of soil moisture. Three examples of tailings are shown that cover the probable extreme values of radon emission from bare tailings at the designated sites (100 to 1000 pCi/m^2s); the most common value is probably somewhat less than 500 pCi/m^2s.

ESTIMATED COVER THICKNESS (METERS) TO ACHIEVE 20 pCi/m^2s

Radon emission from tailings (pCi/m^2s)	Percent moisture content of cover			
	6	8	10	12
100	1.7	1.3	1.0	0.7
500	3.4	2.6	2.0	1.5
1,000	4.1	3.2	2.4	1.8

These values are for simple homogeneous covers. In practice, multi-layer covers using clay next to the tailings can be used to significantly reduce the total thickness required.

Methods that control radon emissions will also prevent transport of particulates from the tailings pile to air or to surface water.[3] Similarly, permeable covers sufficiently thick for effective radon control will also absorb gamma radiation effectively (although thin impermeable covers will not).

[3] However, recent studies suggest the possibility that some chemical processes in tailings piles could carry dissolved contaminants upward, perhaps even through earthen coverings. Control system designers must carefully consider this possibility.

Control of possible contamination of ground water is difficult. In the few cases where this is a potentially significant problem, clay liners and/or clay caps may provide a good degree of protection for at least many decades. However, more permanent protection may require removal to a site with more favorable hydrological, geochemical, or meteorological characteristics.

Very effective long-term inhibition of misuse by man, as well as of releases to air and surface water, could be achieved by burying tailings in deep mined cavities. In this case, however, direct contact with ground water would be difficult to avoid. The potential hazards of tailings could also be reduced by chemically processing them to remove contaminants. Such processes have limited efficiencies, however, so the residual tailings would still require control. Furthermore, the extracted substances (e.g., radium and thorium) would be concentrated, and would require further control.

We analyzed the costs of a number of possible control methods. The total cost is affected most strongly by the type of material used to stabilize the surface against erosion and inhibit misuse by man, by the water protection features required, and by the number of piles that must be moved to new sites. In general, costs of covers using man-made materials (e.g., asphalt) are somewhat higher than costs for earthern covers. Active control measures are usually less costly in the short term than are passive measures. The costs for burial of tailings piles or for using chemical processing to extract radium (and perhaps other substances) are much higher than those for disposal using covers. We find that, given a decision to carry out any significant stabilization, the total cost of control using earthen covers does not depend strongly on the degree of reduction of radon emissions, for reductions by up to about a factor of 50 (the maximum that would probably be required at any site under these standards).

2. Cleanup of Tailings. The objective of cleanup of tailings from buildings is to reduce elevated indoor levels of radon decay products and gamma radiation. The objective of cleanup of tailings from land is to remove the potential for elevated levels of radon decay products in future buildings, and exposure of people to gamma radiation.

A variety of methods for cleanup of buildings are available. The most commonly used, and the most reliable and permanent measure, is to dig out the tailings and return them to the pile. This is sometimes relatively easy, such as

removing tailings from outside footings, but may be very difficult, as in removing tailings from under a concrete slab floor in a finished room. Other methods include air filtration, improved ventilation, and the use of sealants to keep out radon.

Windblown tailings on lands around a tailings pile are usually removed by scraping off the top few inches of earth with earth-moving equipment and adding it to the pile. Land cleaned up in this way is relatively easily restored to close to background levels of radioactivity because windblown tailings are usually on the surface and easy to remove. Generally the cost is determined by the amount of land scraped, and not by the depth of scraping required. Alternatively, the land could be removed from productive use, access restricted, and the tailings fixed on the site by deep plowing.

When tailings have been removed from piles and misused in other ways, such as for soil conditioners in gardens and yards or as fill under detached buildings, the usual cleanup measure is to dig up the tailings and return them to the pile.

III. Resolution of Major Issues Raised in Public Comments

A. The Basis for the Standards

1. Health Risk Models. Some commenters considered that the models we used to estimate risks from breathing radon decay products underestimate the risk. More, however, argued that the models overestimate the risk. Some of these comments argued that the use of data on exposure of underground miners was not valid for estimating risks to the general public and suggested that we should use a lower risk estimate recently published as a contributed article in *Nature* (*290*:98, 1981).

We have reviewed the evidence presented and conclude that it does not support changing the risk models we have used. We agree that some evidence exists that risks may be either higher or lower than those we use, but, when all the available information is carefully considered, this evidence is not compelling. It is also true that the use of data on underground miners to predict risks to the general public is less than ideal; however, we have corrected for the most obvious difference (breathing rate) and do not believe this substantial body of evidence can be ignored. Finally, the estimates published in the article in *Nature* are not convincing. The upper limit of lung cancer risk given by these authors is apparently based on assuming that the total period of risk following exposure is only 15 years. However, the evidence from the Japanese A-bomb survivor data, the only large body of data for a general population, leads to use of a lifetime period of risk following exposure. Our detailed responses to these comments are presented in the FEIS.

2. Cost Estimates. Commenters suggested that our estimates of the costs to implement the standards were low (by a factor of two or more) and that we had not included costs for engineering, field supervision, contingencies, or for reclamation of borrow pits from which cover material was obtained.

Many of these comments are correct. Our estimates in the DEIS were expressed in 1978 dollars. Costs of some construction activities have increased substantially between 1978 and 1982. We have revised our cost estimates to reflect these changes, and have also included previously omitted costs for engineering, field supervision, contingencies, and reclamation of borrow pits. We have analyzed specific estimates of the cost of meeting the proposed standards and find that our revised estimates are lower than those of the DOE, but in substantial agreement with those provided by industry and NRC. Our cost estimates are reported in detail in the FEIS.

3. Cost-Benefit Analysis. Commenters expressed the view that the cost of implementing the proposed standards will be high compared to the benefits, that we failed to carry out a cost-benefit analysis for these standards, or that we did not adequately consider alternatives to the standards proposed.

It is not possible to carry out a formal quantitative cost-benefit analysis for these standards. Many of the hazards reduced (or avoided) through their application (or through application of alternative standards) can neither be evaluated quantitatively nor restated in terms of a common index of value. The major hazard, the extent of possible future misuse of tailings by man, is almost impossible to quantify. A further complication is that the benefits of successful control accrue over a very long period of time, whereas the costs occur now. We can only roughly estimate how long control will last and how many cases of lung cancer might be avoided over the full term of effective control.

Instead of a quantitative cost-benefit anlaysis, we have cited examples of the impact of misuse and dispersal by wind and water in the FEIS, and have estimated the impact of radon emissions from unstabilized piles. We have then estimated the extent to which these impacts might be avoided over the long term under realistic alternative standards, and made judgments about which alternatives offer the most cost-effective reduction of these impacts. The final standards are based on the results of such an analysis of alternatives, including a detailed consideration of their costs. This information is presented in Chapters 6 and 7 of the FEIS. Based on these analyses, we have made a number of changes (described in Sections B and C, below) to make the standards more cost-effective and easier to implement.

One notable conclusion from our analysis is that providing tailings piles with thick, durable covers costs surprisingly little more than applying minimal covers that will require maintenance and last a much shorter time. This conclusion follows from the large start-up expenditures related to managing the remedial program and undertaking any significant level of remedial work at mill sites. Thick covers offer greatly increased benefits from inhibiting misuse, controlling radon emissions, and increased longevity of the covers' effectiveness. For example, we estimate that the final control standard provides about ten times greater overall benefits than the lowest cost alternative standard, for only about 25 percent greater cost. Therefore, given that tailings piles will be stabilized under any of the alternatives we considered, we find it cost-effective to stabilize them well. This observation strongly influenced our choice of a radon release standard, as discussed in Section III.B.2, below.

Cost and benefit estimates for the alternative standards we considered are reported in detail in the FEIS; we briefly summarize here only our estimates for the final standards we selected.

Costs: We estimate the remedial action costs for mill sites and for off-site cleanup will be 158 and 38 million (1981) dollars, respectively. DOE has estimated its program development and management ("overhead") costs as 118 million (1981) dollars. These estimated total expenditures of 314 million (1981) dollars will occur over a period of seven years or more.

Benefits: We estimate benefits under the assumption, when appropriate, that tailings pile control systems will be partially effective longer than the standard requires. Control systems are required to be effective for as long as reasonably achievable up to 1000 years, but for not less than 200 years. Under this standard most of the 24 tailings pile will be stable against erosion and casual intrusion for misuse for much longer than 1000 years. Those few piles that are susceptible to flood damage will be

protected for at least 200 years, and might not suffer real damage for much longer. During the period of full control, the maximum risk for individuals living very near a tailings pile from exposure to its radon emissions will be reduced by about 97%, from about 3 chances in 100 to about 1 chance in 1000. An estimated 200 potential premature deaths per century will be avoided initially, for a total of many thousands over the life of the cover. The potential for or existence of water contamination from tailings piles will be evaluated and any protective or remedial actions that the implementing agencies determine are warranted will be taken. We further estimate that about 60 premature deaths will be avoided by cleaning up contaminated buildings. An undeterminable additional number of deaths and the institutional burden of applying land-use controls may be avoided by cleaning up 1900 acres of land containing windblown tailings and about 3200–6500 additional locations where tailings have been brought for inappropriate uses.

4. Scope of the Standards and the EIS. Commenters expressed the view that some important impacts of mill tailings were not adequately considered in the DEIS and that we had not considered all of the available pertinent data. They cited inadequate consideration of (a) the health impacts of toxic elements, (b) radiation doses to man from the food pathway, and (c) the effects of radionuclides and toxic elements on plants and animals.

We have reviewed the available data on toxic elements in tailings and improved the FEIS in this respect (Appendix C). We have concluded that it is reasonable to expect that hazards from toxic elements will be adequately limited if control and cleanup are carried out according to these final standards. We have also reviewed the radiation doses from ingestion of food and confirmed our earlier conclusion that the risks from this pathway are small. We have not specifically required measures to protect animals and plants from the hazards of radioactivity, since we have concluded that the impacts are small.

Some comments expressed the view that the proposed standards were too narrow in scope to adequately protect public health. For example, it was proposed that the standards should include: Limits for radionuclide concentrations in air particulates and in vegetation; limits for toxic elements in soil; guidance for the interim period prior to remedial actions; and radiation protection criteria for workers who perform remedial actions.

We have considered these comments and believe that no changes are needed. If control and cleanup are carried out according to these final standards, the health impact from radionuclides in air and from food pathways, and from toxic elements in soil, which are already low, would be further mitigated. Workers are already protected under existing Federal Guidance for occupational radiation exposures. Finally, the impacts that will occur prior to completion of remedial actions are sufficiently small that we do not believe special interim standards are justified.

B. The Standards for Control of Tailings Piles

1. Longevity of the Control. Some commenters expressed the view that the proposed requirement that stabilization and control last for at least 1000 years is unreasonable because events cannot be predicted over this period of time with sufficient certainty. They recommended a period of no more than 100 to 200 years, and that active institutional care, such as access control and periodic maintenance, be permitted. Other commenters recommended that the longevity required should be greater than 1000 years, and expressed the view that a requirement for longevity of up to 10,000 years is practical.

We consider the single most important goal of control to be effective isolation and stabilization of tailings for as long a period of time as is reasonably feasible, because tailings will remain hazardous for hundreds of thousands of years. The longevity of tailings control is governed chiefly by the possibilty of intrusion by man and erosion by natural forces. Reasonable assurance of avoiding casual intrusion by man can be provided through the use of relatively thick and/or difficult-to-penetrate covers (such as soil, rock, or soil-cement). No standard can guarantee absolute protection against the purposeful works of man, and these standards do not require such protection. Protection against natural forces requires consideration of wind and surface water erosion, and of the possibility of flood damage. Wind and surface water erosion are relatively well-understood and predictable, and are easily inhibited through the use of rock or, in some cases, vegetative surface stabilization. Similarly, a body of scientific and engineering knowledge exists to predict the frequency and magnitude of floods for periods of many hundreds of years, and to provide the engineering controls to protect against such floods (including the possibility of moving a pile if this is more economical). We considered longevity requirements ranging from 100 to 10,000 years and have concluded that existing knowledge permits the design of control systems for these tailings that have a good expectation of lasting at least for periods of 1000 years. We recognize that it may not always be practical, however, to project such performance with a high degree of certainty, because of limited engineering experience with such long time periods.

We know no historical examples of societies successfully maintaining active care of decentralized materials through public institutions for periods extending to many hundreds or thousands of years. We have concluded that primary reliance on passive measures is preferable, since their long-term performance can be projected with more assurance than that of measures which rely on institutions and continued expenditures for active maintenance.

Section 104 of the Act requires the Federal Government to acquire and retain control of these tailings disposal sites under licenses issued by the Nuclear Regulatory Commission (NRC). The NRC is authorized to require performance of any maintenance, monitoring, and emergency measures that are needed to protect public health and safety. As long as the Federal Government exercises its ownership rights and other authorities regarding these sites, they should not be systematically exploited by people or severely degraded by natural forces.

We believe that these institutional provisions are essential to support any project whose objectives is as long term as are these disposal operations, and for which we have as little experience. This does not mean that we believe primary reliance should be placed on institutional controls; rather, that institutional oversight is an essential backup to passive control. We note, in this regard, that the remedial actions required by these standards would not make it safe to build habitable structures on the disposal sites. Federal ownership of the sites is assumed to preclude such inappropriate uses.

In the final standards we have modified the requirement for longevity of control so as to assure that it is practical for agencies to certify that the standards are implemented in all cases. We recognize that this is a remedial action program, that these sites were not chosen with long-term disposal in mind, and that our ability to predict the longevity of engineered designs is not always adequate to the task at hand. The proposed standard required a longevity of control of at least 1000

years. The final standard requires that control measures be carried out in a manner that provides reasonable assurance that they will last, to the extent reasonably achievable, up to 1000 years and, in any case, for a minimum of 200 years. The widely varying characteristics of the inactive sites, the uncertainties involved in projecting performance of control measures over long periods of time, and the large costs involved in moving some tailings piles to provide a very high degree of assurance of longevity make this change appropriate. (We estimate up to 50 million dollars might be unnecessarily spent to move piles under the proposed requirement for a longevity of at least 1000 years.) The change does not signify that there are circumstances under which the term of protection contemplated by the proposed standards is not appropriate. The change merely acknowledges that implementing agencies may in some cases have difficulty certifying that control measures that are appropriate can reasonably be expected to endure without degradation for 1000 years. Man's ability to predict the future is notoriously limited. That fact, which on the one hand warrants our making responsible societal efforts to limit risk to future generations, also warrants our refraining from actions undertaken merely in the name of necessarily artificial levels of statistical certainty.

We selected this period of period of performance because we believe there is a reasonable expectation that readily achievable controls will remain effective for at least this period. However, we recognize that uncertainties increase significantly beyond a thousand years, and we conclude it would be unreasonable to require that assurance be provided that the controls will be effective for periods of up to 10,000 years.

2. The Radon Release Limit. Some commenters expressed the view that the proposed radon emission standard of 2 pCi/m^{2}s from the surface of a tailings pile was either unreasonably low or unnecessary. Others suggested that proper consideration of costs and benefits would lead to a higher standard, in the range of 40–100 pCi/m^{2}s. Some urged that the standards for radon be expressed as a limit on ambient air concentration at the site boundary, rather than as an emission limit. Others were concerned that the proposed level could not be reliably implemented, since it is close to background levels. Finally, many argued that radon emitted from tailings piles does not constitute a significant health hazard because it cannot be distinguished from background radon levels a short distance from a tailings pile (i.e., ¼–½ mile), and that, therefore, there is no need for a radon emission standard.

We believe that limiting radon emissions from tailings piles serves several necessary functions: reducing the risk to nearby individuals and individuals at greater distances; and furthering the goals of reliable long-term deterrence of misuse of tailings by man and control of erosion of piles by natural processes. The degree of reduction of radon emissions achieved by a disposal system is more or less directly related to the degree of abatement of each of these hazards.

Our analysis predicts significant risk to people living next to tailings piles, and field measurements confirm elevated levels of radon in air close to the piles. If radon emissions are not reduced, we estimate that individuals residing permanently near some of the piles could incur as much as three to four chances in a hundred of a fatal lung cancer in addition to normal expectations. The fact that increases in radon levels due to the piles cannot be distinguished relative to background levels further away from a pile does not mean that radon is not present or that there is no increased risk from this radon—it merely means that measurements are not capable of unambiguously detecting such levels. Limiting radon release, therefore, not only benefits the nearby individual, but also reduces the adverse effects of radon well beyond the immediate vicinity of the site.

Radon emission was selected as the preferred quantity to be specified by the standard because, unlike ambient air concentration at the site boundary, it is directly related to the degree of radon control achieved. A site boundary standard would not necessarily require any control of radon emissions (since the boundary might be moved arbitrarily far from the pile), and, in any case, compliance would depend on indefinitely excluding public access across the boundary.

We have concluded that a limit on a radon emission is the most direct and appropriate means for furthering the Congressional objective of adequate and reliable long-term control of tailings. Such a limit assures a sufficient earthen cover (or its equivalent) to provide an acceptable degree of stabilization and isolation of the tailings over a long period of time. Congress did not intend that EPA set standards for one generation only, or that it set standards without consideration of the long-term reliability of whatever means are available for implementing them. (Similarly, Congress anticipated that short-term institutional controls would not provide the primary basis for protection.) Although the implementing agencies will decide which specific controls to employ, this does not preclude our considering, in accordance with Congress' directive, the effect of a particular choice of a numerical limit on the maintenance of future control. Therefore, in selecting the value for radon emissions, an important consideration was that the standard promote the objectives of adequate isolation and stabilization to control both intrusion by man and erosion by natural forces.

We have reevaluated the costs and benefits of alternative standards and have revised the radon emission standard to 20 pCi/m^{2}s, in part because we concluded that the incremental benefits of the proposed standards are not justified by the increased costs, and in part because recent results of tests of covers indicate that a 2 pCi/m^{2}s standard may be more difficult to achieve than we originally believed. The specific alternatives we analyzed are described in detail in the FEIS. They ranged from controlling emissions to 2 pCi/m^{2}s to providing only a minimal cover that we estimate would, on the average, reduce total radon emissions by half (to final values ranging from 40 pCi/m^{2}s to 500 pCi/m^{2}s, depending upon the site.) Estimated disposal costs for these options (excluding DOE overhead and the cost of moving piles) range from 50 to 195 million dollars. The costs for the revised standard of 20 pCi/m^{2}s were estimated as 95 million dollars; this is approximately 45 million dollars less than for the proposed standard.

We have concluded that this revised standard will provide excellent protection of public health, safety, and the environment. Control measures designed to meet this standard will prevent misuse and protect piles from erosion by providing adequate isolation of tailings. The standard provides more than 96% of the reduction of the potential for lung cancer from radon emissions provided by the proposed standard. Under the revised emission limit, the excess risk to the most exposed individual would be reduced to a few chances in a thousand. In addition, it provides this protection at a substantial cost reduction compared to the originally proposed standard (including the modification of the longevity requirement, the combined saving is approximately 95 million

dollars). The revised emission limit should also be high enough to remove any concern associated with confusing radon from tailings with radon emitted from normal soils (typically up to 1 pCi/m²s), and can be readily achieved through the use of a wider variety of earthen materials than the proposed standards.

We conclude from our analysis that a higher emission standard, such as 100 pCi/m²s, would not achieve the above objectives to an acceptable degree. It would result in a five times greater risk to individuals living near a tailings pile and a similar increase in the impact from radon emissions on local, regional, and national populations (to 20% of the total risk from uncontrolled piles). The control measures required to meet such a less restrictive standard would provide significantly less isolation against intrusion and protection against erosion. The further cost reduction compared to the final standard would be relatively small (approximately 20 million dollars).

The Department of Energy, in the course of the consultations that Section 206 of the Act requires before we promulgate final standards, expressed its strong preference for an ambient air concentration standard rather than an emission standard. Therefore, through calculations described in the FEIS, we determined an alternative standard expressed as a radon concentration at the *edge of the tailings* that we believe would require basically the same level of control as the 20 pCi/m²s emission standard. Applying a concentration standard at the edge of the tailings resolves our concerns about applying it at a site boundary. A limit applied at a site boundary would permit varying effectiveness of cover, depending on the choice of location of the boundary, and compliance would depend on indefinite maintenance of the boundary. However, a radon concentration standard at any position that is defined in terms of its relation to the tailings has a fixed relationship to radon releases and compliance does not depend on institutional maintenance of a fence.

Calculations can be used to estimate the values of the annual average radon concentrations at various distances from tailings piles with a given emission rate. Considering the uncertainties in such calculations, we are confident that designing control systems to keep the maximum annual average radon concentration at the edges of the tailings below 0.5 pCi/l will provide approximately the same overall health protection as designing them for an average emission rate of 20 pCi/m²s. Under either form of the radon limit the radon concentration due to a pile will be well below the background level at any residence near the disposal site. The final standard contains both forms of radon limit, as approximately equivalent alternatives.

3. Avoiding Contamination of Water. Commenters expressed concern that the proposed requirements for protection of water are unnecessarily restrictive, are impractical or too costly to implement, or incorporate numerical values that had not been adequately justified. Some argued that water protection should be handled on a site-specific basis, that general standards were not necessary, and that water quality standards were not an appropriate basis for these regulations. Other comments expressed the opposite view that the proposed standards did not provide sufficient protection, that already degraded ground water should be cleaned up, or that numerical values should be included for additional toxic elements.

We have carefully reviewed available data on contamination of ground water at the designated sites. Studies of these sites are not yet conclusive, but they provide little evidence of recent movement of contaminants into ground water, and there is some evidence that the geochemical setting may inhibit contaminants from entering usable ground water at two sites where there might otherwise be a problem (Salt Lake City and Canonsburg). The proposed standards might be difficult to implement at certain sites because our ability to perform definitive hydrological assessments is limited. That is, they could lead to decisions to use very expensive control methods, such as moving piles to new sites and installing liners, even though no substantial threat to ground water is demonstrated. We also believe that minor degradation of ground water may be acceptable, such as for water of already inadequate quality for existing or probable uses, or for very small aquifers.

Finally, we agree that there is uncertainty associated with the appropriateness of both the toxic elements selected and the numerical values specified in the proposed standards, which were drawn mainly from existing national water quality standards for surface water and public drinking water supplies.

In summary, although a few sites appear to have some existing ground water contamination, probably due to dewatering of process liquids from the tailings, we believe there is a low probability of additional contamination at most of the sites. The remedial program should provide for adequate hydrological and geochemical surveys of each site as a basis for determining whether specific water protection or cleanup measures should be applied. Whether or not it is feasible or practical to restore an aquifer and to what degree will depend on site-specific factors, including the aquifer's hydrogeologic setting, the cost, the present and future value of the aquifer as a water resource, the availability of alternative supplies, and the degree to which human exposure is likely to occur.

We do not believe that the existing evidence indicates that ground water contamination from inactive mill tailings is or will be a matter of regulatory concern. We have decided, therefore, not to establish general substantive standards on this subject. Should evidence be found that shows that this judgment is in error, we will consider the need for further rulemaking procedures.

A possible alternative to the above course of action is for us to establish a general regulatory mechanism for others to use in deciding, on a site-specific basis, whether a ground water problem exists and, if so, what remedial action is appropriate. Such a nonsubstantive, or procedural, mechanism would resemble that established by our regulations implementing the Solid Waste Disposal Act, as amended (47 FR 32274, July 26, 1982). In this connection, the Uranium Mill Tailings Radiation Control Act reflects the desire of Congress (in Section 206) that EPA's standards be consistent, to the maximum extent practicable, with the Solid Waste Disposal Act. It also requires NRC to concur in DOE's remedial actions at each site (in Section 108) and to issue licenses for these sites (in Section 104) that may encompass any ". . . monitoring, maintenance, or emergency measures necessary to protect public health and safety." These functions are consistent with those embodied in EPA's above-referenced regulations. We have decided not to adopt this alternative, because we believe that the devising of any necessary such mechanisms for application under this Act can more appropriately be left to the NRC and DOE.

If any existing contamination or potential for future ground water contamination is present we have provided, therefore, in the implementation section of these standards, that judgments on the possible need for monitoring or remedial actions should be guided by relevant considerations described in EPA's hazardous waste management system,

and by relevant State and Federal Water Quality Criteria for existing and anticipated uses of the aquifer. Decisions to undertake remediation should consider the costs and benefits of possible remedial and control measures, including the extent and usefulness of the aquifer. We have also concluded that the same approach is appropriate to surface water, which should be adequately protected in any case by any control measures meeting the standards for longevity and radon emission.

C. The Standards for Cleanup of Tailings

1. Radium-226 in Soil. Comments about the cleanup standard for radium-226 in soil dealt primarily with the proposed numerical value of the standard and perceived difficulty of measurement to show conformance. Many comments expressed the view that there was no justification for a standard as low as 5 pCi/g and that a higher value would be most cost-effective. Recommended values ranged from 10–30 pCi/g.

The purpose of this standard is to limit the risk from inhalation of radon decay products in houses built on land contaminated with tailings, and to limit gamma radiation exposure of people using contaminated land. We estimate that each increase of 0.01 WL inside a house increases the risk of lung cancer to each of its inhabitants by something like one-half to one in a hundred, for an assumed lifetime of residency. The infiltration of radon in soil gas directly into a house is by far the largest contributor to indoor radon, and we estimate that soil extensively contaminated at a level of 5 pCi/g radium can readily lead to indoor levels of radon decay products of 0.02 WL. Because the risks from soils contaminated with radium-226 are potentially so great, the proposed standard was set at a level as close to background as we believed reasonable, taking into consideration the difficulties in measuring this level and distinguishing it from natural backgound.

We have examined the costs and benefits of alternative standards ranging from 5 to 30 pCi/g. These are described in detail in the FEIS. Total cleanup costs are less than 10% to 20% of the total costs of disposal of tailings piles for all the alternatives considered. Costs for cleanup of windblown tailings from land surfaces are sensitive to the standard, because the area to be cleaned up varies approximately inversely with the limit selected. Costs for removal of buried tailings are not sensitive to the standard, since the amount to be removed varies only slightly with the limit selected. That is, we concluded most buried tailings would be removed under any of the alternatives considered. We also considered the difficulty of measuring various thicknesses of surface contamination, and in identifying and measuring contamination due to buried tailings. Detection of buried tailings could be difficult. However, buried tailings, as opposed to surface contaimination (usually windblown and diluted with soil), can be effectively located using a higher detection limit than the proposed standard of 5 pCi/g. Based on these analyses, we have modified the standard for surface contamination of soil (5 pCi/g) from an average over the top 5 cm of soil to an average over the top 15 cm of soil; and revised the standard for subsurface contamination from 5 pCi/g to 15 pCi/g (still averaged over any 15 cm layer of soil). We believe these standards will result in essentially the same degree of cleanup, and will be simpler to implement.

For tailings transported by man to off-site properties, the hazard varies with the amount of tailings involved and their location. The proposed standard did not provide for exemption of locations posing a low hazard. The final standard requires cleanup of contamination only when the amount and location of tailings poses a clear present or future hazard, and provides criteria to assist this determination. We estimate that perhaps more than half of the identified locations of such contamination do not present a hazard sufficient to warrant cleanup, at an estimated saving of 24 million dollars.

Some comments expressed the view that measuring radium-226 and distinguishing residual radioactive materials from natural background at the levels proposed would be difficult and costly, and that many samples would have to be collected and analyzed to show compliance with the standards. The changes we have made make determination of compliance with the standard easier and less costly. In addition, we have provided guidance in this Notice and the FEIS on implementation of the standards, to clarify our intent that unnecessarily stringent (and costly) verification that the standards have been achieved should be avoided.

2. Radon Decay Products in Buildings. Some comments expressed the view that the proposed indoor radon decay product standard of 0.015 WL would be difficult and costly to implement, because it is within the upper range of levels that commonly occur in houses due to natural causes. For example, it might be necessary to distinguish whether the standard is exceeded because of the presence of tailings or because of anomalies in the natural background. This could result in costly and unnecessary remedial actions, or in the frequent use of an exceptions procedure. These comments recommended that we raise this standard to a more cost-effective value that can be more easily distinguished from naturally-occurring levels.

We have considered these arguments and re-examined the costs and benefits of alternative standards. We used the data from the Grand Junction, Colorado, remedial program for contaminated buildings to assist this evaluation. Reduction of radon decay products in existing buildings is probably the most cost-effective of all types of remedial actions for tailings, because the high risk associated with indoor radon decay products. Based on these evaluations, the standard has been revised upward only slightly so as to facilitate implementation and to more closely conform to other related standards. Under the final standard the objective of remedial actions is to achieve an indoor radon decay product concentration of 0.02 WL. For circumstances where remedial action has been performed and it would be unreasonably difficult and costly to reduce the level below 0.03 WL, the remedial action may be terminated at this level without a specific finding of the need for an exception. However, we have also sought to avoid excessive costs by encouraging the use of active measures (such as heat exchangers, air cleaners, and sealants) to meet the objective of 0.02 WL when further removal of tailings to achieve levels below 0.03 WL is impractical. We believe the final standard deals adequately with complications introduced by the presence of any high concentration of naturally-occurring radionuclides, and avoids unnecessary and costly remedial actions that produce only marginal improvements.

D. Reducing Regulatory Burdens. Some commenters suggested that the proposed standards should be flexible to take account of unusual circumstances, site-specific factors, and any complications due to high natural background levels. These commenters recommended that this be accomplished by raising the numerical limits, establishing different standards for unusual circumstances, or by expressing the standards as a range of values.

We agree that it is appropriate and desirable to take into account, as far as

practical, different circumstances. In addition, we believe that regulations should be easy to carry out and not contain unnecessary procedural requirements. We have encouraged the implementing agencies to do this in our "Guidance for Implementation" as described below. We have also changed the procedures for situations in which it would be unreasonable to satisfy the standards from an "exceptions" process to one in which the implementing agencies apply "Supplemental Standards." This is also described below. Finally, the numerical limits of some of the standards have been raised; this will assure that they are more readily distinguishable from background levels.

IV. Implementation.

The Act requires the Secretary of Energy to select and perform the remedial actions needed to implement these standards, with the full participation of any State that shares the cost, with the concurrence of the Nuclear Regulatory Commission, and in consultation, when appropriate, with affected Indian tribes and the Secretary of the Interior.

The cost of remedial action will be borne by the Federal Government and the States as prescribed by the Act. Control and stabilization remedial activities are large scale undertakings for which there is relatively little experience. Although preliminary engineering assessments have been performed, specific engineering requirements and costs to meet the standards at each site have yet to be determined. We believe control and stabilization costs (including DOE overhead) averaging about 10–12 million (1981) dollars per tailings pile are most likely. For some sites, this cost may be partly offset by recovered land values or through provisions of the Act for recovery of uranium or other minerals through reprocessing the tailings prior to performing remedial actions.

A. Guidance for Implementation

Conditions at the inactive processing sites vary greatly, and engineering experience with some of the required remedial actions is limited. It is our objective that implementation of these standards be consistent with the assumptions we have made in deriving them. We are therefore providing "Guidance for Implementation" to avoid needless expense which may result from uncertainty or confusion as to what level of protection the standards are intended to achieve.

The standard for control and stabilization of tailings piles is primarily intended as a design standard. Implementation will require a judgment that the method chosen provides a reasonable expectation that the provisions of the standard will be met, to the extent reasonably achievable, for up to 1000 years, and, in any case, for at least 200 years. This judgment will necessarily be based on site-specific analyses of the properties of the sites, candidate control systems, and the potential effects of natural processes over time, and, therefore, the measures required to satisfy the standard will vary from site to site. We expect that computational models, theories, and expert judgment will be the major tools in deciding that a proposed control system will adequately satisfy the standard. Post-remediation monitoring will not be required to show compliance, but may serve a useful role in determining whether the anticipated performance of the control system is achieved.

The purpose of our cleanup standards is to provide the maximum reasonable protection of public health and the environment. Costs incurred by remedial actions should be directed toward this purpose. We intend the standards to be implemented using search and verification procedures whose cost and technical requirements are reasonable. For example, since we intend the cleanup standards for buildings to protect people, measurements in such locations as small crawl spaces and furnace rooms may often be inappropriate. Remedial action decisions should be based on radiation levels in the parts of buildings where people spend substantial amounts of time. The standards for cleanup of land are designed to limit the exposure of people to gamma radiation, and to limit the level of radon decay products in buildings that might later be built on the land. In most circumstances, no significant harm would be caused by not cleaning up small areas of land contaminated by tailings. Similarly, it would be unreasonable to require expensive detailed proof that all the tailings below the surface of open lands had been removed. Procedures that provide a reasonable assurance of compliance with the standards will be adequate. Where measurements are necessary to determine compliance with the cleanup standards, they should be performed within the accuracy of presently available field and laboratory measurement capabilities and in conjunction with reasonable survey and sampling procedures designed to minimize the cost of verification. We are confident that DOE and NRC, in consultation with EPA and the States, will adopt implementation procedures consistent with our intent in establishing these standards.

B. Supplemental Standards

The varied conditions at the designated sites and limited experience with remedial actions make it appropriate that EPA allow adjustment of the standards where circumstances require. We believe that, in most cases, our final standards are adequately protective and can be implemented at reasonable cost. However, the standards could be too strict in some applications. We anticipate that such circumstances might occur. We originally proposed to deal with this through an "exceptions" procedure which would relax standards when certain criteria were satisfied. We agree with the comments, however, that the proposed procedure was unnecessarily burdensome to apply.

In the final regulations we have eliminated this procedure and replaced it with a simplified procedure for applying "supplemental standards." This is a more effective means of accomplishing our original purpose. An additional significant change in the proposed criteria for exceptions is the addition of criterion 192.21(c), which relaxes the requirement for cleanup of land at off-site locations when residual radioactive materials are not clearly hazardous and cleanup costs are unreasonably high. This category of contamination was not adequately addressed in the proposals.

Regulatory Impact Analysis

Under Executive Order 12291, EPA must judge whether a regulation is "Major" and therefore subject to the requirement of a Regulatory Impact Analysis. That order requires such an analysis if the regulations would 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 on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This regulation is not Major, because we expect the costs of the remedial action program in any calendar year to be less than $100 million; States bear only 10% of these costs and there are no anticipated major effects on costs or prices for others; and we anticipate no

significant adverse effects on domestic or foreign competition, employment, investment, productivity, or innovation. The costs of these standards are discussed in the FEIS.

This regulation was submitted to the Office of Management and Budget for review as required by Executive Order 12291.

This regulation will not have a significant effect on a substantial number of small entities, as specified under Section 605 of the Regulatory Flexibility Act, because there are no small entities subject to this regulation.

Dated: December 15, 1982.

Anne M. Gorsuch,

Administrator.

List of Subjects in 40 CFR Part 192

Environmental protection; Radiation protection; Uranium.

In 40 CFR Chapter I, Part 192 is revised to read as follows:

PART 192—HEALTH AND ENVIRONMENTAL PROTECTION STANDARDS FOR URANIUM MILL TAILINGS

Subpart A—Standards for the Control of Residual Radioactive Materials from Inactive Uranium Processing Sites

Sec.

Subpart B—Standards for Cleanup of Land and Buildings Contaminated with Residual Radioactive Materials from Inactive Uranium Processing Sites

Subpart C—Implementation

Authority: Section 275 of the Atomic Energy Act of 1954, 42 U.S.C. 2022, as added by the Uranium Mill Tailings Radiation Control Act of 1978, Pub. L. 95-604.

Subpart A—Standards for the Control of Residual Radioactive Materials from Inactive Uranium Processing Sites

§ 192.00 Applicability

This subpart applies to the control of residual radioactive material at designated processing or depository sites under Section 108 of the Uranium Mill Tailings Radiation Control Act of 1978 (henceforth designated "the Act"), and to restoration of such sites following any use of subsurface minerals under Section 104(h) of the Act.

§ 192.01 Definitions

(a) Unless otherwise indicated in this subpart, all terms shall have the same meaning as in Title I of the Act.

(b) *Remedial* action means any action performed under Section 108 of the Act.

(c) *Control* means any remedial action intended to stabilize, inhibit future misuse of, or reduce emissions or effluents from residual radioactive materials.

(d) *Disposal site* means the region within the smallest perimeter of residual radioactive material (excluding cover materials) following completion of control activities.

(e) *Depository site* means a disposal site (other than a processing site) selected under Section 104(b) or 105(b) of the Act.

(f) *Curie* (Ci) means the amount of radioactive material that produces 37 billion nuclear transformation per second. One picocurie (pCi) = 10^{-12}Ci.

§ 192.02 Standards

Control shall be designed[4] to:

(a) Be effective for up to one thousand years, to the extent reasonably achievable, and, in any case, for at least 200 years, and,

(b) Provide reasonable assurance that releases of radon-222 from residual radioactive material to the atmosphere will not:

(1) Exceed an average [5] release rate of 20 picocuries per square meter per second, *or*

(2) Increase the annual average concentration of radon-222 in air at or above any location outside the disposal site by more than one-half picocurie per liter.

Subpart B—Standards for Cleanup of Land and Buildings Contaminated with Residual Radioactive Materials from Inactive Uranium Processing Sites

§ 192.10 Applicability

This subpart applies to land and buildings that are part of any processing site designated by the Secretary of Energy under Section 102 of the Act. Section 101 of the Act, states, in part, that "processing site" means—

(a) Any site, including the mill, containing residual radioactive materials at which all or substantially all of the uranium was produced for sale to any Federal agency prior to January 1, 1971, under a contract with any Federal agency, except in the case of a site at or near Slick Rock, Colorado, unless—

(1) Such site was owned or controlled as of Januray 1, 1978, or is thereafter owned or controlled, by any Federal agency, or

(2) A license (issued by the (Nuclear Regulatory) Commission or its predecessor agency under the Atomic Energy Act of 1954 or by a State as permitted under Section 274 of such Act) for the production at site of any uranium or thorium product derived from ores is in effect on January 1, 1978, or is issued or renewed after such date; and

(b) Any other real property or improvement thereon which—

(1) Is in the vicinity of such site, and

(2) Is determined by the Secretary, in consultation with the Commission, to be contaminated with residual radioactive materials derived from such site.

§ 192.11 Definitions

(a) Unless otherwise indicated in this subpart, all terms shall have the same meaning as defined in Title I of the Act or in Subpart A.

(b) "Land" means any surface or subsurface land that is not part of a disposal site and is not covered by an occupiable building.

(c) "Working Level" (WL) means any combination of short-lived radon decay products in one liter of air that will result in the ultimate emission of alpha particles with a total energy of 130 billion electron volts.

(d) "Soil" means all unconsolidated materials normally found on or near the surface of the earth including, but not limited to, silts, clays, sands, gravel, and small rocks.

§ 192.12 Standards

Remedial actions shall be conducted so as to provide reasonable assurance that, *as a result of residual radioactive materials from any designated processing site:*

(a) The concentration of radium-226 in land averaged over any area of 100 square meters shall not exceed the background level by more than—

(1) 5 pCi/g, averaged over the first 15 cm of soil below the surface, and

(2) 15 pCi/g, averaged over 15 cm thick layers of soil more than 15 cm below the surface.

(b) In any occupied or habitable building—

(1) The objective of remedial action shall be, and reasonable effort shall be made to achieve, an annual average (or

[4] Because the standard applies to design, monitoring after disposal is not required to demonstrate compliance.

[5] This average shall apply over the entire surface of the disposal site and over at least a one-year period. Radon will come from both residual radioactive materials and from materials covering them. Radon emissions from the covering materials should be estimated as part of developing a remedial action plan for each site. The standard, however, applies only to emissions from residual radioactive materials to the atmosphere.

equivalent) radon decay product concentration (including background) not to exceed 0.02 WL. In any case, the radon decay product concentration (including background) shall not exceed 0.03 WL, and

(2) The level of gamma radiation shall not exceed the background level by more than 20 microroentgens per hour.

Subpart C—Implementation

§ 192.20 Guidance for implementation

Section 108 of the Act requires the Secretary of Energy to select and perform remedial actions with the concurrence of the Nuclear Regulatory Commission and the full participation of any State that pays part of the cost, and in consultation, as appropriate, with affected Indian Tribes and the Secretary of the Interior. These parties, in their respective roles under Section 108, are referred to hereafter as "the implementing agencies." The implementing agencies shall establish methods and procedures to provide "reasonable assurance" that the provisions of Subparts A and B are satisfied. This should be done as appropriate through use of analytic models and site-specific analyses, in the case of Subpart A, and for Subpart B through measurements performed within the accuracy of currently available types of field and laboratory instruments in conjunction with reasonable survey and sampling procedures. These methods and procedures may be varied to suit conditions at specific sites. In particular:

(a)(1) The purpose of Subpart A is to provide for long-term stabilization and isolation in order to inhibit misuse and spreading of residual radioactive materials, control releases of radon to air, and protect water. Subpart A may be implemented through analysis of the physical properties of the site and the control system and projection of the effects of natural processes over time. Events and processes that could significantly affect the average radon release rate from the entire disposal site should be considered. Phenomena that are localized or temporary, such as local cracking or burrowing of rodents, need to be taken into account only if their cumulative effect would be significant in determining compliance with the standard. Computational models, theories, and prevalent expert judgment may be used to decide that a control system design will satisfy the standard. The numerical range provided in the standard for the longevity of the effectiveness of the control of residual radioactive materials allows for consideration of the various factors affecting the longevity of control and stabilization methods and their costs. These factors have different levels of predictability and may vary for the different sites.

(2) Protection of water should be considered in the analysis for reasonable assurance of compliance with the provisions of § 192.02. Protection of water should be considered on a case-specific basis, drawing on hydrological and geochemical surveys and all other relevant data. The hydrologic and geologic assessment to be conducted at each site should include a monitoring program sufficient to establish background ground water quality through one or more upgradient wells, and identify the presence and movement of plumes associated with the tailings piles.

(3) If contaminants have been released from a tailings pile, an assessment of the location of the contaminants and the rate and direction of movement of contaminated ground water, as well as its relative contamination, should be made. In addition, the assessment should identify the attenuative capacity of the unsaturated and saturated zone to determine the extent of plume movement. Judgments on the possible need for remedial or protective actions for groundwater aquifers should be guided by relevant considerations described in EPA's hazardous waste management system (47 FR 32274, July 26, 1982) and by relevant State and Federal Water Quality Criteria for anticipated or existing uses of water over the term of the stabilization. The decision on whether to institute remedial action, what specific action to take, and to what levels an aquifer should be protected or restored should be made on a case-by-case basis taking into account such factors as technical feasibility of improving the aquifer in its hydrogeologic setting, the cost of applicable restorative or protective programs, the present and future value of the aquifer as a water resource, the availability of alternative water supplies, and the degree to which human exposure is likely to occur.

(b)(1) Compliance with Subpart B, to the extent practical, should be demonstrated through radiation surveys. Such surveys may, if appropriate, be restricted to locations likely to contain residual radioactive materials. These surveys should be designed to provide for compliance averaged over limited areas rather than point-by-point compliance with the standards. In most cases, measurement of gamma radiation exposure rates above and below the land surface can be used to show compliance with § 192.12(a). Protocols for making such measurements should be based on realistic radium distributions near the surface rather than extremes rarely encountered.

(2) In § 192.12(a), "background level" refers to the native radium concentration in soil. Since this may not be determinable in the presence of contamination by residual radioactive materials, a surrogate "background level" may be established by simple direct or indirect (e.g., gamma radiation) measurements performed nearby but outside of the contaminated location.

(3) Compliance with § 192.12(b) may be demonstrated by methods that the Department of Energy has approved for use under Pub. L. 92-314 (10 CFR 712), or by other methods that the implementing agencies determine are adequate. Residual radioactive materials should be removed from buildings exceeding 0.03 WL so that future replacement buildings will not pose a hazard [unless removal is not practical—see § 192.21(c)]. However, sealants, filtration, and ventilation devices may provide reasonable assurance of reductions from 0.03 WL to below 0.02 WL. In unusual cases, indoor radiation may exceed the levels specified in § 192.12(b) due to sources other than residual radioactive materials. Remedial actions are not required in order to comply with the standard when there is reasonable assurance that residual radioactive materials are not the cause of such an excess.

§ 192.21 Criteria for applying supplemental standards

The implementing agencies may (and in the case of Subsection (f) shall) apply standards under § 192.22 in lieu of the standards of Subparts A or B if they determine that any of the following circumstances exists:

(a) Remedial actions required to satisfy Subparts A or B would pose a clear and present risk of injury to workers or to members of the public, notwithstanding reasonable measures to avoid or reduce risk.

(b) Remedial actions to satisfy the cleanup standards for land, § 192.12(a), or the acquisition of minimum materials required for control to satisfy § 192.02(b), would, notwithstanding reasonable measures to limit damage, directly produce environmental harm that is clearly excessive compared to the health benefits to persons living on or near the site, now or in the future. A clear excess of environmental harm is harm that is long-term, manifest, and

grossly disproportionate to health benefits that may reasonably be anticipated.

(c) The estimated cost of remedial action to satisfy § 192.12(a) at a "vicinity" site (described under Sec. 101(6)(B) of the Act) is unreasonably high relative to the long-term benefits, and the residual radioactive materials do not pose a clear present or future hazard. The likelihood that buildings will be erected or that people will spend long periods of time at such a vicinity site should be considered in evaluating this hazard. Remedial action will generally not be necessary where residual radioactive materials have been placed semi-permanently in a location where site-specific factors limit their hazard and from which they are costly or difficult to remove, or where only minor quantities of residual radioactive materials are involved. Examples are residual radioactive materials under hard surface public roads and sidewalks, around public sewer lines, or in fence post foundations. Supplemental standards should not be applied at such sites, however, if individuals are likely to be exposed for long periods of time to radiation from such materials at levels above those that would prevail under § 192.12(a).

(d) The cost of a remedial action for cleanup of a building under § 192.12(b) is clearly unreasonably high relative to the benefits. Factors that should be included in this judgment are the anticipated period of occupancy, the incremental radiation level that would be affected by the remedial action, the residual useful lifetime of the building, the potential for future construction at the site, and the applicability of less costly remedial methods than removal of residual radioactive materials.

(e) There is no known remedial action.

(f) Radionuclides other than radium-226 and its decay products are present in sufficient quantity and concentration to constitute a significant radiation hazard from residual radioactive materials.

§ 192.22 Supplemental standards

Federal agencies implementing Subparts A and B may in lieu thereof proceed pursuant to this section with respect to generic or individual situations meeting the eligibility requirements of § 192.21.

(a) When one or more of the criteria of § 192.21(a) through (e) applies, the implementing agencies shall select and perform remedial actions that come as close to meeting the otherwise applicable standard as is reasonable under the circumstances.

(b) When § 192.21(f) applies, remedial actions shall, in addition to satisfying the standards of Subparts A and B, reduce other residual radioactivity to levels that are as low as is reasonably achievable.

(c) The implementing agencies may make general determinations concerning remedial actions under this Section that will apply to all locations with specified characteristics, or they may make a determination for a specific location. When remedial actions are proposed under this Section for a specfic location, the Department of Energy shall inform any private owners and occupants of the affected location and solicit their comments. The Department of Energy shall provide any such comments to the other implementing agencies. The Department of Energy shall also periodically inform the Environmental Protection Agency of both general and individual determinations under the provisions of this section.

§ 192.23 Effective date.

Subparts A, B, and C shall be effective March 7, 1983.

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BILLING CODE 6560-50-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 192

[A–FRL 2211–8b]

Standards for Remedial Actions at Inactive Uranium Processing Sites, Advance Notice of Proposed Rulemaking

AGENCY: Environmental Protection Agency (EPA).

ACTION: Advance Notice of Proposed Rulemaking.

SUMMARY: EPA has issued final remedial action standards (40 CFR Part 192, Subpart A) for the control of tailings piles at inactive uranium processing sites. This notice announces that the Agency will consider whether different standards than 40 CFR Part 192, Subpart A would be more appropriate for control of tailings piles at those designated sites that have been established as having "medium" or "low" priority for carrying out remedial actions. Specifically, since most of these sites have much lower population densities than the "high" priority sites, 1) should the standards be less restrictive at such sites, and/or 2) should the standards place primary reliance on control of access (such as through fences) rather than physical control of tailings (such as by thick earthen covers) to avoid radiation exposure, so as to reduce the costs of disposal of tailings at these sites?

DATE: Comments are due by May 5, 1983.

ADDRESS: Comments on the issue described in this notice should be submitted to Docket No. A–79–25, which is located at the Environmental Protection Agency, Central Docket Section (A–130), West Tower Lobby, 401 M Street, S.W., Washington, D.C. 20460. Docket A–79–25 contains the rulemaking records. The Docket is available for public inspection between 8:00 a.m. and 4:00 p.m., Monday through Friday. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Dr. Stanley Lichtman, Guides and Criteria Branch (ANR–460), Office of Radiation Programs, U.S. Environmental Protection Agency, Washington, D.C. 20460; telephone 703–557–8927.

SUPPLEMENTARY INFORMATION:

Background

On November 8, 1978, Congress enacted the Uranium Mill Tailings Radiation Control Act of 1978, Pub. L. 95–604 (henceforth designated "the Act"). In the Act, Congress stated its finding that uranium mill tailings ". . . may pose a potential and significant radiation health hazard to the public, . . . and . . . that every reasonable effort should be made to provide for stabilization, disposal, and control in a safe and environmentally sound manner of such tailings in order to prevent or minimize radon diffusion into the environment and to prevent or minimize other environmental hazards from such tailings." The Administrator of the Environmental Protection Agency was directed to set ". . . standards of general application for the protection of the public health, safety, and the environment . . ." to govern this process of stabilization, disposal, and control.

The Act directs the Department of Energy (DOE) to conduct necessary remedial actions at designated inactive uranium processing sites to achieve compliance with the general standards established by EPA. Standards are required for two types of remedial actions: control and cleanup. Control is the operation which places the tailings piles in a condition that will minimize the risk to man for a long time. Cleanup is the operation which reduces the potential health consequences of tailings that have been dispersed from tailings piles by natural forces or removed by man and used elsewhere in buildings or land.

In another part of this issue we have promulgated such standards (40 CFR Part 192). Subparts A and B of the standards cover control and cleanup, respectively; Subpart C addresses implementation of Subparts A and B. This notice concerns only Subpart A, the standards for control of tailings piles.

DOE has designated 24 inactive mill sites for remedial actions under the Act (44 FR 74892, December 18, 1979). Furthermore, as required by Section 102(b) of the Act, DOE has established priorities for carrying out remedial actions at each site (44 FR 74892), relying primarily on advice from EPA. EPA recommended that the primary basis for establishing priorities for carrying out remedial action should be the estimated near-term local rates of induction of health effects associated with radon emissions from the piles. Accordingly, DOE established 9 sites as having "high" priority, 6 as having "medium" priority, and 9 as having "low" priority for carrying out remedial actions. However, in advising DOE on a logical order for carrying out remedial actions, EPA noted that it was not addressing the need for nor the goals of such actions (see docket item IV–E–2).

EPA's goals for control of these tailings piles were described in the supporting documents (see below) for the final standards as: isolation and stabilization against misuse by people and dispersal by natural forces; reduction of risk to nearby individuals and of the collective risk to populations from radon emitted by the piles; elimination of any significant exposure to gamma radiation from piles; and protection of ground and surface water quality. The longevity of control to achieve these goals was a major concern in setting the standards.

Issues for Public Comment

During the review of the standards by certain Federal agencies required by Section 206(a) of the Act and Executive Order 12291 (46 FR 13193–8, February 19, 1981), questions were raised regarding the appropriateness of the control standards for general application to all 24 inactive sites. Noting that the regions around "low" priority sites are generally sparsely populated, some reviewers suggested that less restrictive standards might be appropriate for sites in the lower priority categories than for those having "high" priority for carrying out remedial actions. In view of this concern at Federal agencies that have reviewed the final standards, EPA is requesting public comments on this issue.

Some of these Federal reviewers suggested, in addition, that a radon limit applied at the boundary ("fenceline") of the government-owned property around a tailings pile would be an appropriate form of standards for the lower priority sites. Such a standard could be satisfied largely by institutional methods, i.e., by acquiring and maintaining control over land. The standard of Subpart A, however, can be satisfied only by generally more costly physical methods (such as applying thick earthen covers) that control the tailings and their emissions, with minimal reliance on institutional methods. EPA also requests comments on the adequacy of such a radon "fenceline" standard to meet the objectives of the Act.

Comments on both issues are requested to assist the Agency in its decision whether the standards should be revised for the lower priority sites. Revision of the standards is authorized by Section 275a of the Atomic Energy Act, as added by Pub. L. 95–604. Persons interested in commenting on these issues may wish to examine the rulemaking record (see "ADDRESS," above), or review site-specific information. Of special interest are the Preamble to the final standards published today, and the Final Environmental Impact Statement (EPA Report 520/4–82–013–1; instructions for obtaining this report are given in the

Preamble). Individual "Engineering Assessment" reports have been prepared for DOE for the 24 designated sites. Ordering instructions may be obtained from the U.S. Department of Energy, Albuquerque Operations Office, Uranium Mill Tailings Remedial Action Project Office, Albuquerque, New Mexico 87108; telephone number 505–844–1014.

List of Subjects in 40 CFR Part 192

Environmental protection, Radiation protection, Uranium.

Dated: December 27, 1982.

John W. Hernandez, Jr.,

Acting Administrator.

[FR Doc. 82-35508 Filed 12-30-82; 11:00 am]

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Wednesday
January 5, 1982

Part III

Department of the Interior

Fish and Wildlife Service

Endangered and Threatened Wildlife and Plants; Endangered Status and Critical Habitats for Two Fish Species in Ash Meadows, Nevada; Emergency Rule and Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants: Emergency Determination of Endangered Status and Critical Habitats for Two Fish Species in Ash Meadows, Nevada

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Emergency rule.

SUMMARY: The Service determines the Ash Meadows speckled dace and Ash Meadows Amargosa pupfish to be Endangered species and designates their Critical Habitats. This action is being taken because these species are restricted to the Ash Meadows region and groundwater basin in Nye County, Nevada, where they are facing intensifying threats. Imminent land development for housing subdivisions, clearing of land for road construction and agricultural purposes, pumping of groundwater, and diversion of surface flows threaten the integrity of the species' habitat and therefore their survival. This action will result in the continuation of protective measures beyond the January 5, 1982, expiration date of their May 10, 1982, emergency listing as Endangered.

DATES: This emergency determination is effective on January 5, 1983, and expires on September 2, 1983.

ADDRESSES: Interested persons or organizations can obtain information from and submit written comments to the Regional Director, U.S. Fish and Wildlife Service, Lloyd 500 Building, Suite 1692, 500 N.E. Multnomah Street, Portland, Oregon 97232.

FOR FURTHER INFORMATION CONTACT: Mr. Sanford R. Wilbur, U.S. Fish and Wildlife Service, Lloyd 500 Building, Suite 1692, 500 N.E. Multnomah Street, Portland, Oregon 97232 (phone 503/231–6131) or Mr. John L. Spinks, Jr., Chief, Office of Endangered Species, U.S. Fish and Wildlife Service, Washington, D.C. 20240 (703/235–2771).

SUPPLEMENTARY INFORMATION:

Background

The Ash Meadows Amargosa pupfish (*Cyprinodon nevadensis mionectes)* and Ash Meadows speckled dace (*Rhinichthys osculus nevadensis*) are found only in the Ash Meadows basin and require the integrity of its physical environment and maintenance of spring, surface, and subsurface flows for their survival. The Ash Meadows speckled dace was described as a full species (*Rhinichthys nevadensis*) by Gilbert (1893) based on material collected in 1891 (La Rivers, 1962). It was later designated a subspecies of *Rhinichthys osculus* by Hubbs and Miller (1948). *Cyprinodon nevadensis mionectes* was described by Miller (1948) based on specimens collected in 1937 and 1942.

An emergency rule published on May 10, 1982, listed these fishes as Endangered for a period lasting 240 days. This period of emergency listing expires on January 5, 1983. A proposal of Endangered status and Critical Habitats for these two fish species under normal listing procedures is being published concurrently with this rule. Development of this proposal was delayed as a result of uncertainties concerning changes in listing procedures specified by the 1982 Amendments to the Endangered Species Act. In addition, the Bureau of Land Management (BLM) has been negotiating with Preferred Equities Corporation (PEC), owner of most of these species' remaining habitat, for a land exchange that would have brought these habitats under BLM protection. These negotiations now appear to indicate that a land exchange for all of PEC's land is no longer being considered. The uncertain status of this possible land exchange has delayed development of the economic analysis required for the designation of Critical Habitat. The present emergency listing and Critical Habitat designations for these species will provide protection for these species for the time period from January 5, 1983, the date of expiration of the original emergency listing, until the normal rulemaking process for listings is completed.

The Ash Meadows region is a unique and diverse desert wetland located east of the Amargosa River. These wetlands are maintained by flow from several dozen springs and seeps which are fed by an extensive groundwater system which extends more than 167 km northeast of Ash Meadows. Hundreds of plant and animal species, many of them endemic, are associated with these wetlands and depend upon them for survival.

The Ash Meadows Amargosa pupfish and Ash Meadows speckled dace are restricted to the large warmwater springs and related outflows of Ash Meadows. The pupfish inhabits the pools and outflows of Fairbanks, Rogers, Longstreet, Jack Rabbit, Big, and Point of Rocks Springs; Crystal Pool; three unnamed springs just southeast of Longstreet Spring; and the two westernmost springs of the Bradford Springs group. These springs are at elevations ranging from 655 to 700 m and are generally oriented along an imaginary line running 16 km from Fairbanks Spring to Big Spring. Water temperatures of the springs are consistently between 24° and 30° C. Flowing water of spring outflows is preferred by the speckled dace. Although formerly inhabiting much of the interconnected surface drainage in Ash Meadows, dace populations have been severely reduced and are now restricted to springs and outflows of Jack Rabbit Spring, Big Spring, and the two westernmost springs of the Bradford Springs group. A number of exotic species, such as mosquitofish and black mollies, have been introduced to these springs and compete with the native fishes.

Many other plant and animal species are endemic to Ash Meadows. The Service proposed the Ash meadows turban snail (*Fluminicola erythropoma*) as Threatened on April 28, 1976 (41 FR 17742). This proposal was withdrawn on December 10, 1979 (44 FR 70796), as a result of the 1978 Amendments to the Endangered Species Act. Current evidence indicates that this species, as proposed, actually comprised more than one species. This area has an extraordinarily diverse freshwater mollusk fauna, which is currently being studied by Dr. Dwight Taylor of Tiburon, California. Of special interest is the presence of two species flocks or complexes of snails which are found within a 5-mile radius in Ash Meadows and gives Ash Meadows the highest concentration of endemic species in the United States. Most of these mollusk species have not been scientifically described and named.

Two endemic Ash Meadows fishes, the Devil's Hole pupfish (*Cyprinodon diabolis*) and the Warm Springs pupfish (*Cyprinodon nevadensis pectoralis*) are already listed as Endangered. The Devil's Hole pupfish's natural distribution is restricted to Devil's Hole, a disjunct portion of Death Valley National Monument. The Warm Springs pupfish occurs only in small nearby springs at an elevation of about 710 m.

The Point of Rocks Springs naucorid (*Ambrysus amargosus*) is an insect that has been recorded living only in Point of Rocks Springs.

A general notice of review on candidate plants in the December 15, 1980, **Federal Register** (45 FR 82479) included six species that are restricted to Ash Meadows. These species and their edaphic associations are as follows: The spring-loving centaury (*Centaurium namophilum* var. *namophilum*) is restricted to wet clay soils of spring areas and stream banks; the Amargosa niterwort (*Nitrophila*

mohavensis) is found only on undisturbed, salt-encrusted, heavy alkaline mud flats in the Carson Slough area in Inyo County, California; the Ash Meadows gum plant (*Grindelioa fraxino-pratensis*) occurs in small populations in relatively undisturbed moist to wet clay soils of spring areas and stream banks, and is often associated with the spring-loving centaury; the Ash Meadows stick-leaf (*Mentzelia leucophylla*) is associated with desert washes in coarse-grained, water-sorted, alkaline soils; the Ash Meadows milk-vetch (*Astragalus phoenix*) occurs in washes and on flats and low knolls in fine-grained, clay-like soils; and corrugated sunray (*Enceliopsis nudicaulis* var. *corrugatum*) occupies strongly alkaline and often poorly drained soils in several localities. An additional species in that review, the tecopa birds-beak (*Cordylanthus tecopensis*), has a wider but still restricted distribution that includes Ash Meadows.

Early homesteaders attempted to farm Ash Meadows using the free-flowing water from the springs for irrigation. These efforts failed because the salty, clay soils were not suitable for crops.

Agricultural practices in the late 1960s and early 1970s resulted in large tracts of land being plowed and the installation of groundwater pumps and diversion ditches to support a cattle-feed operation. These practices resulted in the destruction of many populations of plants and animals and their wetland habitats by alteration of the land surface and lowering of the water table. In 1976, the Supreme Court limited the amount of groundwater pumping in Ash Meadows to ensure sufficient water levels in the only known habitat of the Endangered Devil's Hole pupfish. The agricultural interests in Ash Meadows sold approximately 36 square km of land to a real estate developer, Preferred Equities Corporation (PEC), in 1977.

While the Bureau of Land Management (BLM) is the principal landowner in Ash Meadows, PEC owns most of the surface water rights, which are currently designated for municipal use. Groundwater pumping would be required to develop and support municipal and agricultural activities. The imminent development and concomitant destruction of Ash Meadows by PEC may be avoided if an acceptable alternative can be devised with BLM to protect this fragile habitat. A possibility did exist whereby BLM would have exchanged land suitable for development in the Pahrump Valley (approximately 20 miles SE of Ash Meadows) for PEC's holding in Ash Meadows. Negotiations between FWS, BLM, and PEC proved fruitless: PEC found BLM lands in the Pahrump Valley unacceptable because of inadequate water supply.

The initial phase of construction, when completed, would result in the destruction of Crystal Pool, Point of Rocks and Jack Rabbit Springs, and possibly lower the level of other springs by groundwater pumping. PEC's activities have already substantially altered surface flows and spring hole morphometry at these sites. The amount of land which would be altered for housing is unknown. PEC has recently constructed a multi-lane road which connects Ash Meadows at Point of Rocks Spring with Pahrump Valley, a connecting section of road (2 miles long and 80 feet wide) north of Jack Rabbit Spring, and a new road (1.5 miles long and 30 feet wide) east of Crystal Pool. In addition, approximately 1,000 acres of cotton have been planted west of Point of Rocks Spring. The terrestrial habitats of the Ash Meadows ecosystems are as fragile as the aquatic habitats. Many candidate plant species are dependent upon the unique hydrological characteristics of this basin and require undisturbed soils for sustenance and propagation.

Factors Affecting the Species

The Service's listing regulations (50 CFR Part 424) provide for a review of the five factors below when listing (or reclassifying or delisting) a species (§ 424.11):

(A) The present or threatened destruction, modification or curtailment of its habitat or range;

(B) Overutilization for commercial, recreational, scientific, or educational purposes;

(C) Disease or predation;

(D) Inadequacy of existing regulatory mechanisms; and

(E) Other natural or manmade factors affecting its continued existence.

These factors, and their application to the subject species, are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.*

The Ash Meadows Amargosa pupfish and the Ash Meadows speckled dace are endemic to the Ash Meadows basin and depend upon the integrity of this fragile ecosystem for their survival. These species require undisturbed flows from the extensive Ash Meadows basin aquifer. The imminent threat to their existence is the proposed development of Ash Meadows by PEC into a residential, recreational, industrial, and agricultural community. Construction activities will clear essential habitat, directly extirpate populations of these fish, and alter surface drainage patterns. Human habitation will require great quantities of potable water. Utilization of surface outflows from springs and pumping of the acquifer will reduce or eliminate surface flows, lower the water table, and interfere with ground water recharge which will destroy down-gradient wetlands.

Diversion of spring outflows and pumping of spring holes and ground water to provide water for the proposed development will destroy essential habitat of the Ash Meadows speckled dace and Ash Meadows Amargosa pupfish. Since all springs in this acquifer are intricately connected, drawdown at one location would affect water levels of many other springs. In addition, such alternation of surface flows will prevent migration to other suitable habitats and therefore prevent natural expansion of range or recolonization by these species.

To date, the outflow channels of Crystal Pool and King Pool (Point of Rocks Spring) have been modified to increase flows, resulting in the lowering of pool levels 1–1.5 feet and consequently decreasing riparian habitat. A significant area of land has already been altered by road construction in the vicinity of Crystal Pool and Point of Rocks and Jack Rabbit Springs.

Initial construction activities in late spring and summer of 1981 severely altered the watercourse of two springs (Point of Rocks and Bradford) and related spring hole morphometry; these activities severely reduced the populations of the Ash Meadows speckled dace and Ash Meadows Amargosa pupfish in Bradford Springs. Recent excavation of Fairbanks Spring by heavy equipment has apparently eliminated all but one pupfish.

Recent construction activities in Ash Meadows have continued the destruction of fish habitat that began with early agricultural activities. The Ash Meadows Amargosa pupfish has been extirpated in Bole, Deep, and Forest Springs. The Ash Meadows speckled dace has been extirpated from Forest, Fairbanks, Rogers, Longstreet, Tubbs, and Point of Rocks Springs, the easternmost spring of the Bradford Springs group, and Crystal Pool. The ranges of both the pupfish and the dace have been reduced from 1 mile to about 200 yards in the Bradford Springs outflow and from 3 miles to 0.5 mile in the Big Springs outflow. The range of the pupfish has been reduced from 6 miles to 0.5 mile of the Point of Rocks Springs outflow and from 2,000 acres to about 0.5 acre in the area of Fairbanks, Rogers,

and Longstreet Springs. Dace and pupfish populations were temporarily extirpated form Jack Rabbit Spring when the spring pool was pumped dry. Both the dace and pupfish populations are much reduced in most of the limited habitat that they still occupy. Both the pupfish and the dace have been eliminated from Carson Slough where draining, plowing, and mining have eliminated the fish habitat.

PEC's long-term development plans call for direct alteration of many of these springs with construction to progress in three phases in the following areas: Phase I—Crystal Pool; Phase II—Point of Rocks Springs; Phase III—Fairbanks Spring complex. The Nye County Commission has already approved Phases I and II, and work has begun. Further, PEC, as principal owner of water rights, has made application to the State of Nevada to divert water from many of the other Ash Meadows springs, which will destroy more riparian habitat. Ground water pumping may seriously deplete water levels (directly and indirectly) upon which the fish species depend. In the past, pumping of ground water from nearby wells for agriculture has lowered the water level in Devil's Hole in Ash Meadows, which caused a severe decline in the population of the Endangered Devil's Hole pupfish; continued pumping could have caused the extinction of the species. In 1976 the U.S. Supreme Court ruled (*United States vs. Cappaert et al.*) that a minimum water level must be maintained to protect the Devil's Hole pupfish. Devil's Hole is the most sensitive spring in Ash Meadows, but all of the springs are interconnected. The impact of ground water pumping from wells south of Devil's Hole appears to be greater than from those located in the north. Because agricultural and municipal activities require large volumes of water, and pumping of ground water from the northern areas may be necessary to supplement flows from the south, it is expected that the proposed development by PEC will create a demand for water throughout Ash Meadows.

Introduction of exotic fish and other aquatic species which compete with or prey upon native species have caused the extinction of the Ash Meadows killifish (*Empetrichthys merriami*) and reduced or extirpated other native fish populations. Continued modification of habitat by construction activity can only exacerbate this problem.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.*

Not applicable to these species.

C. *Disease or predation.*

Numerous exotic organisms have been introduced into springs in Ash Meadows. Some of these exotics, including largemouth bass (*Micropterus salmoides*), crayfish (*Procambarus clarki*), and bullfrogs (*Rana catesbeiana*) prey on the Ash Meadows Amargosa pupfish and the Ash Meadows speckled dace. Largemouth bass have been introduced into Crystal Reservoir and have subsequently gained access to Crystal Pool and its outflow. Crayfish and bullfrogs are common inhabitants in many springs and have significantly contributed to the decline of the Ash Meadows pupfish (La Rivers, 1962; Miller, 1948).

D. *The inadequacy of existing regulatory mechanisms.*

No permanent regulations exist to protect the two species of fish included in this rule. The existing emergency regulations will expire on January 5, 1983.

E. *Other natural or manmade factors affecting its continued existence.*

The extremely small range and specialized habitats of these species make them especially vulnerable to all of the factors that adversely affect them.

Vandalism has been reported at a number of springs. Future acts of vandalism could cause the extinction of local populations of the fishes.

The Mexican mollie (*Poecilia mexicana*) and mosquitofish (*Gambusia affinis*) have been introduced into several Ash Meadows spring systems including Point of Rocks, Jack Rabbit, Big, Bradford Springs, and Crystal Pool. These exotic fishes have replaced the pupfish and dace as the dominant species in the affected springs (Deacon *et al.*, 1964). Exotic snails have also become established in several springs, where they compete for food with native fishes.

Critical Habitat

50 CFR Part 424 defines "Critical Habitat" to include areas within the geographical area occupied by the species at the time the species is listed which are essential to the conservation of the species and which may require special management considerations or protection and specific areas outside the geographic area occupied by the species at the time, upon a determination by the Secretary that such areas are essential for the conservation of the species.

Critical Habitat for the Ash Meadows speckled dace is as follows:

Nevada, Nye County: Each of the following springs and outflows plus surrounding land areas for a distance of 50 meters from the springs and outflows: Bradford Springs in Section 11, T. 18 S., R 50 E., and their outflows for a distance of 300 meters from the springs.

Jack Rabbit Spring and its outflows flowing southwest to the boundary between Section 24 in T. 18 S., R. 50 E. and Section 19, T. 18 S., R. 51 E.

Big Spring and its outflow to the boundary between Section 19, T. 18 S, R. 51 E. and Section 24, T. 18 S., R. 50 E.

Critical Habitat for the Ash Meadows Amargosa pupfish is as follows:

Nevada, Nye County: Each of the following springs and outflows plus surrounding land areas or a distance of 50 meters from these springs and outflows:

Fairbanks Spring and its outflow to the boundary between Sections 9 and 10, T. 17 S., R. 50 E.

Rogers Spring and its outflow to the boundary between Sections 15 and 16, T. 17 S., R. 50 E.

Longstreet Spring and its outflow to the boundary between Sections 15 and 22, T. 17 S., R. 50 E.

Three unnamed springs in the northwest corner of Section 23, T. 17 S., R. 50 E. and each of their outflows for a distance of 75 meters from the spring.

Crystal Pool and its outflow for a distance of 400 meters from the pool.

Bradford Springs in Section 11, T. 18 S., R. 50 E., and their outflows for a distance of 300 meters from the springs.

Jack Rabbit Spring and its outflow flowing southwest to the boundary between Section 24, in T. 18 S., R. 50 E. and Section 19, T. 18 S., R. 51 E.

Big Spring and its outflow to the boundary between Section 19, T. 18 S., R. 51 E. and Section 24, T. 18 S., R. 50 E.

Point of Rocks Springs and their entire outflows within Section 7, T. 18 S., R. 51 E.

These Critical Habitats include the springs and associated outflows that are the sole remaining habitat for these fishes. The Critical Habitats also include land areas immediately surrounding these aquatic land areas. These land areas provide vegetative cover that contributes to providing the uniform water conditions preferred by the pupfish and dace and provides habitat for insects and other invertebrates which constitute a substantial portion of their diet.

The activities that may adversely modify these Critical Habitats are described in the "Factors Affecting the Species" section of this emergency rule.

Effect of the Rule

Endangered Species regulations already published in Title 50, § 17.21 of the Code of Federal Regulations, set forth a series of general prohibitions and

exceptions which apply to all Endangered species. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take, import or export, ship in interstate commerce in the course of a commercial activity, or sell or offer for sale these species in interstate or foreign commerce. It is also illegal to possess, sell, deliver, carry, transport, or ship any such wildlife which was illegally taken. Certain exceptions apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving Endangered species under certain circumstances. Regulations governing permits are at 50 CFR 17.22 and 17.23. Such permits are available for scientific purposes or to enhance the propagation or survival of the species. In some instances, permits may be issued during a specified period of time to relieve undue economic hardship which would be suffered if such relief were not available.

This rule, by extending the protection provided by the original emergency rule, could subject the construction activities of Preferred Equities Corporation (PEC) to enforcement actions, undertaken through Section 9 of the Endangered Species Act, or civil injunction, should such development result in the taking of one of the fish.

This rule requires Federal agencies not only to insure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of the Ash Meadows Amargosa pupfish and the Ash Meadows speckled dace, but also requires them to insure that their actions do not result in the destruction or adverse modification of Critical Habitats. Provisions for Interagency Cooperation are codified at 50 CFR Part 402.

Section 4 (b)(8) of the Act requires that, to the maximum extent practicable, any determination of Critical Habitat be accompanied by a brief description and evaluation of those activities which in the opinion of the Secretary may adversely modify such habitat if undertaken or may be impacted by such designation. Activities that may adversely affect these Critical Habitats include the activities carried out and planned by Preferred Equities Corporation (PEC) that would modify the springs and their outflows, disturb the land areas immediately surrounding these habitats, or draw down the water table to the extent that spring flows are reduced.

Section 4 (b)(2) requires the Service to consider economic and other impacts of specifying a particular area as Critical Habitat. Listing these species as Endangered does not specifically preclude in their entirety housing, commercial, intensive agricultural, or industrial development in Ash Meadows. Full protection of the two fish species may, however, preclude a portion of the proposed PEC development, and may result in the modification of PEC's construction activities. The Service notes that much of PEC's proposed development may already be precluded by the extent of their water ownership and the Endangered status of the Devil's Hole pupfish and the Warm Springs pupfish. The exact extent of possible water conflict is presently unknown.

The designated Critical Habitats include a total area of approximately 200 acres. Based on the best scientific and commercial data available, smaller Critical Habitats might result in the extinction of species.

The Bureau of Land Management (BLM) has jurisdiction over two springs (Big and Jack Rabbit) that are included in these Critical Habitats. Present BLM activities are consistent with the conservation of these fishes and therefore will not be affected by this action.

National Environmental Policy Act

A draft Environmental Assessment was prepared when these fishes were proposed as Endangered, with Critical Habitat, pursuant to regulations in 50 CFR 424.16 and 50 CFR 424.17. A determination will be made at the time of final listing of these species under normal listing procedures as to whether this is a major Federal action which would significantly affect the quality of the human environment within the meaning of Section 102(2)(C) of the National Environmental Policy Act of 1969 and 40 CFR Parts 1500–1508.

Primary Author: The primary author of this emergency rule is Steven M. Chambers, Office of Endangered Species, U.S. Fish and Wildlife Service, Washington, D.C. 20240. Phone: 703/235–1975.

This rule is issued under the following authority:

(Pub. L. 93–205, 87 Stat. 884; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1241; Pub. L. 97–304, 96 Stat. 1411 (16 U.S.C. 1531, *et seq.*)).

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List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Regulation Promulgation

PART 17—[AMENDED]

1. Accordingly, until September 2, 1983, or until regulations become effective through normal listing procedures, whichever comes first, § 17.11(h), subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, is amended by adding the

following two entries alphabetically to the table under the heading "Fishes" as set forth below.

§ 17.11 Endangered and Threatened Wildlife.

(h) * * *

* * * * *

Common name	Species (scientific name)	Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
*	*	*	*	*	*	*	*
Fishes							
*	*	*	*	*	*	*	*
Dace, Ash Meadows Speckled	*Rhinichthys osculus nevadensis*	U.S.A. (NV)	Entire	E		17.95(e)	N/A.
*	*	*	*	*	*	*	*
Pupfish, Ash Meadows Amargosa	*Cyprinodon nevadensis mionectes.*	U.S.A. (NV)	Entire	E		17.95(e)	N/A.
*	*	*	*	*	*	*	*

§ 17.95 [Amended]

2. It is further determined that § 17.95(e), Fishes, be amended until September 2, 1983 or until these regulations become effective through normal listing procedures, whichever comes first, by adding Critical Habitat of the Ash Meadows speckled dace after that of the spotfin chub as follows:

Ash Meadows Speckled Dace

(Rhinichthys osculus nevadensis)

Nevada, Nye County: Each of the following springs and outflows plus surrounding land areas for a distance of 50 meters from these springs and outflows:

Bradford Springs in Section 11, T. 18 S., R. 50 E., and their outflows for a distance of 300 meters from the springs.

Jack Rabbit Spring and its outflow flowing southwest to the boundary between Section 24 in T. 18 S., R. 50 E. and Section 19, T. 18 S., R. 51 E.

Big Spring and its outflow to the boundary between Section 19, T. 18 S., R. 51 E. and Section 24, T. 18 S., R. 50 E.

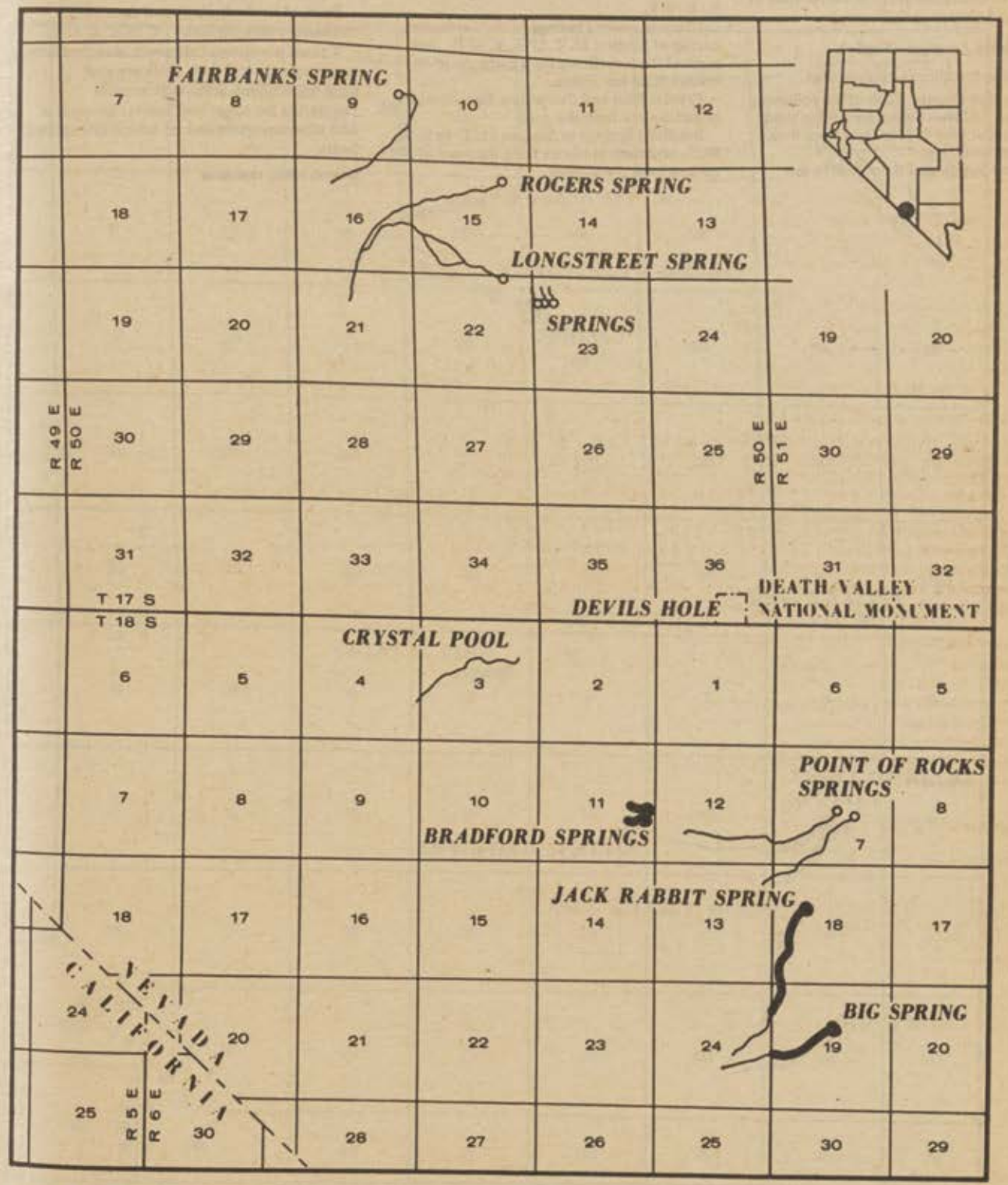
Known constituent elements include warm-water springs and their outflows and surrounding land areas that provide vegetation for cover and habitat for insects and other invertebrates on which the species feeds.

BILLING CODE 4310-55-M

BILLING CODE 4310-55-C

ASH MEADOWS SPECKLED DACE

Nye County, NEVADA



BILLING CODE 4310-55-C

3. It is further determined that § 17.95 (e), Fishes, be amended until September 2, 1983, or until these regulations are effective through normal listing procedures, whichever comes first, by adding Critical Habitat of the Ash Meadows Amargosa pupfish after that of the leopard darter as follows:

Ash Meadows Amargosa Pupfish

(Cyprinodon nevadensis minonectes)

Nevada, Nye County: Each of the following springs and outflows plus surrounding land areas for a distance of 50 meters from these springs and outflows:

Fairbanks Spring and it outflow to the boundary between Sections 9 and 10, T. 17 S., R. 50 E.

Rogers Spring and its outflow to the boundary between Sections 15 and 16, T. 17 S., R. 50 E.

Longstreet Spring and it outflow to the boundary between Sections 15 and 22, T. 17 S., R. 50 E.

Three unnamed springs in the northwest corner of Section 23, T. 17 S., R. 50 E., and each of their outflows for a distance of 75 meters from the spring.

Crystal Pool and its outflow for a distance of 400 meters from the pool.

Bradford Springs in Section 11, T. 18 S., R. 50 E., and their outflows for a distance of 300 meters from the springs.

Jack Rabbit Springs and its outflow flowing southwest to the boundary between Section 24, T. 18 S., R. 50 E. and Section 19, T. 18 S., R. 51 E.

Big Spring and its outflow to the boundary between Section 19, T. 18 S., R. 51 E. and Section 24, T. 18 S., R. 50 E.

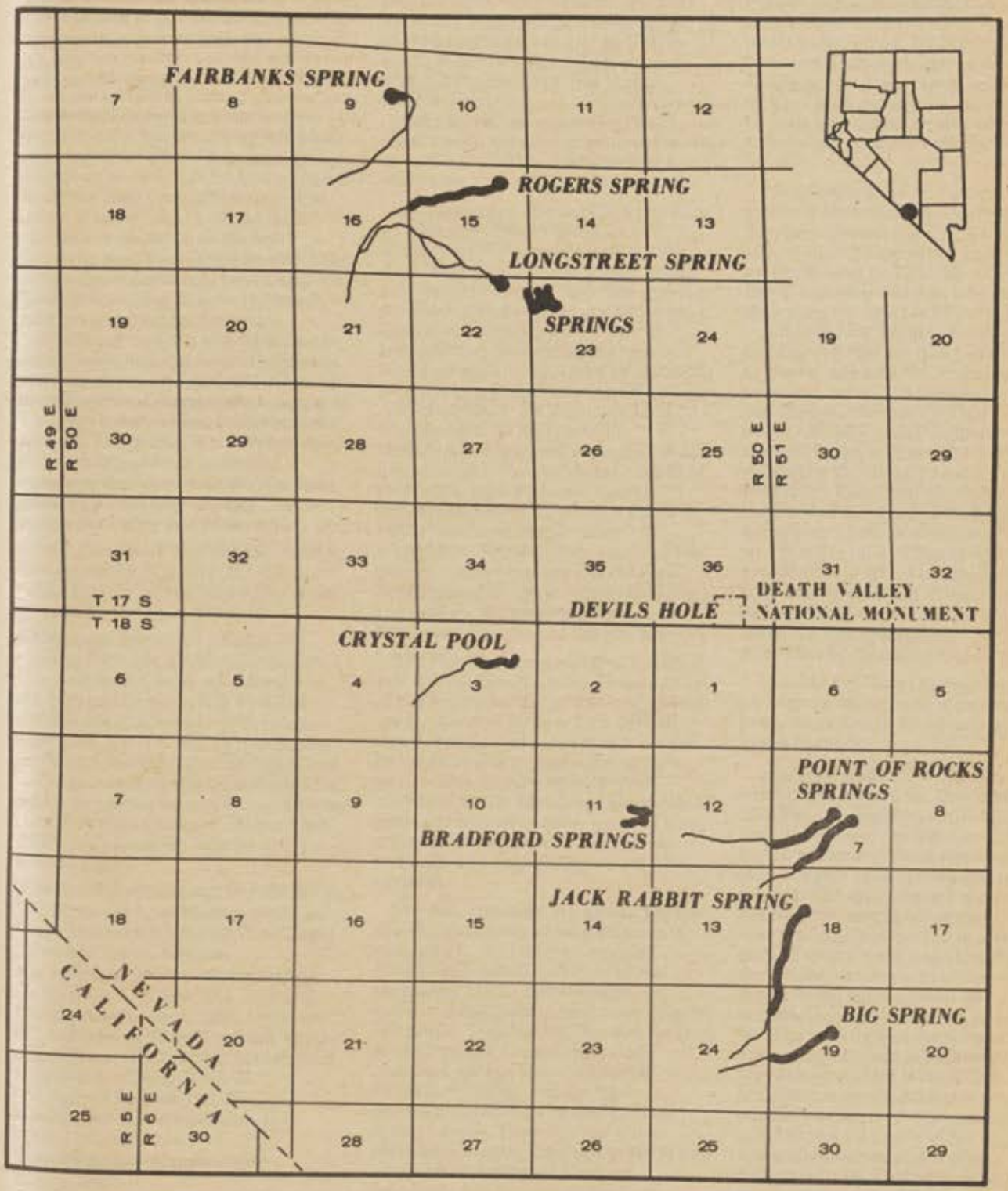
Point of Rocks Springs and their entire outflows within Section 7, T. 18 S., R. 51 E.

Known constituent elements include warm-water springs and their outflows and surrounding land areas that provide vegetation for cover and habitat for insects and other invertebrates on which this species feeds.

BILLING CODE 4310-55-M

ASH MEADOWS AMARGOSA PUPFISH

Nye County, NEVADA



Dated: December 29, 1982.

J. Craig Potter,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 83-204 Filed 1-4-83; 8:45 am]

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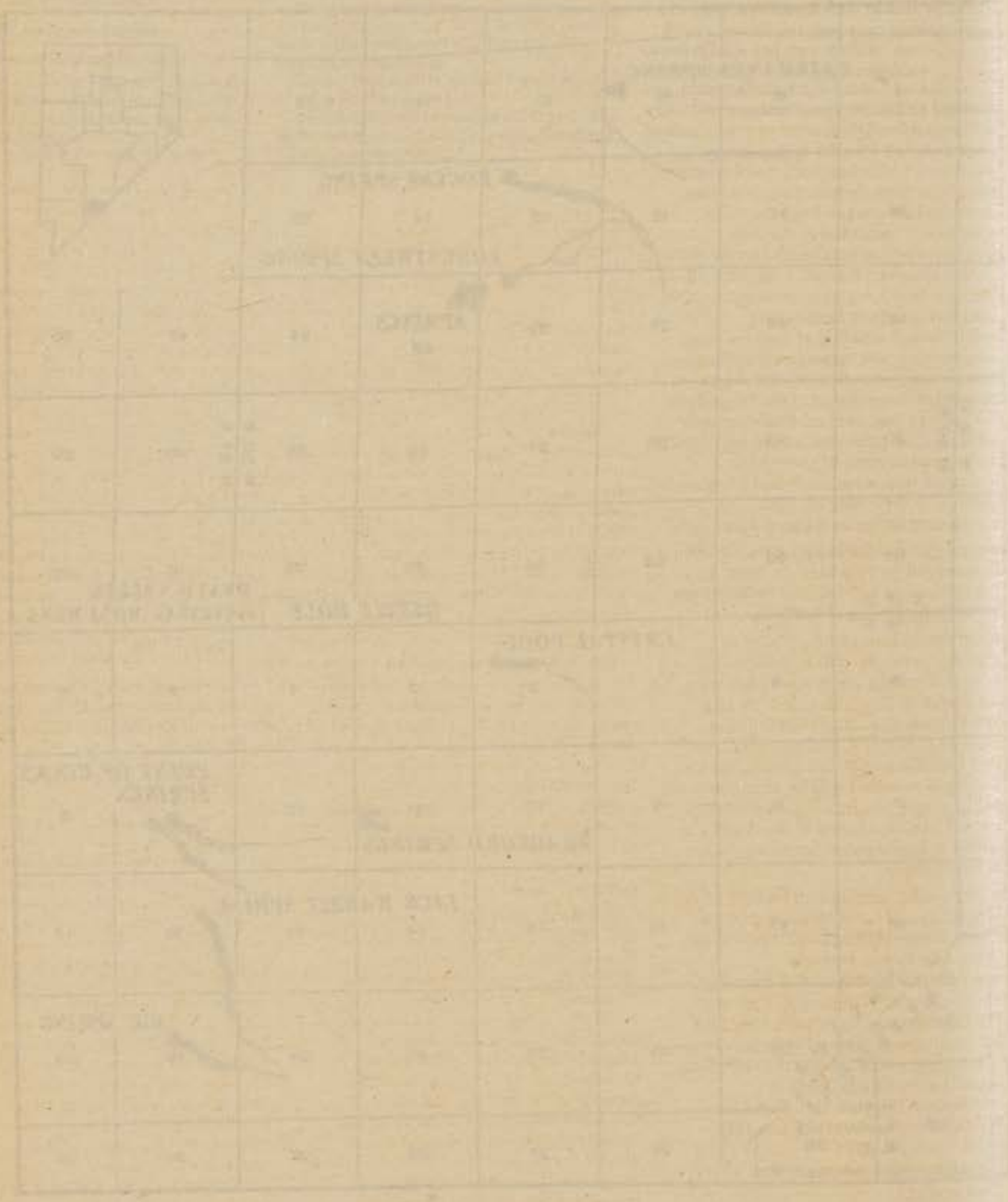

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants: Proposed Endangered Status and Critical Habitats for Two Fish Species in Ash Meadows, Nev.

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Service proposes to determine the Ash Meadows speckled dace and Ash Meadows Amargosa pupfish to be Endangered species and to designate their Critical Habitats. This action is being taken because these species are restricted to the Ash Meadows region and groundwater basin in Nye County, Nevada, where they are facing intensifying threats. Imminent land development for housing subdivisions, clearing of land for road construction and agricultural purposes, pumping of groundwater, and diversion of surface flows threaten the integrity of the species' habitat and therefore their survival. The proposed action will result in the continuation of protective measures that were instituted for these species by their May 10, 1982, emergency listing as Endangered.

DATES: Comments from the public must be received by February 22, 1983. A public hearing will be held on February 11, 1983, beginning at 7:00 p.m.

ADDRESSES: Interested persons or organizations can obtain information from and submit written comments to the Regional Director, U.S. Fish and Wildlife Service, Lloyd 500 Building, Suite 1692, 500 N.E. Multnomah Street, Portland, Oregon 97232. Comments and materials received will be available for public inspection by appointment during normal business hours at the Service's Office of Endangered Species at the address above.

The public hearing will be held at the U.S. Bureau of Land Management Las Vegas District Office, 4765 West Vegas Drive, Las Vegas, Nevada.

FOR FURTHER INFORMATION CONTACT: Mr. Sanford R. Wilbur, U.S. Fish and Wildlife Service, Suite 1692, Lloyd 500 NE. Multnomah Street, Portland, Oregon 97232 (phone 503/231-6131) or Mr. John L. Spinks, Jr., Chief, Office of Endangered Species, U.S. Fish and Wildlife Service, Washington, D.C. 20240, (703) 235-2771.

SUPPLEMENTARY INFORMATION:

Background

The Ash Meadows Amargosa pupfish *(Cyprinodon nevadensis mionectes)* and Ash Meadows speckled dace *(Rhinichthys osculus nevadensis)* are found only in the Ash Meadows basin and require the integrity of its physical environment and maintenance of spring, surface, and subsurface flows for their survival. The Ash Meadows speckled dace was described as a full species *(Rhinichthys nevadensis)* by Gilbert (1893) based on material collected in 1891 (La Rivers, 1962). It was later designed a subspecies of *Rhinichthys osculus* by Hubbs and Miller (1948). *(Cyprinodon nevadensis) mionectes* was described by Miller (1948) based on specimens collected in 1937 and 1942.

An emergency rule published on May 10, 1982, listed these fishes as Endangered for a period lasting 240 days. This period of emergency listing expires on January 5, 1983. The present proposal of Endangered status for these species was delayed as a result of uncertainties concerning changes in listing procedures specified by the 1982 amendments to the Endangered Species Act. In addition, the Bureau of land Management (BLM) has been considering a land exchange that would have brought these habitats under BLM protection. At the present time it appears that a land exchange for all of PEC's land is no longer being considered. The uncertain status of this possible land exchange has delayed development of the economic analysis required for the present proposal of Endangered status and Critical Habitat.

The Ash Meadows region is a unique and diverse desert wetland located east of the Amargosa River. These wetlands are maintained by flow from several dozen springs and seeps which are fed by an extensive groundwater system which extends more than 167 km northeast of Ash Meadows. Hundreds of plant and animal species, many of them endemic, are associated with these wetlands and depend upon them for survival.

The Ash Meadows Amargosa pupfish and Ash Meadows speckled dace are restricted to the large warmwater springs and related outflows of Ash Meadows. The pupfish inhabits the pools and outflows of Fairbanks, Rogers, Longstreet, Jack Rabbit, Big, and Point of Rocks Springs; Crystal Pool; three unnamed springs just southeast of Longstreet Spring; and the two westernmost springs of the Bradford Springs group. These springs are at elevations ranging from 655 to 700 m and are generally oriented along an imaginary line running 16 km from Fairbanks Spring to Big Spring. Water temperatures of the springs are consistently between 24° and 30° C. Flowing water of spring outflows is preferred by the speckled dace. Although formerly inhabiting much of the interconnected surface drainage in Ash Meadows, dace populations have been severely reduced and are now restricted to springs and outflows of Jack Rabbit Spring, Big Spring, and the two westernmost springs of the Bradford Spring group. A number of exotic species, such as mosquitofish and black mollies, have been introduced to these springs and compete with the native fishes.

Many other plant and animal species are endemic to Ash Meadows. The Service proposed the Ash Meadows turban snail *(Fluminicola erythropoma)* as Threatened on April 28, 1976 (41 FR 17742) this proposal was withdrawn on December 10, 1979 (44 FR 70796) as a result of the 1979 Amendments to the Endangered Species Act. Current evidence indicates that this species, as proposed, actually comprised more than one species. This area has an extraordinarily divise freshwater mollusk fauna, which is currently being studied by Dr. Dwight Taylor of Tiburon, California. Of special interest is the presence of two species flocks or complexes of snails which are found within a five mile radius in Ash Meadows and give Ash Meadows the highest concentration of endemic species in the United States. Most of these mollusk species have not been scientifically described and named.

The Point of Rocks Springs naucorid *(Ambrysus amargosus)* is an insect that has been recorded living only in Point of Rocks Springs.

A general notice of review on candidate plants in the December 15, 1980 **Federal Register** (45 FR 82479) included six species that are restricted to Ash Meadows. These species and their edaphic associations are as follows: The spring-loving centaury (*Centaurium namophilum* var. *namophilum)* is restricted to wet clay soils of spring areas and stream banks; the Amargosa niterwort (*Nitrophila mohavensis*) is only found on undisturbed, salt-encrusted, heavy alkaline mud flats in the Carson Slough area in Inyo County, California; the Ash Meadow gum plant (*Grindelina fraxino-pratensis*) occurs in small populations in relatively undisturbed moist to wet clay soils of spring areas and stream banks, and is often associated with the spring-loving centaury; the Ash Meadows stick-leaf (*Mentzelia leucophylla*) is associated

with desert washes in coarse-grained, water-sorted, alkaline soils; the Ash Meadows milk-vetch (*Astragalus phoenix*) occurs in washes and on flats and low knolls in fine-grained, clay-like soils; and corrugated sunray (*Enceliopsis nudicaulis* var. *corrugatum*) occupies strongly alkaline and often poorly drained soils in several localities. An additional species in that review, the tecopa birds-beak (*Cordylanthus tecopensis*), has a wider distribution that includes Ash Meadows.

Early homesteaders attempted to farm Ash Meadows using the free-flowing water from the springs for irrigation. These efforts failed because the salty, clay soils were not suitable for crops.

Agricultural practices in the late 1960s and early 1970s resulted in large tracts of land being plowed and the installation of groundwater pumps and diversion ditches to support a cattle-feed operation. These practices resulted in the destruction of many populations of plants and animals and their wetland habitats by alteration of the land surface and lowering of the water table. In 1976, the Supreme Court limited the amount of groundwater pumping in Ash Meadows to ensure sufficient water levels in the only known habitat of the Endangered Devil's Hole pupfish. The agricultural interests in Ash Meadows sold approximately 36 square km of land to a real estate developer, PEC, in 1977.

While the BLM is the principal landowner in Ash Meadows, PEC owns most of the surface water rights, which are currently designated for municipal use. Groundwater pumping would be required to develop and support municipal and agricultural activities. The imminent development and concomitant destruction of Ash Meadows by PEC may be avoided if an acceptable alternative can be devised with BLM to protect this fragile habitat. A possibility did exist whereby BLM would have exchanged land suitable for development in the Pahrump Valley (approximately 20 miles SE of Ash Meadows) for PEC's holding in Ash Meadows. Negotiations between FWS, BLM, and PEC proved fruitless: PEC found BLM lands in the Pahrump Valley unacceptable because of inadequate water supply.

The initial phase of construction, when completed would result in the destruction of Crystal Pool, Point of Rocks Spring and Jack Rabbit Springs and possibly lower the level of other springs by groundwater pumping. PEC's activities have already substantially altered surface flows and spring hole morphometry at these sites. The amount of land which would be altered for housing is unknown. PEC has recently constructed a multi-lane road which connects Ash Meadows at Point of Rocks Spring with Pahrump Valley, a connecting section of road (2 miles long and 80 feet wide) north of Jack Rabbit Springs, and a new road (1.5 miles long and 30 feet wide) east of Crystal Pool. In addition, approximately 1,000 acres of cotton have been planted west of Point of Rocks Spring. The terrestrial habitats of the Ash Meadows ecosytem are as fragile as the aquatic habitats. Many candidate plant species are dependent upon the unique hydrological characteristics of this basin and require undisturbed soils for sustenance and propagation.

Factors Affecting the Species:

The Service's listing regulations (50 CFR Part 424) provide for a review of the five factors below when listing (or reclassifying or delisting) a species (§ 424.11):

(A) The present or threatened destruction, modification, or curtailment of its habitat or range;

(B) Utilization for commercial, recreational, scientific, or educational purposes at levels that detrimentally affect it;

(C) Disease or predation;

(D) Absence of regulatory mechanisms adequate to prevent the decline of a species or degradation of its habitat; and

(E) Other natural or manmade factors affecting its continued existence.

These factors, and their application to the subject species, are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* The Ash Meadows Amargosa pupfish and the Ash Meadows speckled dace are endemic to the Ash Meadows basin and depend upon the integrity of this fragile ecosystem for their survival. These species require undisturbed flows from the extensive Ash Meadows basin aquifer. The imminent threat to their existence is the proposed development of Ash Meadows by PEC into a residential, recreational, industrial, and agricultural community. Construction activities will clear essential habitat, directly extirpate populations of these fishes, and alter surface drainage patterns. Human habitation will require great quantities of potable water. Utilization of surface outflows from springs and pumping of the aquifer will reduce or eliminate surface flows, lower the groundwater table, and interfere with groundwater recharge which will destroy down-gradient wetlands.

Diversion of spring outflows and pumping of spring holes and groundwater to provide water for the proposed development will destroy essential habitat of the Ash Meadows speckled dace and Ash Meadows Amargosa pupfish. Since all springs in this aquifer are intricately connected, drawdown at one location would affect water levels of many other springs. In addition, such alteration of surface flows will prevent migration to other suitable habitats and therefore prevent natural expansion of range or recolonization by these species.

To date, the outflow channels of Crystal Pool and King Pool (Point of Rocks Spring) have been modified to increase flows, resulting in the lowering of pool levels 1–1.5 feet and consequently decreasing riparian habitat. A significant area of land has already been altered by road construction in the vicinity of Crystal Pool and Point of Rocks and Jack Rabbit Springs.

Initial construction activities in late spring and summer of 1981 severely altered the watercourse of two springs (Point of Rocks and Bradford) and related spring hole morphometry; these activities severely reduced the populations of the Ash Meadows speckled dace and Ash Meadows Amargosa pupfish in Bradford Springs. Recent excavation of Fairbanks Spring by heavy equipment has apparently eliminated all but one pupfish.

Recent construction activities in Ash Meadows have continued the destruction of fish habitat that began with early agricultural activities. The Ash Meadows Amargosa pupfish has been extirpated in Bole, Deep, and Forest Springs. The Ash Meadows speckled dace has been extirpated from Forest, Fairbanks, Rogers, Longstreet, Tubbs, and Point of Rocks Springs, the easternmost spring of the Bradford Springs group, and Crystal Pool. The ranges of both the pupfish and the dace have been reduced from 1 mile to about 200 yards in the Bradford Springs outflow and from 3 miles to .5 mile in the Big Springs outflow. The range of the pupfish has been reduced from 6 miles to .5 mile of the Point of Rocks Springs outflow and from 2,000 acres to about 0.5 acre in the area of Fairbanks, Rogers and Longstreet Springs. Dace and pupfish populations were temporarily extirpated from Jack Rabbit Spring when the spring pool was pumped dry. Both the dace and pupfish populations are much reduced in most of the limited habitat that they still occupy. Both the pupfish and the dace have been eliminated from Carson Slough where draining, plowing, and mining have eliminated the fish habitat.

PEC's long-term development plans call for direct alteration of many of these springs with construction to progress in 3 phases in the following areas: Phase I—Crystal Pool; Phase II—Point of Rocks Spring; Phase III—Fairbanks Spring complex. The Nye County Commission has already approved Phases I and II, and work has begun. Further, PEC, as principal owner of water rights, has made application to the State of Nevada to divert water from many of the other Ash Meadows springs, which will destroy more riparian habitat. Groundwater pumping may seriously deplete water levels (directly and indirectly) upon which the fish species depend. In the past, pumping of groundwater from near by wells for agriculture has lowered the water level in Devil's Hole in Ash Meadows, which caused a severe decline in the population of the Endangered Devil's Hole pupfish; continued pumping could have caused the extinction of the species. In 1976 the U.S. Supreme Court ruled (*United States* v. *Cappaert et al.*) that a minimum water level must be maintained to protect the Devil's Hole pupfish. Devil's Hole is the most sensitive spring in Ash Meadows and the springs are interconnected. The impact of groundwater pumping from wells south of Devil's Hole appears to be greater than from those located in the north. Because agricultural and municipal activities require large volumes of water, and pumping of groundwater from the northern areas may be necessary to supplement flows from the south, it is expected that the proposed development by PEC will create a demand for water throughout Ash Meadows.

Introduction of exotic fish and other aquatic species which compete with or prey upon native species have caused the extinction of the Ash Meadows killifish *(Empetrichthys merriami)* and reduced or extirpated other native fish population. Continued modification of habitat by construction activity can only exacerbate this problem.

B. *Overutilization for commercial, recreational, scientific or educational purposes.* Although taking endangered wildlife is prohibited, these activities could affect the tenuous existence of these fishes. If these species are not accorded Endangered status under the regular listing process, protection would cease leading to potential threat from taking.

C. *Disease or predation.* Numerous exotic organisms have been introduced into springs in Ash Meadows. Some of these exotics including largemouth bass *(Micropterus salmoides)*, crayfish *(Procambarus clarki)*, and bullfrogs (Rana catesbeiana), prey on the Ash Meadows Amargosa pupfish and the Ash Meadows speckled dace. Large mouth bass have been introduced into Crystal Reservior and have subsequently gained access to Crystal Pool and its outflow. Crayfish and bullfrogs are common inhabitants in many springs and have significantly contributed to ther decline of the Ash Meadows pupfish (La Rivers, 1962, Miller, 1948).

D. *The inadequacy or existing regulatory mechanisms.* No permanent regulations exist to protect the two species of fish included in this rule. The existing emergency regulations will expire on January 5, 1983.

E. *Other natural or man-made factors affecting its continued existence.* The extremely small range and specialized habitats of these species make them especially vulnerable to all of the factors that adversely affect them.

Vandalism has been reported at a number of springs. Future acts of vandalism could cause the extinction of local populations of the fishes.

The Mexican mollie *(Poecilia mexicana)* and mosquitofish (*Gambusia affinis)* have been introduced into several Ash Meadows spring systems including Point of Rocks, Jack Rabbit, Big, and Bradford Spring and Crystal Pool. These (Deacon *et al.*, 1964) have replaced the pupfish and dace as the dominant species in the affected springs. Exotic snails have also become extablished in several springs where they compete with native fishes for food.

Critical Habitat

50 CFR part 424 defines "Critical Habitat" to include areas within the geographical area occupied by the species at the time the species is listed which are essential to the conservation of the species and which may require special management considerations or protection and specific areas outside the geographic area occupied by the species at the time, upon a determination by the Secretary that such areas are essential for the conservation of the species.

Proposed Critical Habitat for the Ash Meadows speckled dace is as follows:

Nevada, Nye County: Each of the following spring and outflows plus surrounding land areas for a distance of 50 meters from the springs and outflows:

Bradford Springs in Section 11, T. 18 S., R 50 E., and their outflows for a distance of 300 meters from the springs.

Jack Rabbit Spring and its outflows flowing southwest to the boundary between Section 24 in T. 18 S., R. 50 E. and Section 19, T. 18 S., R. 51 E.

Big Springs and its outflow to the boundary between Section 19, T. 18 S, R. 51 E. and Section 24, T. 18 S., R. 50 E.

Proposed Critical Habitat for the Ash Meadows Amargosa pupfish is as follows:

Nevada, Nye County: Each of the following springs and outflows plus surrounding land areas for a distance of 50 meters from these springs and outflows:

Fairbanks Spring and its outflow to the boundary between Sections 9 and 10, T. 17 S., R. 50 E.

Rogers Spring and its outflow to the boundary between Sections 15 and 16, T. 17 S., R. 50 E.

Longstreet Spring and its outflow to the boundary between Sections 15 and 22, T. 17 S., R. 50 E.

Three unnamed springs in the northwest corner of Section 23, T. 17 S., R. 50 E. and each of their outflows for a distance of 75 meters from the spring.

Crystal Pool and its outflow for a distance of 400 meters from the pool.

Bradford Springs in Section 11, T. 18 S., R. 50 E., and their outflows for a distance of 300 meters from the springs.

Jack Rabbit Spring and its outflow southwest to the boudary between Section 24, in T. 18 S., R. 50 E. and Section 19, T. 18 S., R. 51 E.

Big Spring and its outflow to the boundary between Section 19, T. 18 S., R. 51 E. and Section 24, T. 18 S., R. 50 E.

Point of Rocks Springs and their entire outflows within Section 7, T. 18 S., R. 51 E.

These Critical Habitats include the springs and associated outflows that are the sole remaining habitat for these fishes. The Critical Habitats also include land areas immediately surrounding these aquatic land areas. These land areas provide vegetative cover that contributes to providing the uniform water conditions preferred by the pupfish and dace and provides habitat for insects and other invertebrates which constitute a substantial portion of their diet.

The activities that may adversely modify these Critical Habitats are described in the "Factors Affecting the Species" section of this proposed rule.

Effect of This Proposal if Published as a Final Rule

Endangered Species regulations already published in Title 50, § 17.21 of the Code of Federal Regulations, set forth a series of general prohibitions and exceptions which apply to all Endangered species. These prohibitions, in part, would make it illegal for any person subject to the jurisdiction of the United States to take, import or export,

ship in interstate commerce in the course of a commercial activity, or sell or offer for sale these species in interstate or foreign commerce. It also would be illegal to possess, sell, deliver, carry, transport, or ship any such wildlife which was illegally taken. Certain exceptions would apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving Endangered species under certain circumstances. Regulations governing permits are at 50 CFR 17.22 and 17.23. Such permits are available for scientific purposes or to enhance the propagation or survival of the species. In some instances, permits may be issued during a specified period of time to relieve undue economic hardship which would be suffered if such relief were not available.

This rule, by extending the protection provided by the emergency rule, would allow the threat of development by PEC to be met by enforcement action undertaken through Section 9 of the Endangered Species Act or civil injunction should such development jeopardize the existance of the fish. Alteration of the water levels in habitats supporting these species would likewise be countered by enforcement efforts.

If published as a final rule this proposal would require Federal agencies not only to insure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of the Ash Meadows Amargosa pupfish and the Ash Meadows speckled dace, but also requires them to insure that their actions do not result in the destruction or adverse modification of Critical Habitats. Provisions for Interagency Cooperation are codified at 50 CFR Part 402.

Subsection 4(b)(8) of the Act requires that, to the maximum extent practicable, any proposal to determine Critical Habitat be accompanied by a brief description and evaluation of those activities which in the opinion of the Secretary many adversely modify such habitat if undertaken or may be impacted by such designation. Activities that may adversely affect these Critical Habitats include the activities carried out and planned by PEC that would modify the springs and their outflows, disturb the land areas immediately surrounding these habitats, or draw down the water table to the extent that spring flows are reduced.

Subsection 4(b)(4) requires the Service to consider economic and other impacts of specifying a particular area as Critical Habitat. Listing these species as Endangered does not specifically preclude in their entirety housing, commercial, intensive agricultural, or industrial development in Ash Meadows. Full protection of the two fish species may preclude a portion of the proposed PEC development; however, much of their proposed development is already precluded by the extent of their water ownership. The exact extent of possible water conflict is presently unknown.

At the time of formulation of the Determination of Effects, a Critical Habitat of 2,960 acres was expected. The presently proposed Critical Habitat is approximately 200 acres. It is believed, based on the best scientific and commercial data available, further reduction might result in the extinction of the species.

The Bureau of Land Management (BLM) has jurisdiction over two springs (Big and Jack Rabbit) that are included in these Critical Habitats Present BLM activities are consistent with the conservation of these fish and therefore will not be affected by this proposed action.

The Service is notifying Federal agencies that may have jurisdiction over the land and water under consideration in this proposed action. These Federal agencies and other interested persons or organizations are requested to submit information on economic or other impacts of this proposed action.

Public Comments Solicited

The service intends that the rules finally adopted will be as accurate and effective as possible in the conservation of any Endangered or Threatened species. Therefore, any comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, private interests, or any other interested party concerning any aspect of these proposed rules are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial, or other relevant data concerning any threat (or the lack thereof) to the species included in this proposal;

(2) The location of and the reasons why any habitat of these species should or should not be determined to be Critical Habitat as provided for by Section 7 of the Act.

(3) Additional information concerning the range and distribution of these species.

(4) Current or planned activities which may adversely modify the subject areas which are being considered for Critical Habitat; and

(5) The foreseeable economic and other impacts of the Critical Habitat designations on federally funded or authorized projects.

A public hearing on this action will be held on February 11, 1983 beginning at 7:00 p.m. at the U.S. Bureau of Land Management Las Vegas District Office, 4765 West Vegas Drive, Las Vegas, Nevada.

National Environmental Policy Act

A draft environmental assessment has been prepared in conjunction with this proposal. It is on file in the Service's Office of Endangered Species, 1000 North Glebe Road, Arlington, Virginia, and may be examined by appointment during regular business hours. A determination will be made at the time of a final rulemaking as to whether this is a major Federal action which would significantly affect the quality of the human environment within the meaning of Section 102(2)(c) of the National Environmental Policy Act of 1969 (40 CFR Parts 1500–1508).

Primary Author: The primary author of these proposed rules is Steven M. Chambers, Office of Endangered Species, U.S. Fish and Wildlife Service, Washington, D.C. 20240. Phone: 703/235–1975.

Authority: This proposal is being published under the authority contained in the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*; 96 Stat. 1411).

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List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Regulations Promulgation

Accordingly, It is proposed to amend § 17.11(h), Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, by adding the following two entries alphabetically to the table (h) * * * under the heading "Fishes" as set forth below.

§17.11 Endangered and threatened Wildlife

* * * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
* * *	*	*	*	*	*	*	*
Fishes: * * *	*	*	*	*	*	*	*
Dace, Ash Meadows speckled.	*Rhinichtys osculus nevadensis.*	U.S.A. (NV).	Entire	E		17.95(e)	NA.
* * *	*	*	*	*	*	*	*
Pupfish, Ash Meadows Amargosa.	*Cyprinodon nevadensis mionectes.*	U.S.A. (NV).	Entire	E		17.95(e)	NA
* * *	*	*	*	*	*	*	*

§ 17.95 [Amended]

2. It is further proposed that § 17.95(e), Fishes, be amended by adding Critical Habitat of the Ash Meadows speckled dace after that of the spotfin club as follows:

Ash Meadows Speckled Dace

(Rhinichtys osculus nevadensis)

Nevada, Nye County: Each of the following springs and outflows plus surrounding land areas for a distance of 50 meters from these springs and outflows:

Bradford Springs in Section 11, T. 18 S., R. 50 E., and their outflows for a distance of 300 meters from the springs.

Jack Rabbit Spring and its outflow flowing southwest to the boundary between Section 24 in T. 18 S., R. 50 E. and Section 19, 18 S., R. 51 E.

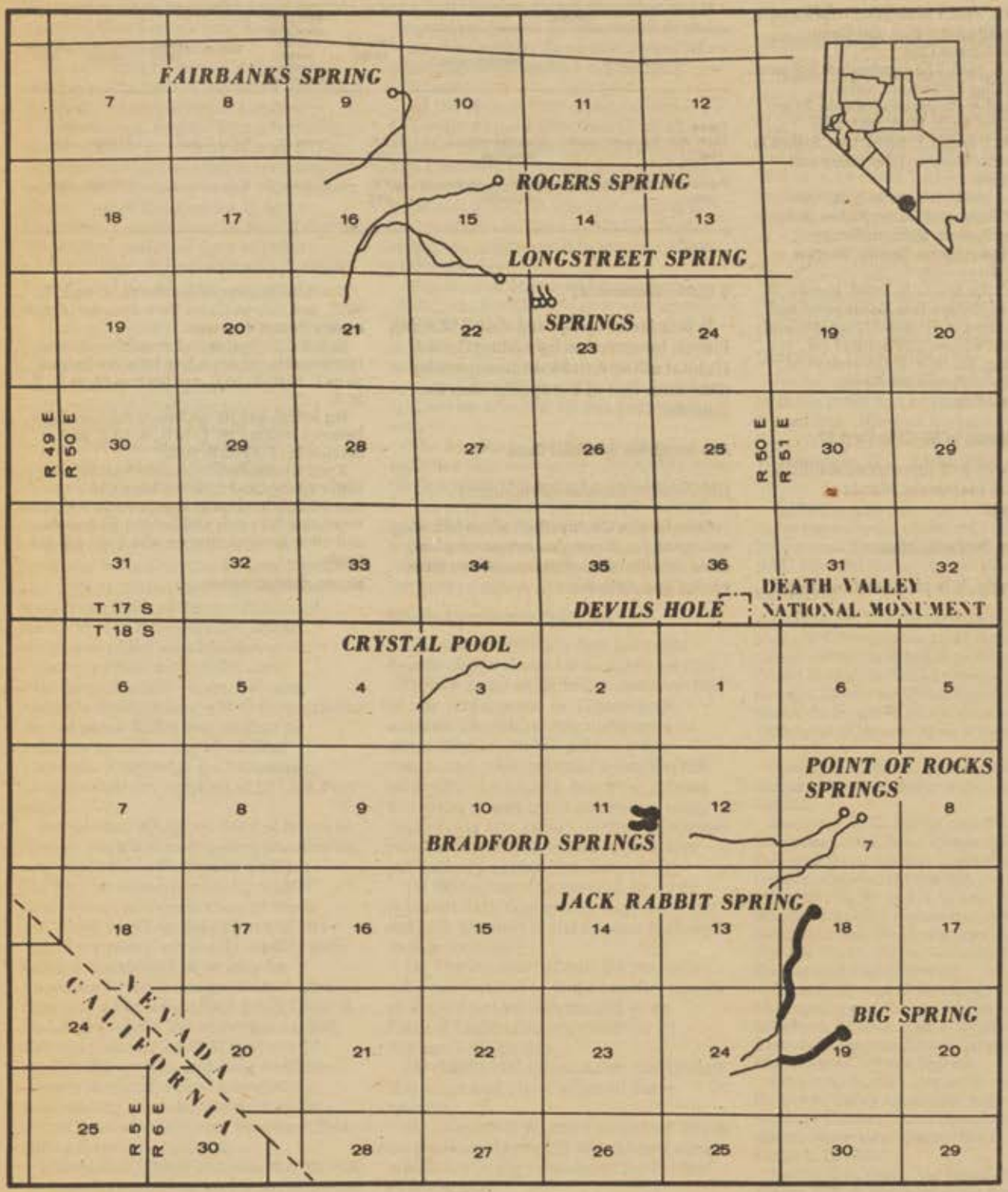
Big Spring and its outflow to the boundary between Section 19, T. 18 S., R. 51 E. and Section 24, T. 18 S., R. 50 E.

Known constituent elements include warm-water springs and their outflows and surrounding land areas that provide vegetation for cover and habitat for insects and other invertebrates on which the species feeds.

BILLING CODE 4310-55-M

ASH MEADOWS SPECKLED DACE

Nye County, NEVADA



BILLING CODE 4310-55-C

3. It is further proposed that Section 17.95(e), Fishes, be amended by adding Critical Habitat of the Ash Meadows Amargosa pupfish after that of the leopard darter as follows:

Ash Meadows Amargosa Pupfish

(Cyprinodon nevadensis mionectes)

Nevada. Nye County: Each of the following springs and outflows plus surrounding land areas for a distance of 50 meters from these springs and outflows:

Fairbanks Spring and its outflow to the boundary between Sections 9 and 10, T. 17 S., R. 50 E.

Rogers Spring and its outflow to the boundary between Sections 15 and 16, T. 17 S., R. 50 E.

Longstreet Spring and its outflow to the boundary between Sections 15 and 22, T. 17 S., R. 50 E.

Three unnamed springs in the northwest corner of Section 23, T. 17 S., R. 50 E., and each of their outflows for a distance of 75 meters from the spring.

Crystal Pool and its outflow for a distance of 400 meters from the pool.

Bradford Springs in Section 11, T. 18 S., R. 50 E., and their outflows for a distance of 300 meters from the springs.

Jack Rabbit Spring and its outflow flowing southwest to the boundary between Section 24, T. 18 S., R. 50 E. and Section 19, T. 18 S., R. 51 E.

Big Spring and its outflow to the boundary between Section 19, T. 18 S., R. 51 E. and Section 24, T. 18 S., R. 50 E.

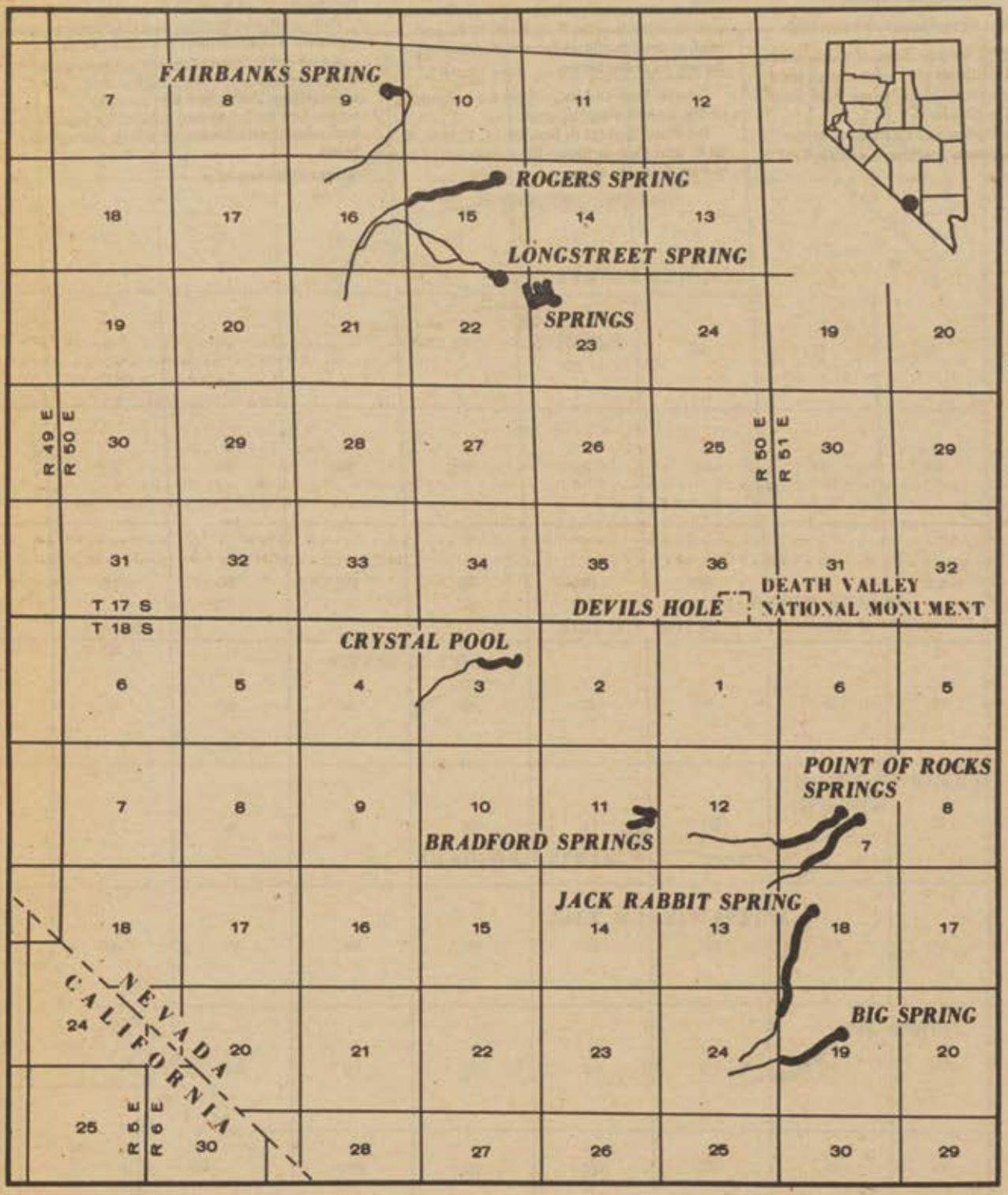
Point of Rocks Springs and their entire outflows within Section 7, T. 18 S., R. 51 E.

Know constituent elements include warm-water springs and their outflows and surrounding land areas that provide vegetation for cover and habitat for insects and other invertebrates on which this species feeds.

BILLING CODE 4310-55-M

ASH MEADOWS AMARGOSA PUPFISH

Nye County, NEVADA



BILLING CODE 4310-55-C

Dated: December 7, 1982.

J. Craig Potter,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 83-305 Filed 1-4-83; 8:45 am]

BILLING CODE 4310-55-M

federal register

Wednesday
January 5, 1983

Part IV

Environmental Protection Agency

National Primary and Secondary Ambient Air Quality Standards; Hydrocarbons

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 50

[Docket Number OAQPS A-80-60; AD-FRL-1983-5]

National Primary and Secondary Ambient Air Quality Standards

AGENCY: Environmental Protection Agency.

ACTION: Final rulemaking.

SUMMARY: As a result of the review of the hydrocarbon criteria, EPA revokes the primary (health) and secondary (welfare) national ambient air quality standards (NAAQS) for hydrocarbons. The rule (40 CFR 50.10) has been found to be technically inadequate. The intended effect of this revocation is to eliminate unnecessary regulations pertaining to ambient air quality.

EFFECTIVE DATE: This action is effective January 5, 1983.

ADDRESSES: A docket (Number OAQPS A-80-60) containing information used by EPA in revising the standards is available for public inspection and copying between 8:00 a.m. and 4:30 p.m., Monday through Friday at EPA's Central Docket Section, West Tower Lobby, Gallery I, Waterside Mall, 401 M Street, S.W., Washington, D.C. A reasonable fee may be charged for copying. The final review document on hydrocarbons, *Review of Criteria for Vapor-Phase Hydrocarbons*, EPA-600/8-80-45 (August 1980) is now available from: U.S. Department of Commerce, National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161. (PB 82-136516; A14 paper, $24; A01 micro, $4).

FOR FURTHER INFORMATION CONTACT: Dr. David McKee, Ambient Standards Branch, Strategies and Air Standards Division, Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, Telephone: (919) 541-5655 (FTS 629-5655).

SUPPLEMENTARY INFORMATION: On May 8, 1981, EPA proposed to revoke the NAAQS for hydrocarbons (46 FR 25655). The proposal notice set forth the rationale for revoking the standards and detailed background information relating to the proposal.

Prior to proposal, EPA solicited public comments on a draft document, initially entitled *Facts and Issues Relating to the Need for a Hydrocarbon Criteria Document*. The final version of the document, entitled *Review of Criteria for Vapor-Phase Hydrocarbons*, was published in connection with the proposal to revoke the standards. As discussed in the proposal notice, the hydrocarbons review document was also discussed at a public meeting of the Clean Air Scientific Advisory Committee (CASAC) of EPA's Science Advisory Board on March 17, 1980 in Washington, D.C. At that meeting, CASAC members concluded that hydrocarbons, as a class, do not cause adverse health or welfare effects at or near ambient levels.

Summary of Rationale for Revocation of Primary and Secondary Standards

As more fully discussed in the proposal notice, the NAAQS for hydrocarbons are unique among the seven pollutants or classes of pollutants for which NAAQS have been established in the following respects: (1) The NAAQS were not based on direct health or welfare effects of hydrocarbons, either singly or as a class; (2) the NAAQS were intended to serve solely as a guide in helping States determine the extent of hydrocarbon emission reductions necessary for attainment of the original NAAQS for photochemical oxidants; and (3) they were not intended to have the same regulatory status and functions as other NAAQS. For these reasons, no State Implementation Plans for attainment of NAAQS for hydrocarbons have been required and only limited monitoring of ambient non-methane hydrocarbons has been required.

EPA's recent review of hydrocarbon criteria indicated that although hydrocarbons in ambient air are major precursors to ozone and other photochemical oxidants, no consistent quantitative relationship exists nationwide between ambient air ozone concentrations and hydrocarbon air quality levels. Accordingly, the original basis for the NAAQS for hydrocarbons can no longer serve to justify retaining them as a guide for attainment of the ozone standards.

A review of the literature since 1970 has confirmed that hydrocarbons, as a class, do not appear to cause adverse health or welfare effects at the present ambient air levels. Thus, there is presently no direct health or welfare basis for retaining the NAAQS for hydrocarbons. Nonetheless, hydrocarbons should continue to be controlled or restricted because of their contribution to the formation of ozone and the resultant health and welfare effects of this pollutant and other photochemical oxidant products. Specific hydrocarbons which are shown to cause adverse effects can be regulated separately.

Summary of Comments Received

Only fifteen comments have been received on the proposal to revoke the NAAQS for hydrocarbons, all of which supported the proposed action.

Final Action

For the reasons stated above and in the notice of proposed rulemaking published on May 8, 1981, EPA has decided to revoke the NAAQS for hydrocarbons. Because this action relieves a restriction, it will take effect immediately upon publication. As discussed in the proposal notice, this action will not restrict EPA or state authority to regulate emissions of hydrocarbons as a class, particular hydrocarbon compounds, or any other volatile organic compounds that may be found to pose a threat to public health or welfare, and it does not alter current monitoring requirements.

Regulatory Impact

Under Executive Order 12291, EPA must judge whether a regulation is "Major" and, therefore, subject to the requirement of a Regulatory Impact Analysis. This action is *not* major because it involves revocation of a standard or guide, which itself has required only limited regulatory costs. Revocation will result in no increased regulatory costs. Revocation is also expected to have no effect on competition, employment, investment, productivity, innovation, or the competitive ability of United States-based enterprises.

EPA has also determined that this action will not have an economic impact on small entities. Accordingly, the Agency has determined that the preparation of a regulatory flexibility analysis, as defined by the Regulatory Flexibility Act, Pub. L. 96-354, 5 U.S.C. 601-602, is unnecessary.

This notice was submitted to the Office of Management and Budget (OMB) for review under Executive Order 12291.

List of Subjects in 40 CFR Part 50

Air pollution control, Carbon monoxide, Hydrocarbons, Ozone, Sulfur oxides, Particulate matter, Nitrogen dioxide, Lead.

Dated: December 29, 4982.

John W. Hernandez,

Acting Administrator.

PART 50—NATIONAL PRIMARY AND SECONDARY AMBIENT AIR QUALITY STANDARDS

For the reasons set forth in the preamble, EPA amends Title 40, Chapter

I, Part 50, of the Code of Federal Regulations as follows:

1. The authority citation for Part 50 is revised to read as follows:

Authority: Sec. 109, Clean Air Act, as amended 42 U.S.C. 7409.

2. The table of contents for Part 50 is amended by revising the entry for § 50.10 to read as follows:

Sec.

* * * * *

50.10 [Reserved]

* * * * *

3. Section 50.10 is removed and reserved.

§ 50.10 [Removed and Reserved]

[FR Doc. 83-180 Filed 1-4-83; 8:45 am]
BILLING CODE 6560-50-M

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Vol. 48, No. 3

Wednesday, January 5, 1983

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The following agencies have agreed to publish all documents on two assigned days of the week (Monday/Thursday or Tuesday/Friday). This is a voluntary program. (See OFR NOTICE 41 FR 32914, August 6, 1976.) Documents normally scheduled for publication on a day that will be a Federal holiday will be published the next work day following the holiday.

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DOT/FHWA	USDA/SCS		DOT/FHWA	USDA/SCS
DOT/FRA	MSPB/OPM		DOT/FRA	MSPB/OPM
DOT/MA	LABOR		DOT/MA	LABOR
DOT/NHTSA	HHS/FDA		DOT/NHTSA	HHS/FDA
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Last Listing December 28, 1982