

Selected Subjects

Friday
January 24, 1986

Selected Subjects

- Air Pollution Control**
Environmental Protection Agency
- Aliens**
Employment and Training Administration
- Animal Diseases**
Animal and Plant Health Inspection Service
- Communications Common Carriers**
Federal Communications Commission
- Endangered and Threatened Species**
Fish and Wildlife Service
- Fuel Economy**
National Highway Traffic Safety Administration
- Health Insurance**
Defense Department
- Income Taxes**
Internal Revenue Service
- Labeling**
Alcohol, Tobacco and Firearms Bureau
- Marketing Agreements**
Agricultural Marketing Service
- Motor Vehicle Safety**
National Highway Traffic Safety Administration
- Postal Service**
Postal Service

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Selected Subjects

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Surface Mining

Surface Mining Reclamation and Enforcement Office

Securities

Securities and Exchange Commission

U.S. Constitution Bicentennial

Bicentennial of the United States Constitution
Commission

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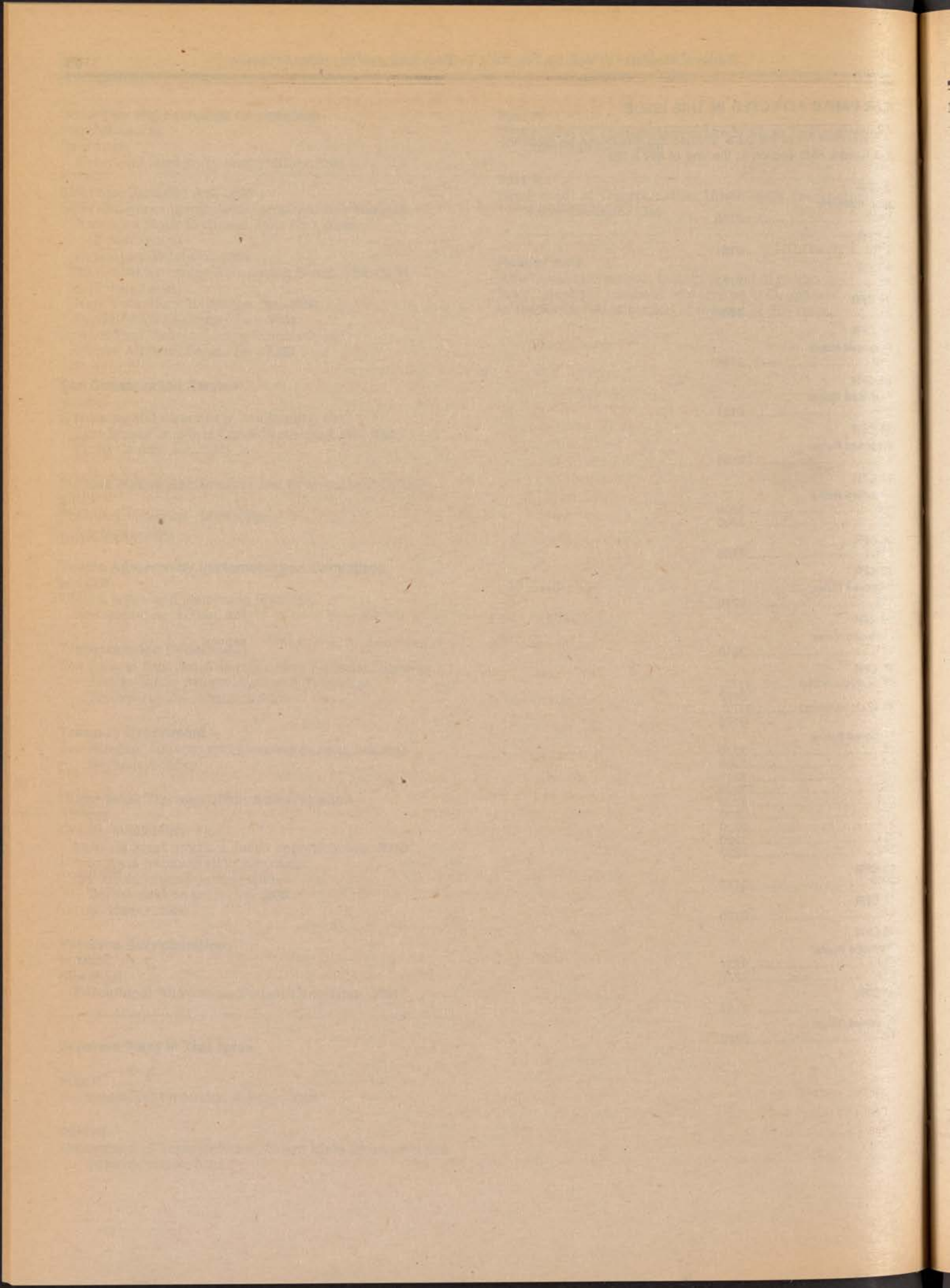
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Proclamation 5432 of January 21, 1986

The President

National Jaycee Week, 1986

By the President of the United States of America

A Proclamation

Nowhere has the spirit of voluntarism shone more brightly than among the members of the United States Jaycees and its affiliated State and local organizations. Currently numbering more than 268,000 members and more than 6,500 chapters in 50 States, Jaycees have actively involved themselves in the life of our communities by providing leadership, rendering services, and returning the biblical hundredfold in a variety of endeavors. Their noteworthy contributions include such humanitarian projects as assistance to the elderly, fundraising for the disadvantaged, cardiopulmonary resuscitation programs, energy conservation, and countless other efforts to address community needs.

The heart and soul of the Jaycee philosophy may be found in its brief 65-word Creed:

"We believe:

That faith in God gives meaning and purpose to human life;

That the brotherhood of man transcends the sovereignty of nations;

That economic justice can best be won by free men through free enterprise;

That government should be of laws rather than of men;

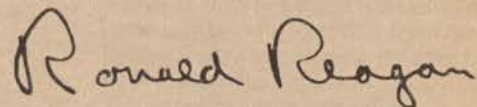
That earth's great treasure lies in human personality;

And that service to humanity is the best work of life."

In recognition of the accomplishments of the United States Jaycees, the Congress of the United States, by Senate Joint Resolution 213, has designated the week beginning January 19, 1986, as "National Jaycee Week" and authorized and requested the President to issue a proclamation in observance of this event.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby designate the week beginning January 19, 1986, as National Jaycee Week, and I call upon the people of the United States to observe that period with appropriate programs, ceremonies, and activities.

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



Federal Documents

Washington, D.C. January 12, 1952

Federal Reserve Bank, New York

Dear Sirs:

Reference is made to your letter of January 10, 1952, regarding the proposed amendments to the Federal Reserve Act, 12 U.S.C. 217, 218, and 219, which are contained in the bill (H.R. 10000) introduced in the House of Representatives on January 8, 1952.

The bill provides for the elimination of the Federal Reserve Board's authority to issue regulations under the Federal Reserve Act, 12 U.S.C. 217, 218, and 219, and for the transfer of this authority to the Federal Reserve Bank of New York. The bill also provides for the elimination of the Federal Reserve Board's authority to issue regulations under the Federal Reserve Act, 12 U.S.C. 217, 218, and 219, and for the transfer of this authority to the Federal Reserve Bank of New York.

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*Respectfully,
D. Paul Hayes*

Rules and Regulations

Federal Register

Vol. 51, No. 16

Friday, January 24, 1986

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 907

[Navel Orange Reg. 623]

Navel Oranges Grown in Arizona and Designated Part of California; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: Regulation 623 establishes the quantity of California-Arizona navel oranges that may be shipped to market during the period January 24 through January 30, 1986. Such action is needed to provide for the orderly marketing of fresh navel oranges for the period specified due to the marketing situation confronting the orange industry.

EFFECTIVE DATE: Regulation 623 (§ 907.923) is effective for the period January 24-30, 1986.

FOR FURTHER INFORMATION CONTACT: Ronald L. Cioffi, Acting Chief, Marketing Order Administration Branch, F&V, AMS, USDA, Washington, D.C. 20250, telephone: 202-447-5053.

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

This rule is issued under Order No. 907, as amended (7 CFR Part 907), regulating the handling of navel oranges grown in Arizona and designated part of California. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674). This action is based upon the recommendation and information submitted by the Navel Orange Administrative Committee and upon

other available information. It is hereby found that this action will tend to effectuate the declared policy of the act.

This action is consistent with the marketing policy for 1985-86 adopted by the Navel Orange Administrative Committee. The committee met publicly on January 21, 1986, at Visalia, California, to consider the current and prospective conditions of supply and demand and recommended a quantity of navel oranges deemed advisable to be handled during the specified week. The committee reports that the market for fresh navel oranges remains steady. The regulation is needed to continue providing stability in the market and promote orderly marketing.

It is further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking, and postpone the effective date until 30 days after publication in the *Federal Register* (5 U.S.C. 553), because of insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared policy of the act. To effectuate the declared purposes of the act, it is necessary to make this regulatory provision effective as specified, and handlers have been apprised of such provision and the effective time.

List of Subjects in 7 CFR Part 907

Marketing agreements and orders, California, Arizona, Oranges (Navel).

1. The authority citation for 7 CFR 907 continues to read:

Authority: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

2. Section 907.923 Navel Orange Regulation 623 is hereby added to read:

§ 907.923 Navel Orange Regulation 623.

The quantities of navel oranges grown in California and Arizona which may be handled during the period January 24, 1986, through January 30, 1986, are established as follows:

- (a) District 1: 1,800,000 cartons;
- (b) District 2: Unlimited cartons;
- (c) District 3: Unlimited cartons;
- (d) District 4: Unlimited cartons.

Dated: January 22, 1986.

Joseph A. Gribbin,

Director, Fruit and Vegetable Division,
Agricultural Marketing Service.

[FR Doc. 86-1711 Filed 1-23-86; 8:45 am]

BILLING CODE 3410-02-M

Animal and Plant Health Inspection Service

9 CFR Part 92

[Docket No. 85-129]

Contagious Equine Metritis, Certificate Signature and Endorsement Requirements

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule.

SUMMARY: This document affirms the interim rule which amended the regulations concerning the return to the United States of certain horses which have been temporarily exported from the United States to any country affected with contagious equine metritis (CEM). The amendments clarify the requirements concerning signing or endorsing certain certificates required to accompany such horses upon their return to the United States.

EFFECTIVE DATE: January 24, 1986.

FOR FURTHER INFORMATION CONTACT:

Dr. Dan Sheesley, Import-Export Animals and Products Staff, VS, APHIS, USDA, Room 844AAA, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-8172.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR Part 92 (the regulations) regulate the importation into the United States of specified animals and animal products in order to prevent the introduction into the United States of various diseases, including contagious equine metritis (CEM). CEM is a venereal disease of horses that affects fertility and breeding.

A document published in the *Federal Register* on October 7, 1985 (50 FR 40801-40802), amended the regulations concerning the return to the United States of certain horses which have been temporarily exported from the United States to any country affected with contagious equine metritis (CEM). The amendments clarify the requirements concerning signing or endorsing certain certificates required to accompany such horses upon their return to the United States.

Comments were solicited for 60 days

after publication of the amendment. No comments were received. The factual situation which was set forth in the document of October 7, 1985, still provides a basis for the amendment.

Executive Order 12291 and Regulatory Flexibility Act

This rule is issued in conformance with Executive Order 12291 and has been determined to be not a major rule. The Department has determined that this rule will not have a significant annual effect on the economy; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will have no significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

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

The rule clarified certain regulations in Part 92. It has been determined that this clarification will have no impact on affected persons.

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

Executive Order 12372

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

Paperwork Reduction Act

In accordance with section 3507 of the Paperwork Reduction Act of 1980 (44 U.S.C. 3507), the information collection provisions that are included in this rule have been approved by the Office of Management and Budget (OMB) and have the OMB control number 0579-0069.

List of Subjects in 9 CFR Part 92

Animal diseases, Canada, Imports, Livestock and livestock products, Mexico, Poultry and poultry products, Quarantine, Transportation, Wildlife.

PART 92—IMPORTATION OF CERTAIN ANIMALS AND POULTRY AND CERTAIN ANIMAL AND POULTRY PRODUCTS; INSPECTION AND OTHER REQUIREMENTS FOR CERTAIN MEANS OF CONVEYANCE AND SHIPPING CONTAINERS THEREON

Accordingly, the interim rule amending 9 CFR Part 92 which was published at 50 FR 40801-40802 on October 7, 1985, is adopted as a final rule.

Authority: 7 U.S.C. 1622; 19 U.S.C. 1306; 21 U.S.C. 102-105, 111, 134a, 134b, 134c, 134d, 134f, and 135; 7 CFR 2.17, 2.51, and 371.2(d).

Done at Washington, D.C., this 16th day of January 1986.

Gerald J. Fichtner,

Acting Deputy Administrator, Veterinary Services.

[FR Doc. 86-1528 Filed 1-23-86; 8:45 am]

BILLING CODE 3410-34-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 83-AWA-28]

Alteration of VOR Federal Airway V-181-South Dakota

Correction

In FR Doc. 85-30933 beginning on page 7 in the issue of Thursday, January 2, 1986, make the following correction: In the docket line of the heading, the docket number should appear as it does above.

BILLING CODE 1505-01-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 917

Approval of Permanent Program Amendments From the Commonwealth of Kentucky Under the Surface Mining Control and Reclamation Act of 1977

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

ACTION: Final rule.

SUMMARY: OSMRE is announcing the approval of program amendments submitted by Kentucky as modifications to the State's permanent regulatory program (hereinafter referred to as the Kentucky program) under the Surface

Mining Control and Reclamation Act of 1977 (SMCRA). The amendments were submitted on June 6, 1984, and pertain to existing policies that Kentucky has incorporated by reference into its regulations. The policy statements pertain to underground mines, water quality monitoring, incremental bonding, permanent impoundments, roads, steep slope variances reclamation deferrals, coal processing operations, and crushing and loading facilities, overlapping permits, transition permits, and withdrawal and maintenance of mining permit applications.

The amendments were submitted as emergency amendments but have since been replaced by superseding amendments that went through the regular Kentucky amendment process. The superseding amendments were submitted to OSMRE December 17, 1985. The regulations submitted to OSMRE on December 17, 1985 were identical in form and content to those submitted to OSMRE on June 6, 1984.

After providing for public comment and conducting a thorough review of the program amendments, the Director has determined that the amendments meet the requirements of SMCRA and the Federal regulations and is approving the amendments, with certain exceptions which will be discussed below. The Federal rules at 30 CFR Part 917 codifying decisions concerning the Kentucky program are being amended to implement these actions.

This final rule is being made effective immediately to expedite the State program amendment process and encourage States to conform their programs with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

EFFECTIVE DATE: January 24, 1986.

FOR FURTHER INFORMATION CONTACT: W. Hord Tipton, Director, Lexington Field Office, Office of Surface Mining Reclamation and Enforcement, 340 Legion Drive, Suite 28, Lexington, Kentucky 40504. Telephone: (606) 233-7327.

SUPPLEMENTARY INFORMATION:

I. Background

On December 30, 1981, Kentucky resubmitted its proposed regulatory program to OSMRE. The Kentucky program was conditionally approved by the Secretary of the Interior subject to the correction of 12 minor deficiencies. The approval was effective upon publication of the notice of conditional approval in May 18, 1982 Federal Register (47 FR 21404-21435).

Information pertinent to the general background, revisions, modifications, and amendments to the proposed permanent program submission, as well as the Secretary's findings, the disposition of comments and a detailed explanation of the conditions of approval of the Kentucky program can be found in the May 18, 1982 Federal Register.

Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 917.11, 30 CFR 917.15, 30 CFR 917.16 and 30 CFR 917.17.

II. Submission of Program Amendments

On June 6, 1984, Kentucky advised OSMRE of certain revisions to the Kentucky program. These modifications incorporate program guidance and policy statements issued by the Kentucky National Resources and Environmental Protection Cabinet (NREPC) into approved regulations of the Kentucky regulatory program.

Kentucky submitted the proposed amendment on June 6, 1984. OSMRE published a notice in the Federal Register on October 22, 1984 (49 FR 41262) announcing receipt of the amendment and inviting public comment on its adequacy. The public comment period ended November 21, 1984. The public hearing scheduled for November 16, 1984 was not held because no one requested an opportunity to testify.

The amendments were originally submitted as emergency amendments, but have since been superseded by non-emergency rules, which were submitted to OSMRE on December 17, 1985. The regulations submitted to OSMRE on December 17, 1985 were identical in form and content to those submitted to OSMRE on June 6, 1984.

III. Director's Findings

The Director finds, in accordance with SMCRA and 30 CFR 732.15 and 732.17, that the program amendments submitted by Kentucky on June 6, 1984 and December 17, 1985, meet the requirements of SMCRA and 30 CFR Chapter VII, with the exception of certain policy documents which are discussed below.

The regulations adopted by Kentucky incorporated by reference program guidance and policy statements issued by NREPC concerning statutory and regulatory requirements of the Kentucky program for the regulation of surface coal mining and reclamation operations. The program guidance and policy statements being made a part of the Kentucky program through this rulemaking were applicable during the transition period from the interim to

permanent regulatory program or are currently being utilized by NREPC in the implementation of the Kentucky program. In this regard, the material being incorporated by reference does not represent new requirements of the Kentucky program.

The program guidance documents and policy statements that are being approved for incorporation by reference as part of the regulation change, will be listed with a brief description of their contents.

Unless specifically stated in the findings below, all policy statements listed below are found to be consistent with the findings made by the Secretary and the Director in the approval of the Kentucky State regulatory program. Only the documents that are being disapproved will be discussed at length.

Since the submission of these amendments, Kentucky has been advised by OSMRE of required amendments to its program necessitated by Federal rule changes (Administrative Record No. KY-622). As the required amendments are submitted, it may be necessary for Kentucky to amend some of the program guidance documents and policy statements being incorporated by today's action. In those instances where Kentucky has already begun the process of amending its program in response to OSMRE's requirements the affected policy statements are noted in the discussion below. Therefore, the regulation changes and incorporations are approved as they apply to the approved Kentucky program. Changes may be required as Kentucky amends that program.

Title 405 KAR 1:015

Kentucky rule 405 KAR 1:015 pertains only to interim program permits and two-acre permits. The rule incorporates by reference the following Reclamation Advisory Memoranda (RAM) and Secretarial Order.

(1) RAM #10: "a) Existing Underground Coal Mines; Time Extension for Application for Permit, b) Supplemental Mine Map Required for Small Operators", March 1, 1979.

(2) RAM #14: "Reporting Results of Water Quality Monitoring," August 3, 1979.

(3) RAM #18: "Incremental Bonding," March 6, 1980.

(4) RAM #22: "Approval of Permanent Water Impoundments," May 8, 1980.

(5) RAM #23: "Retention of Roads," May 23, 1980.

(6) RAM #24: Also identified as #81-01, "AOC Variances on Steep Slopes," March 19, 1981.

(7) RAM #27: Also identified as #81-04, "Reclamation Deferments," April 29,

1981. A statement on page 3 under coal marketing problems indicates that such deferments may be given for a "single" period of six (6) months. Amendments submitted by NREPC on August 3, 1984 and modified on October 12, 1984 and approved by OSMRE on May 30, 1985 (50 FR 22999) provide that reclamation deferments may be renewed for additional six-month periods up to a maximum of 30 months.

(8) RAM #33: "Coal Processing Operations and Crushing and Loading Facilities," April 27, 1982. RAM #33 concerns coal processing operations and crushing and loading facilities and is dated April 27, 1982. The Director, in a previous action on September 17, 1985, disapproved this memorandum (50 FR 37656). The Director found that the RAM was less stringent than Section 701(28) of SMCRA and less effective than 30 CFR 700.5 and 701.5 insofar as it related to KRS 350.060(22) which the Director also disapproved in the same Federal Register notice. The Director found the RAM to be inconsistent with the Round I decision of the District Court in *In Re: Permanent Surface Mining Regulation Litigation II*, wherein the court held that facilities which in any way leach, chemically process or physically process coal should be regulated even when located away from the mine site and even if they do not separate coal from its impurities.

Kentucky has recently submitted a proposed amendment to its program which would render RAM #33 null and void (Administrative Record No. KY-680). This program amendment will be the subject of a separate rulemaking by OSM.

(9) RAM #56: "Overlapping Permits," December 1, 1982.

(10) RAM #75: "Permanent Program Performance Standards Take Effect March 16, 1984 on Transitioning Operations," March 12, 1984.

(11) RAM #78: "Departmental Policies: Withdrawal and Maintenance of Mining Permit Applications," April 23, 1984.

(12) Secretarial Order: "In Re: Steep Slope Remining," September 19, 1983.

The Director finds that Kentucky regulation Section 405 KAR 1:015 and the guidance documents and policy statements incorporated in the Kentucky program by adoption of the regulation with the exception of RAM # 33 discussed above are consistent with the findings issued by the Secretary and the Director in approving the Kentucky program. The incorporation of RAM # 33 into the Kentucky regulations is inconsistent with the decision made by

the Director on September 17, 1985 (50 FR 37656).

Title 405 KAR 3:015

Kentucky rule 405 KAR 3:015 also applies only to interim sites and two acre permits and incorporates by reference nine of the RAM's listed under 405 KAR 1:015. These RAM's are as follows: RAM #10, RAM #14, RAM #22, RAM #24, RAM #33, RAM #56, RAM #75, and RAM #78. The subject area and dates of issue for these RAM's are listed under the discussion of Title 405 KAR 1:015.

For the reasons stated under the findings on Title 405 KAR 1:015 the Director has previously disapproved RAM #33 insofar as it implements KRS 350.060(22) which the Director has also disapproved. The Director finds that Kentucky regulation Section 405 KAR 3:015 and the guidance documents and policy statements incorporated in the Kentucky program by adoption of the regulation are consistent with the findings issued by the Secretary and the Director in approving the Kentucky program with the exception of RAM #33 discussed previously.

Title 405 KAR 7:015

Kentucky rule 405 KAR 7:015 which applies to surface coal mining and reclamation operations under the Kentucky permanent regulatory program incorporates by reference 21 RAM's, and additional guidance documents, manuals and reference documents.

(1) RAM #33: "Coal Processing Operations and Crushing and Loading Facilities," April 27, 1982.

(2) RAM #35: "Permanent Program Transition Application," May 14, 1982.

(3) RAM #46: "Status Report on Transition Application Review," August 25, 1982.

(4) RAM #48: "Lands Unsuitable for Mining Program Information Resource Center," September 14, 1982.

(5) RAM #53: "Procedures and Priorities for Review of Transition Comprehensive Applications," November 17, 1982.

(6) RAM #55: "Initial Completeness Requirements for Transition Comprehensive Applications," December 1, 1982.

(7) RAM #56: "Overlapping Permits," December 1, 1982.

(8) RAM #57: "Applicant Changes to Transition Applications," December 1, 1982.

(9) RAM #58: "Priority I Deadline for Sediment Structure Compliance Demonstrations," February 14, 1983.

(10) RAM #62: "Extension of Priority II Technical Submission Date," April 12, 1983.

(11) RAM #63: "Submission of Sediment Structure Compliance Demonstration Data and Other Technical Data," April 22, 1983.

(12) RAM #64: "Certificate of Liability Insurance Update," June 10, 1983. Kentucky has recently submitted an amendment which would delete RAM #64 from 405 KAR 7:015 (Administrative Record No. KY-665). This program amendment will be the subject of a separate rulemaking by OSM.

(13) RAM #65: "Submission of Transitioned Application, Priority II, III, and IV Applications," June 10, 1983.

(14) RAM #66: "Submission of Sediment Pond Compliance Demonstrations for Priority I Transitioning Permits," August 5, 1983.

(15) RAM #68: "Submission of Priority II Data," September 23, 1983.

(16) RAM #72: "Submission of Technically Complete Applications, Priority III and IV," November 29, 1983.

(17) RAM #73: "Delayed Filing of Performance Bonds on Technically Acceptable Applications for Transitioning Permanent Program Permits," February 6, 1984.

(18) RAM #75: "Permanent Program Performance Standards Take Effect March 16, 1984 on Transitioning Operations," March 12, 1984.

(19) RAM #76: "Revision to RAM #73: Maximum Period of Bond Deferral Reduced from 5 Years to 3 Years," April 2, 1984.

(20) RAM #77: "Reinstatement of Small Operator Assistance," April 2, 1984.

(21) RAM #78: "Departmental Policies: Withdrawal and Maintenance of Mining Permit Applications," April 23, 1984.

(22) Technical Reclamation Memorandum (TRM) #1, "Existing Structures," October 22, 1982.

(23) TRM #9, "Revegetation Standards for Success," February 1, 1983.

(24) "Penalty Assessment Manual," July 1983.

(25) "Standard Methods for the Examination of Water and Wastewater," fourteenth edition, 1976. Prepared by American Public Health Association, American Water Works Association, and Water Pollution Control Federation.

(26) "Methods for Chemical Analysis of Water and Wastes," March 1979, U.S. Environmental Protection Agency.

(27) "Soil Taxonomy," Agriculture Handbook 436, 1975, U.S.D.A.—Soil Conservation Service.

(28) "Soil Survey Manual," Agriculture Handbook No. 18, 1951, U.S. Department of Agriculture.

(29) "ASTM STANDARD D388-77, Standard Specification for Classification of Coal by Rank," 1977, American Society for Testing and Materials.

(30) "Environmental Criteria for Electric Transmission Lines," 1970, U.S. Department of the Interior, U.S. Department of Agriculture.

(31) REA Bulletin 61-10, "Protection of Bald and Golden Eagles from Powerlines," 1972 U.S. Department of Agriculture.

(32) Technical Release No. 60, "Earth Dams and Reservoirs," 1976, U.S.D.A.—Soil Conservation Service.

(33) "Kentucky Standard and Specification for Ponds (378)", 1978 U.S. Soil Conservation Service.

(34) ANSI S1.4-1971 "Specification for Sound Level Meters," 1971, American National Standards Institute, Inc.

(35) AASHTO T99-74, "Standard Methods of Test for the Moisture-Density Relations of Soils using 5.5 lb. (2.5 Kg) Rammer and a 12 in. (305 mm) Drop," 1974, American Association of State Highway and Transportation Officials.

(36) Permit Application Review Procedure (PARP) #2, "Lands within 100 feet, measured horizontally, of a cemetery," April 18, 1983.

(37) PARP #6, "Advertising Schedule Variance," July 29, 1983.

(38) PAPER #11, "Condition of Issuance for Transitioning Underground Permits," November 15, 1983.

(39) Department Policy Memorandum #81-003, "Conflict of Interest," June 19, 1981.

For the reasons stated previously in this notice, the Director has disapproved RAM #33 insofar as it implements KRS 350.060(22) which the Director has also disapproved.

The Director finds that Kentucky regulation Section 405 KAR 7:015 and the guidance documents, policy statements and reference works incorporated in the Kentucky program by adoption of the regulation are consistent with the findings issued by the Secretary and Director in approving the Kentucky program with the exception of RAM #33.

IV. Disposition of Public Comments

Disclosure of Federal agency comments is made pursuant to SMCRA § 503(b) (1) and (2) and 30 CFR 732.17(h)(10)(i). Of the Federal agencies invited to comment, the Environmental Protection Agency, by telephone, responded that some of the technical methodology documents referenced in the Kentucky regulations have been replaced by more recent versions. OSMRE agrees with the comment made

by EPA. Kentucky will update appropriate technical document references in the course of its regulation review process currently underway.

Thomas J. FitzGerald, Attorney at law, submitted comments on behalf of the Kentucky Governmental Accountability Project of the Kentucky Resources Council, The Sierra Club, Cumberland Chapter, Joan and Mary DeBord, and Preston and Madaline Alexander.

Mr. FitzGerald stated that the commenters strongly object to incorporation of RAM #33 in the approved Kentucky program. He said that the RAM was in conflict with Judge Flannery's decision in Round I of *In Re: Permanent Surface Mining Regulation Litigation II*, because the RAM provides that crushing and screening facilities will be treated like loading facilities and regulated only if at or near the mine site. The commenter stated that the District Court in its Round I decision has ruled that coal crushing and screening facilities are clearly within the scope of "surface coal mining operations" as defined by SMCRA Section 701(28), and subject to regulation regardless of proximity to a mining operation.

The Director agrees with this observation and has previously disapproved RAM #33 (September 17, 1985, 50 FR 37656). Its incorporation in Kentucky's regulation has also been disapproved.

Comments were also submitted on behalf of the Kentucky Coal Association. The commenter said that OSMRE should not rule on any State program amendment until a final judgment is rendered in the courts of the federal regulations or until OSMRE promulgates new regulations. Except as noted in the Findings section of this notice the guidance documents and policy statements being incorporated by the Kentucky regulation changes are unaffected by recent court decisions on the revisions of the Federal regulations in 30 CFR Chapter VII. The incorporated material that has been utilized in the implementation of the approved Kentucky program does not reflect new requirements being incorporated in the Kentucky program but rather codifies existing policies and procedures. The commenter also stated that Kentucky should be required to publish the entire proposed regulation rather than be allowed to incorporate parts by reference, because such incorporation serves to confuse the regulated community and the public. Through its rulemaking process the NREPC afforded both the regulated community and the public the opportunity to comment on the revised Kentucky regulations and the material being incorporated in the

Kentucky program by reference. OSMRE has no requirement which would limit the incorporation of material by reference into State programs and cannot impose such a requirement on Kentucky.

V. Director's Decision

The Director, based on the above findings, is approving the amendments to the Kentucky program that were submitted to OSMRE on June 6, 1984 and December 17, 1985 with the exception of the incorporation by reference of RAM #33, "Coal Processing Operations and Crushing and Loading Facilities," April 27, 1982. The Director is amending Part 917 of 30 CFR Chapter VII to reflect approval of the above State program modifications.

VI. Additional Determinations

1. *Compliance with the National Environmental Policy Act:* The Secretary has determined that, pursuant to Section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. *Executive Order No. 12291 and the Regulatory Flexibility Act:* On August 28, 1981, the Office of Management and Budget (OMB) granted OSMRE an exemption from Sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a Regulatory Impact Analysis and regulatory review by OMB.

The Department of the Interior has determined that this rule 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.*). This rule will not impose any new requirements; rather, it will ensure that existing requirements established by SMCRA and the Federal rules will be met by the State.

3. *Paperwork Reduction Act:* This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 917

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Dated: January 16, 1986.

James W. Workman,

Deputy Director, Operations and Technical Services.

PART 917—KENTUCKY

30 CFR Part 917 is amended as follows:

1. The authority citation for Part 917 continues to read as follows:

Authority: Pub. L. 95-87, Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 *et seq.*).

2. 30 CFR Part 917.15 is amended by adding a new paragraph (n) as follows:

§ 917.15 Approval of regulatory program amendments.

(n) The following amendments submitted to OSMRE on June 6, 1984 and December 17, 1985, are approved effective January 24, 1986: Revisions to the Kentucky Administrative Regulations adding 405 KAR 1:015, 405 KAR 3:015 and 405 KAR 7:015 except the incorporation by reference of RAM #33 "Coal Processing Operations and Crushing and Loading Facilities," dated April 27, 1982 in 405 KAR 7:015.

[FR Doc. 86-1568 Filed 1-23-86; 8:45 am]

BILLING CODE 4310-05-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[A-10-FRL-2959-4]

Standard of Performance for New Stationary Sources; Delegation to the Oregon Department of Environmental Quality

AGENCY: Environmental Protection Agency (EPA).

ACTION: Delegation of authority.

SUMMARY: Section 111(c) of the Clean Air Act permits EPA to delegate to the States the authority to implement and enforce the standards set out in 40 CFR Part 60, Standards of Performance for New Stationary Sources (NSPS).

The Oregon Department of Environmental Quality (DEQ) on October 15, 1985, requested EPA to delegate to DEQ the authority to implement and enforce additional source categories for NSPS. EPA granted the request on dated December 4, 1985. DEQ now has the authority to enforce the additional source categories as approved in their OAR 340-25-510 to 690. This notice will amend the February 20, 1976, December 3, 1981, September 3, 1982, September 27, 1983, and October 12, 1984 and July 13, 1973 delegations.

EFFECTIVE DATE: December 4, 1985.

ADDRESSES: The relative material in support of this delegation may be examined during normal business hours at the following locations: Air Programs Branch (10A-85-19), Environmental Protection Agency, 1200 Sixth Avenue, Seattle, Washington 98101.

FOR FURTHER INFORMATION CONTACT: Mark H. Hooper, Air Programs Branch, M/S 532, Environmental Protection Agency, 1200 Sixth Avenue, Seattle, Washington 98101, Telephone: (206) 442-1949, FTS: 399-1949.

SUPPLEMENTARY INFORMATION: On November 11, 1975, the Regional Administrator of EPA, Region 10 delegated to the State of Oregon the authority to implement and enforce New Source Performance Standards (NSPS) for 13 categories of stationary source as promulgated by EPA prior to January 1, 1975. This delegation was published in the *Federal Register* on February 1, 1976. Additional delegations were made on December 3, 1981 (46 FR 62066), September 3, 1982 (47 FR 38982), September 27, 1983 (48 FR 46535) and October 12, 1984 (49 FR 40031).

DEQ in a letter dated October 15, 1985, requested additional delegation of seven source categories under NSPS. The letter granting this additional delegation of authority to DEQ was dated December 4, 1985, and is as follows:

Fred Hansen, Director, Department of Environmental Quality, P.O. Box 1760, Portland, Oregon 97207

Dear Mr. Hansen: On October 15, 1985, you requested that EPA extend the delegation of authority to enforce seven additional source categories under New Source Performance Standards (NSPS). We have reviewed that request and hereby delegate to ODEQ authority to enforce the following categories: Steel Plant Electric Air Furnaces and Argon-Oxygen Decarburization Vessels (Subpart AAa)

Lime Manufacturing Plants (Subpart HH)
Vinyl and Urethane Coating and Printing (Subpart FFF)

Leaks at Refineries (Subpart GGG)
Synthetic Fiber (Subpart HHH)
Petroleum Dry Cleaners (Subpart JJJ)
Fiberglass Insulation Plants (Subpart PPP)

This delegation is subject to the conditions outlined in the original letter of delegation dated November 11, 1975, and published in the *Federal Register* on February 20, 1976 (41 FR 7749).

A Notice announcing this delegation will be published in the *Federal Register* in the future. The Notice will state, among other things, that effective immediately, all reports required pursuant to the Federal NSPS from sources located in the State which were previously sent to EPA will now be sent to the State agency.

Since this delegation is effective immediately, there is no requirement that the

State notify EPA of its acceptance. Unless EPA receives from the State written notice of objection within 10 days of the date of receipt of this letter, the State will be deemed to have accepted all the terms of the delegation. In addition, EPA hereby delegates to DEQ the authority to enforce revisions to NSPS which have been promulgated through March 22, 1985.

An advance copy of this Register is enclosed for your information.

Sincerely,
Ernesta B. Barnes,
Regional Administrator.

Enclosure

This notice is being published to notify the public that a delegation of authority under NSPS has occurred.

(Section 110, Clean Air Act 42 U.S.C. 7410(a) and 7502)

List of Subjects in 40 CFR Part 60

Air pollution control, Aluminum, Ammonium sulfate plants, Cement industry, Coal, Copper, Electric power plants, Glass and glass products, Grains, Intergovernmental relations, Iron, Lead, Metals, Motor vehicles, Nitric acid plants, Paper and paper products industry, Petroleum, Phosphate, Sewage disposal, Steel sulfuric acid plants, Waste treatment and disposal, and zinc.

Dated: December 4, 1985.

Nora L. McGee,

Acting Regional Administrator.

[FR Doc. 86-1554 Filed 1-23-86; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Parts 60 and 61

[A-10-FRL-2906-2]

Standard of Performance for New Stationary Sources and National Emission Standards for Hazardous Air Pollutants; Delegation to the Washington Department of Ecology

AGENCY: Environmental Protection Agency (EPA).

ACTION: Delegation of authority.

SUMMARY: Section 111(c) and section 112(d) of the Clean Air Act permits EPA to delegate to the States the authority to implement and enforce the standards set out in 40 CFR Part 60, Standards of Performance for New Stationary Sources (NSPS), and Part 61, National Emission Standards for Hazardous Air Pollutants (NESHAP).

The State of Washington Department of Ecology (WDOE) on April 1, 1985, requested EPA to delegate to WDOE the authority to implement and enforce additional source categories for both NSPS and NESHAP. EPA granted the request on dated September 23, 1985. WDOE now has the authority to enforce

the additional source categories as approved in their WAC 173-400-115 and WAC 173-400-075. This delegation will amend the April 1, 1975, July 7, 1977, May 1, 1981, August 24, 1983 and July 13, 1973 *Federal Register* notices.

EFFECTIVE DATE: September 23, 1985.

ADDRESSES: The relative material in support of this delegation may be examined during normal business hours at the following locations: Air Programs Branch (10A-85-18), Environmental Protection Agency, 1200 Sixth Avenue, Seattle, Washington 98101

FOR FURTHER INFORMATION CONTACT: Mark H. Hooper, Air Programs Branch, M/S 532, Environmental Protection Agency, 1200 Sixth Avenue, Seattle, Washington 98101, Telephone: (206) 442-1949, FTS: 399-1949.

SUPPLEMENTARY INFORMATION: On February 28, 1975, the Regional Administrator of EPA, Region 10 delegated to the State of Washington Department of Ecology (WDOE) the authority to implement and enforce New Source Performance Standards (NSPS) for 13 categories of stationary sources as promulgated by EPA prior to January 1, 1975 and three categories for NESHAP or promulgated prior to June 1, 1974. This delegation was published in the *Federal Register* on April 1, 1975 (40 FR 14632). Additional delegations were made on July 7, 1977 (42 FR 55492), May 1, 1981 (46 FR 27173), August 24, 1982 (47 FR 38982), and July 13, 1983 (48 FR 32075).

WDOE in a letter dated April 1, 1985 requested additional delegation of eight source categories under NSPS and one source category under NESHAP. The letter granting this additional delegation of authority to WDOE was dated September 1985 and is as follows:

Andrea Beatty Riniker, Director, Department of Ecology, Olympia, Washington 98504

Dear Ms. Riniker: On April 1, 1975 you requested that EPA extend the delegation of authority to enforce eight additional source categories under New Source Performance Standards (NSPS) and one source category under National Emission Standards for Hazardous Air Pollutants (NESHAP) as granted to the Department of Ecology (WDOE) on February 28, 1975. We have reviewed that request and hereby delegate to WDOE authority to enforce the following categories:

NSPS

Metallic Mineral Processing Plants (Subpart LL)

Pressure Sensitive Tape & Label Surface Coating Operations (Subpart RR)

SOCMI Equipment Leaks (VOC) (Subpart VV)

Beverage Can Surface Coating Operations (Subpart WW)
Bulk Gasoline Terminals (Subpart XX)
Flexible Vinyl & Urethane Coating & Printing (Subpart FFF)
Petroleum Refineries-Compressors & Fugitive Emission Sources (Subpart GGG)
Synthetic Fiber Production Facilities (Subpart HHH)

NESHAP

Benzene-Fugitive Emission Sources Storage Tanks (Subpart J)

This delegation is subject to the conditions outlined in the original letter of delegation dated February 28, 1975 and published in the Federal Register on April 1, 1975 (40 FR 14632).

A Notice announcing this delegation will be published in the Federal Register in the future. The Notice will state, among other things, that effective immediately, all reports required pursuant to the federal NSPS from sources located in the State which were previously sent to EPA will now be sent to the State agency.

Since this delegation is effective immediately, there is no requirement that the State notify EPA of its acceptance. Unless EPA receives from the State written notice of objections within 10 days of the date of receipt of this letter, the State will be deemed to have accepted all the terms of the delegation. In addition, EPA hereby delegates to WDOE the authority to enforce revisions to NSPS and NESHAP which have been promulgated through October 1, 1984.

An advance copy of this Register is enclosed for your information.

Sincerely,

Ernesta B. Barnes,

Regional Administrator.

Enclosure

cc: M. Hoyles

This notice is being published to notify the public that a delegation of authority under NSPS and NESHAP has occurred.

List of Subjects

40 CFR Part 60

Intergovernmental relations, Air pollution control, Aluminum, Ammonium sulfate plants, Cement industry, Coal, Copper, Electric power plants, Glass and glass products, Grains, Intergovernmental relations, Iron, Lead, Metals, motor vehicles, Nitric acid plants, Paper and paper products industry, Petroleum, Phosphate, Sewage disposal, Steel sulfuric acid plants, Waste treatment and disposal, and Zinc.

40 CFR Part 61

Intergovernmental relations, Air pollution control, Asbestos, Beryllium, Hazardous materials, Mercury, Vinyl chloride.

Authority: 42 U.S.C. 7401-7642.

Dated: September 23, 1985.

Ernesta Barnes,
Regional Administrator.

[FR Doc. 86-1558 Filed 1-23-86; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 61

[A-10-FRL-2959-5]

National Emission Standards for Hazardous Air Pollutants; Delegation of Authority to Local Air Agency in Washington

AGENCY: Environmental Protection Agency (EPA).

ACTION: Delegation of authority.

SUMMARY: Section 112(d) of the Clean Air Act permits EPA to delegate to States the authority to implement and enforce the standards set out in 40 CFR Part 61, National Emission Standards for Hazardous Air Pollutants (NESHAP).

The State of Washington Department of Ecology (WDOE) requested EPA to delegate to the Benton-Franklin-Walla Walla Counties Air Pollution Control Authority (BFWWCAPCA) the authority to implement and enforce NSPS category Subpart M (asbestos) on October 4, 1985. EPA granted the request on October 31, 1985. BFWWCAPCA now has the authority to enforce Subpart M (asbestos) as set forth in 40 CFR Part 61.

EFFECTIVE DATE: October 31, 1985.

ADDRESSES: The relative material in support of this delegation may be examined during normal business hours at the following locations: Air Programs Branch (10A-85-19), Environmental Protection Agency, 1200 Sixth Avenue, Seattle, Washington 98101.

FOR FURTHER INFORMATION CONTACT: Mark Hooper, Environmental Protection Agency, 1200 Sixth Avenue, Seattle, Washington 98101, Telephone: (206) 442-1949, FTS: 399-1949.

SUPPLEMENTARY INFORMATION: Pursuant to section 112(d) of the Clean Air Act, as amended, the Regional Administrator of Region 10, EPA, delegated to the State of Washington Department of Ecology (WDOE) on February 28, 1975, the authority to enforce the National Emissions Standards for Hazardous Air Pollutants (NESHAP) for asbestos. The delegation was announced in the Federal Register on April 1, 1975 (40 FR 14632).

On October 4, 1985, WDOE requested approval of a delegation to the Benton-Franklin-Walla Walla Counties Air Pollution Control Authority the authority to enforce the NESHAP for asbestos (Subpart M) and on October 31, 1985, the

Regional Administrator concurred in the following letter:

Andrea Beatty Riniker, Director, Department of Ecology, Olympia, Washington 98504
Dear Ms. Riniker: On October 4, 1985, a request to subdelegate enforcement of the National Emissions Standards for Hazardous Air Pollutants (NESHAP) for asbestos to the Benton-Franklin-Walla Walla Counties Air Pollution Control Authority (BFWWCAPCA) was received. We have reviewed that request and hereby grant the subdelegation to the BFWWCAPCA.

This delegation is subject to the conditions outlined in the original letter of delegation dated February 28, 1975 and published in the Federal Register on April 1, 1975 (40 FR 14632).

A Notice announcing this delegation will be published in the Federal Register in the future. The Notice will state, among other things, that effective immediately, all reports required pursuant to the federal NSPS from sources located in the State which were previously sent to EPA will now be sent to the State agency.

Since this delegation is effective immediately, there is no requirement that the State or local agency notify EPA of its acceptance. Unless EPA receives from the State of local agency written notice of objections within 10 days of the date of receipt of this letter, the State or local agency will be deemed to have accepted all the terms of the delegation.

An advance copy of this Register is enclosed for your information.

Sincerely,

Ernesta B. Barnes,

Regional Administrator.

Enclosure

This notice is being published to notify the public that a delegation of authority under NESHAP has occurred.

Authority: Section 112(d) of the Clean Air Act, as amended. (42 U.S.C. 7401-7642)

List of Subjects in 40 CFR Part 61

Air pollution control, Asbestos, Beryllium, Hazardous materials, Mercury, Vinyl chloride.

Dated: January 8, 1986.

Ernesta Barnes,

Regional Administrator.

[FR Doc. 86-1555 Filed 1-23-86; 8:45 am]

BILLING CODE 6560-50-M

COMMISSION ON THE BICENTENNIAL OF THE UNITED STATES CONSTITUTION

45 CFR Part 2002

Regulations on Donations

AGENCY: Commission on the Bicentennial of the United States Constitution.

ACTION: Interim rule with request for comments.

SUMMARY: These regulations set forth general provisions governing the authority of the Commission to solicit, accept, determine the value, use and dispose of donations of money, property and personal services. Pub. L. 98-101, 97 Stat. 721, requires the Commission to prescribe regulations under which the Commission may accept donations of money, property or personal services, and further requires that these regulations include procedures for determining the value of donations of property or personal services. The intended effect is to clarify for donors the status and purpose of donations and to establish guidelines within the Commission for receipt and recording of donations.

DATES: Interim rule effective January 13, 1986; comments must be received on or before February 24, 1986.

ADDRESS: Comments should be mailed or delivered to the General Counsel of the Commission, 734 Jackson Place NW., Washington, DC 20503. Comments received may also be inspected at this address between 9:00 a.m. and 5:30 p.m.

FOR FURTHER INFORMATION CONTACT: Joseph B. McGrath, General Counsel, (202) USA-1787.

SUPPLEMENTARY INFORMATION:

Background

These regulations were approved by the Commission on November 25, 1985 as an interim rule to govern the handling of donations during the organizational phase of Commission operations. It is intended that the regulations will be published as a final rule following consideration of comments received and further review by the Commission during February 1986.

Classification

This is not a major rule under E.O. 12291 since it is not likely to have any effect on the economy, on costs or prices, or on competition, employment, investment, productivity, innovation or the ability of U.S. based enterprises to compete with foreign-based enterprises. A regulatory analysis is not required for this rulemaking. The rule has no effect on the environment and an environmental impact statement under the National Environmental Policy Act is not required.

Statutory authority

This regulation is mandated by section 5(h) of Pub. L. 98-101; 97 Stat. 719, 721. No previous regulation has been issued. The principal draftsman for

this regulation was Joseph B. McGrath, General Counsel of the Commission.

Request for Comments

A 30 day public comment period ending February 24, 1986 has been provided for the purpose of receiving comments and recommendations for improvement of the regulation prior to publication of a final rule. Comments should be mailed or delivered to the General Counsel of the Commission at 734 Jackson Place NW., Washington, DC, 20503.

List of Subjects in 45 CFR Part 2002

Donations, U.S. Constitution Bicentennial.

Issued in Washington, D.C. in January 10, 1986.

Mark W. Cannon,
Staff Director.

For the reasons set out in the preamble and under the authority of sec. 5(h), Pub. L. 98-101, 97 Stat. 721, a new Chapter XX is established and a new Part 2002 is added to Title 45, Code of Federal Regulations, to read as follows.

Title 45—Public Welfare

CHAPTER XX—COMMISSION ON THE BICENTENNIAL OF THE UNITED STATES CONSTITUTION

PART 2002—REGULATIONS ON DONATIONS

Subpart A—Statement of Policy

Sec.

- 2002.10 Private sector support.
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Subpart B—General Provisions

- 2002.20 Statutory Authority.
2002.21 Limitations.
2002.22 Tax-exempt organizations.

Subpart C—Purpose of Donations

- 2002.30 General purpose.
2002.31 Specific purposes.

Subpart D—Valuation of Donations

- 2002.40 Statutory authority.
2002.41 Property.
2002.42 Personal services.
2002.43 Recognition of donors and volunteers.

Subpart E—Committee to Review Donations

- 2002.50 Appointment.
2002.51 Oversight function.
2002.52 Disposition of donations.

Subpart F—Recording and Reporting

- 2002.60 Accounting.
2002.61 Reporting.

Authority: Sec. 5(h), Pub. L. 98-101; 97 Stat. 719.

Subpart A—Statement of Policy

§ 2002.10 Private sector support.

(a) In creating the Commission, Congress enacted legislation which recognizes a leading role for the private sector in the bicentennial commemoration. Private donations of money, property or personal services, therefore, are encouraged by the Commission as a means of stimulating public support for the commemoration of the Constitution's bicentennial.

(b) Funding of Commission activities and projects by private individuals, corporations and tax-exempt organizations is authorized by specific statutory provisions (Pub. L. 98-101; 97 Stat. 721). Congress also intends a continuation of the same tax deductible status for private donations as was accorded donations to the American Revolution Bicentennial Administration.

§ 2002.11 An enduring commemoration.

(a) Donations to the Commission will be employed to the maximum extent feasible on commemoration projects and activities, including a limited number of bicentennial projects to be undertaken by the Commission on behalf of the Federal Government. Private donations will make possible a commemoration of enduring quality, a nationwide re-examination of the common principles which bind the United States together and a rekindling of national pride in the Constitution which embodies these common principles.

(b) The Commission's efforts, funded largely through private sector support, will stress homage to ideas—ideas that have shaped our Nation. Goals of scholarship and education will balance those of ceremony and celebration. Funds from the private sector will help provide an opportunity for all American citizens to learn more about our system of government and its history.

Subpart B—General Provisions

§ 2002.20 Statutory authority.

This regulation is issued in accordance with sec. 5(h) of Pub. L. 98-101, 97 Stat. 721, which provides that:

(a) The Commission is authorized to accept, use, solicit and dispose of donations of money, property, or personal services.

(b) The Commission shall prescribe regulations under which the Commission may accept donations of money, property or personal services.

(c) These regulations shall include procedures for determining the value of donations of property or personal services.

§ 2002.21 Limitations.

(a) Except for donations from tax-exempt organizations, sec. 5(h)(2) of Pub. L. 98-101, 97 Stat. 721, prohibits the Commission from accepting donations the value of which exceeds:

- (1) \$25,000 annually, in the case of donations from an individual; or,
- (2) \$100,000 annually, in the case of donations from a corporation, partnership, or other business organization.

(b) "Annually" means during one calendar year.

§ 2002.22 Tax-exempt organizations.

(a) Under sec. 5(h)(4) of Pub. L. 98-101, 97 Stat. 721, the limitations set forth in § 2002.21 do not apply in the case of an organization which is:

(1) Described in sec. 501(c)(3) of the Internal Revenue Code of 1954 (26 U.S.C. 501(c)(3)), and

(2) Exempt from taxation under sec. 501(a) of the Internal Revenue Code (26 U.S.C. 501(a)).

(b) Any donation from a tax-exempt organization where the donation value exceeds \$100,000 annually from the donor must be accompanied by written evidence from the donor that it is an organization described in sec. 501(c)(3) of the Internal Revenue Code of 1954 (26 U.S.C. 501(c)(3)) and that it is exempt from taxation under sec. 501(a) of such Code (26 U.S.C. 501(a)). This evidence of qualification shall be retained in the files of the Commission.

Subpart C—Purpose of Donations**§ 2002.30 General purpose.**

A donation to the Commission must be for use by the Commission in carrying out the general purpose for which it was established, which is to promote and coordinate activities to commemorate the bicentennial of the Constitution (sec. 3, Pub. L. 98-101; 97 Stat. 719).

§ 2002.31 Specific purposes.

Within this general purpose, a donation to the Commission may also be given to assist it in accomplishing its specific purposes, including but not limited to the following:

(a) Planning and developing activities appropriate to commemorate the bicentennial of the Constitution, including selected projects to be sponsored by the Commission.

(b) Assisting and encouraging private organizations, and State and local governments to organize and participate in appropriate bicentennial activities.

(c) Coordinating generally public and private bicentennial activities throughout all of the States.

(d) Serving as clearinghouse for the collection and dissemination of information about bicentennial events and plans.

(e) Expanding the personnel of the Commission to enable it to function more effectively.

(f) Providing equipment, facilities, support services or other types of property which will enable the Commission to accomplish its goals more efficiently.

(g) Furnishing the means for the Commission and its staff to travel and sponsor seminars and meetings in various regions of the country.

(h) Encouraging and providing the direction and facilities for volunteers to participate in Commission activities so as to involve the largest possible citizen participation in the bicentennial commemoration.

Subpart D—Valuation of Donations**§ 2002.40 Statutory authority.**

Under sec. 5(h)(3) of Pub. L. 98-101, 97 Stat. 721, the Commission is required to prescribe regulations which include procedures for determining the value of donations of property or personal services. These valuation procedures are as follows.

§ 2002.41 Property.

(a) The value of property donated to the Commission, whether real or personal, shall be determined initially by the donor in a written statement filed with the Commission at the time of the donation. This statement shall be submitted to the Commission by the donor in a written document containing the name of the donor, the date and place of the contribution, an accurate description of the property and a valuation by the donor.

(b) Where the donor is unable to determine a precise value, a reasonably based estimate will suffice. In each case the donor shall receive a written receipt for the property containing the name of the donor, the date and location of the contribution and a description of the property including its value as stated by the donor.

(c) Other recordkeeping requirements which may be applicable to donors are set forth in the pertinent sections of income tax regulations published by the Internal Revenue Service at 26 CFR 1.170 A-13.

(d) If for any reason a donor's

statement of value is unsatisfactory to the Commission, an alternative method of valuation shall be used by the Commission. This shall be done in accordance with regulations of the Internal Revenue Service published at 26 CFR 1.170 A-13T.

(e) The valuation of property provided to the Commission by donors and accepted for purposes of the Commission's use is not to be considered conclusive upon the Internal Revenue Service or other taxing authorities, or upon other governmental entities.

(f) Donors of property with an aggregate or stated value in excess of \$5,000 may fall within substantiation requirements for deductibility under sec. 6050 L of the Tax Reform Act of 1984 (Pub. L. 93-369; 96 Stat. 494), as published by the Internal Revenue Service at 26 CFR 1.170 A-13T. Any questions as to deductibility should be taken up with the Internal Revenue Service.

§ 2002.42 Personal services.

(a) "Personal services" is defined to mean services by persons who are paid to perform a given task or tasks for the benefit of the Commission. This does not include services which are volunteered to the Commission by persons who are not paid, nor does it include provision of advice to the Commission by persons who serve without compensation on an advisory or consulting committee of the Commission.

(b) The value of donated personal services shall be determined by the information as to their costs supplied by the donor at the time of the donation. A donation of personal services is subject to the limitations set forth above in § 2002.21.

(c) A donor of personal services shall be responsible for providing the Commission with a statement or record of the donation showing the name of the donor, the date and place of the donation and a description of the services provided together with their costs or valuation by the donor. Each donor shall receive a receipt for donated services and this receipt may also serve, when appropriate, as the required record of the donation.

§ 2002.43 Recognition of donors and volunteers.

(a) All donors and volunteers of personal services shall receive from the Commission suitable acknowledgment and recognition of their contributions to

the bicentennial. Certificates and letters of appreciation will be sent to donors of money, property or personal services.

(b) A National Honor Roll of donors shall be created and maintained bearing the names of all individual donors who make contributions of \$10,000 or more in value, and of all corporations, partnerships, businesses, unions and other organizations, including tax exempt organizations, which make contributions of \$100,000 or more in value. Suitable emblems, flags or other symbols of recognition shall also be given to such donors at the discretion of the Commission.

(c) The Commission shall keep a record of all volunteers of personal services and persons on this roll shall be recognized with suitable certificates and letters of appreciation and such other symbolic forms of recognition as may be approved by the Commission.

Subpart E—Committee To Review Donations

§ 2002.50 Appointment.

A committee of the Commission shall be appointed by the Chairman to review the propriety of all donations to the Commission together with any legal or other questions relating thereto. The Staff Director shall be responsible for the submission of a report to the committee, quarterly or more often if desired, on all donations or offers to donate money, property or personal services which are valued or estimated to be valued at \$10,000 or more.

§ 2002.51 Oversight function.

(a) The review committee shall oversee the operation of the Commission's donation program, including the receipt, utilization and disposition of donated property and personal services and the effectiveness of this regulation on such donations. The committee may refer particular issues to the Chairman or to the Commission for further review, with or without a recommendation.

(b) The committee, the Chairman, or the Commission may direct the staff to return or decline to accept a donation whenever it is determined, for any reason, that the donation is unacceptable.

§ 2002.52 Disposition of donations.

(a) Records and reports of the Commission as to the receipt and utilization of donations of money and personal services shall be sufficient as records of their disposition.

(b) With respect to donations of property, real or personal, the following requirements shall apply:

(1) Property may be sold, exchanged, or otherwise disposed of only if the objective or result of the disposition will further the purposes of the Commission or will aid in the bicentennial commemoration of the Constitution.

(2) The committee to review donations shall be advised of all proposals for disposition of property prior to disposition and, for all such property valued at \$1,000 or more, shall provide the Chairman or the Commission with a recommendation as to the proposed disposition.

(3) Approval of the Chairman or the Commission shall be obtained in advance of disposition.

(4) All Internal Revenue Service regulations applicable to donated property sold, exchanged or otherwise disposed of within two years after receipt will be observed. (see 26 CFR 1.6050 L-1T)

Subpart F—Recording and Reporting

§ 2002.60 Accounting.

(a) The Staff Director shall be responsible for establishing accounting procedures for the Commission and appropriate forms to record the receipt, utilization and disposition of all donations of money, property or personal services.

(b) Prior to acceptance, recording and deposit of donated moneys, and prior to acceptance and receipt of property and personal services, the Staff Director or his designee shall ascertain from Commission records whether the donation, singly or cumulatively, would exceed the annual dollar amount limits on the Commission's statutory authority to accept the donation as set forth in § 2002.21. Where these limits would be exceeded, all of the donations or, if divisible, the excessive portion of the donation shall be returned to the donor with an appropriate explanation and expression of appreciation.

§ 2002.61 Reporting.

Reports of all donations of money, property, and personal services, and the value thereof, shall be given to the Chairman and the Commission on a periodic basis as desired. Reports shall also be prepared for use in the Commission's annual report to the President, to each House of the Congress, and to the Judicial Conference of the United States, as required by sec. 6(e) of Pub. L. 98-101, 97 Stat. 719, 722.

[FR Doc. 86-1472 Filed 1-23-86; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 67

[CC Docket No. 78-72; CC Docket No. 80-286; FCC 86-5]

MTS and WATS Market Structure

AGENCY: Federal Communications Commission.

ACTION: Decision and order.

SUMMARY: The Federal Communications Commission adopts the Federal-State Joint Board's recommendations concerning the separations treatment of the expenses in Account 645, Local Commercial Operations. The Commission adopted the separations procedures recommended by the Joint Board because they will produce a more cost based allocation of these costs between the jurisdictions. Implementation of separations procedures which reflect cost causation principles will promote efficient use of the telephone network.

EFFECTIVE DATE: February 24, 1986.

ADDRESS: Federal Communications Commission, 1919 M Street NW., Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Susan Lee O'Connell, Common Carrier Bureau, (202) 632-4047.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 67

Jurisdictional Separations, Communications common carriers.

Decision and order

[CC Docket No. 78-72; CC Docket No. 80-286; FCC 86-5]

In the matter of MTS and WATS Market Structure Amendment of Part 67 of the Commission's Rules and Establishment of a Joint Board.

Adopted: January 3, 1986.

Released: January 7, 1986.

By the Commission:

I. Introduction

A. Summary

1. We hereby adopt the Federal-State Joint Board's recommendations¹ concerning the allocation of Account 645, Local Commercial Operations,²

¹ Recommended Decision and Order, MTS and WATS Market Structure and Amendment of Part 67 of the Commission's Rules, CC Docket Nos. 78-72 and 80-286, FCC 85-611, released November 15, 1985.

² Account 645 consists of expenses related to telephone company local commercial operations, excluding promotional and directory services.

Continued

with a few minor modifications.³ We join in the Joint Board's conclusion that, whenever it is administratively feasible, the costs in Account 645 should be allocated based on a work function analysis in order to ensure that the resulting jurisdictional allocation reflects principles of cost causation. We also agree with the Joint Board's conclusion that we should distinguish between large and small local exchange carriers for purposes of implementing the new permanent allocation procedures.

B. Background

2. The issues addressed in the Joint Board's *Recommended Decision and Order* were initially raised in a Petition for Rulemaking filed on November 15, 1984, by the New York State Department of Public Service (New York State). That petition stated that the American Telephone and Telegraph Company (AT&T) planned to discontinue use of the billing inquiry service offered by New York Telephone Company, effective January 1, 1985.⁴ In order to prevent a sudden and substantial reassignment of costs to the state jurisdiction, New York State requested that this Commission freeze the customer contact factor⁵ used in allocating the costs in Account 645 until this Commission could permanently amend its rules governing the separation of these costs. The potential effect of AT&T's decision to discontinue use of Bell Operating Company (BOC) billing inquiry services stemmed from the Part 67 procedures for the categorization and allocation of Account 645 expenses which do not reflect the actual cost of performing the various local commercial office functions. Under these procedures, the level of Account 645 costs assigned to the interstate jurisdiction is largely a product of the customer contact factor,⁶ although

responding to end user billing inquiries involves a very small portion of local business office work time. Thus, AT&T's provision of its own billing inquiry service would reduce the number of local commercial office contacts related to interstate toll messages, thereby lowering the interstate cost assignment, without producing an offsetting reduction in local commercial office expenses.⁷

3. In response to the New York State Petition, the Joint Board adopted a *Recommended Interim Order and Request for Comments (Recommended Interim Order)*⁸ recommending that this Commission adopt measures to prevent a sudden and substantial transfer of costs to the state jurisdiction in study areas in which AT&T began to perform its own billing inquiry service. The Joint Board proposed a freeze of the customer contact factor at the average level for the twelve months preceding the date on which AT&T began to perform its own billing inquiry service in the affected study area. The frozen factor would remain in effect through May 31, 1985, in study areas in which AT&T began to handle its own billing inquiries before that date. Beginning June 1, 1985, the frozen factor would be reduced by 1/24th each month for twelve consecutive months or until adoption of new permanent allocation procedures, whichever came first. The Joint Board recommended that the phase-down begin immediately in the case of study areas in which AT&T began to handle its own billing inquiries after June 1, 1985. The Joint Board *Recommended Interim Order* also requested comments and data concerning permanent procedures for the allocation and recovery of Account 645 costs. These recommendations concerning interim measures for the allocation of Account 645 were adopted by this Commission on May 28, 1985.⁹ The May 28, 1985 *Order* also established interim measures for the recovery of Account 645 costs.

³ The resulting shift of costs to the state jurisdiction is magnified by the allocation of costs in other accounts based on factors which reflect the allocation of costs in Account 645. See *Recommended Decision and Order* at paragraph 6 and footnote 9.

⁴ CC Docket Nos. 78-72 and 80-286, 50 FR 14729 (April 15, 1985).

⁵ *Interim Order*, CC Docket Nos. 78-72 and 80-286, 50 FR 26204 (June 25, 1985), *appeal held in abeyance pending recon. sub nom. AT&T v. FCC*, No. 85-1470 (D.C. Cir., filed July 26, 1985). For a detailed discussion of the requests for clarification and/or waiver of the Commission's *Interim Order* see the *Recommended Decision and Order* at footnote 11.

II. Joint Board Recommendation

A. Summary

4. Based on the comments received in response to both the *Recommended Interim Order* and a subsequent *Order Inviting Further Comments*,¹⁰ the Joint Board recommended that, whenever possible, Account 645 costs be allocated based on an analysis of the work functions involved in order to ensure separations results which reflect cost causation principles. The Joint Board concluded that such an approach would provide a fair and equitable allocation of Local Commercial Operations expenses, and would facilitate the assignment of these costs to the appropriate access charge rate elements. In presenting its recommendations for new permanent allocation procedures, the Joint Board carefully considered the administrative difficulties involved in identifying the jurisdictional nature of Account 645 expenses and tailored its proposal to minimize these burdens.

5. The Joint Board recommended that Account 645 expenses for each study area be allocated to the following five categories, based on periodic work function studies¹¹ designed to reflect the costs of performing each of these local commercial functions; (1) End user service order processing; (2) end user payment and collection; (3) end user billing inquiry; (4) interexchange carrier service (including all service order processing, payment and collection, and billing inquiry functions associated with interexchange carrier service); and (5) coin collection and administration. The Joint Board's recommendations concerning the functions to be included in each of these categories, as well as the subcategorization¹² and jurisdictional allocation of the costs involved, are described below.

B. End User Service Order Processing

6. The Joint Board recommended that the end user service order processing category include expenses related to the receipt and processing of end users' (but not interexchange carriers') orders for telephone service and inquiries concerning service. The Joint Board

¹⁰ CC Docket Nos. 78-72 and 80-286, 50 FR 31749 (August 6, 1985).

¹¹ The Joint Board recognized that this approach would require the carriers to perform periodic work function studies, but found that utilization of such studies would avoid the existing mismatch between the actual cost of performing each local commercial office function and the assignment of the associated costs to the appropriate jurisdiction.

¹² The Joint Board concluded that, in general, the use of service-related subcategories to allocate Account 645 costs would facilitate the recovery of these costs under Part 69 of the Commission's rules.

Telephone company commercial offices perform service order processing, billing inquiry, and certain billing and collection functions for end users and interexchange carriers, as well as collect coins from pay telephones and perform related administrative functions.

³ See para. 17, *infra*.

⁴ This was part of an overall plan by AT&T to phase-in the provision of its own billing inquiry service for AT&T customers. See *Recommended Decision and Order* at footnote 6.

⁵ Section 67.365(a)(1)(i) of this Commission's rules provides for the separation of Account 645 message toll costs based on "the relative number of business office contacts relating to state toll and interstate toll messages." 47 CFR § 67.365(a)(1)(i) (1984). This is referred to herein as the customer contact factor.

⁶ For a more detailed discussion of the Part 67 procedures for allocating Account 645 costs see the Joint Board's *Recommended Decision and Order* at paragraphs 4 and 5.

found that these expenses are generated when a customer contacts the local commercial office, and therefore recommended that the Commission allocate these costs to the following service-related subcategories based on the relative number of actual contacts, with the contacts weighted, if appropriate, to reflect variations in the average work time associated with each type of service contact:¹³ (1) Local service order processing; (2) presubscription; (3) directory advertising; (4) state private line and special access;¹⁴ (5) interstate private line and special access; (6) other state message toll including WATS; (7) other interstate message toll including WATS; and (8) TWX. The Joint Board recommended that the carriers update their customer contact studies periodically to ensure that the results reflect the actual number of contacts and the work times involved.¹⁵

7. Under the *Recommended Decision and Order*, end user service order processing costs for local service, directory advertising, state private line and special access, and other state message toll services including WATS, would be assigned directly to the state jurisdiction. Presubscription costs, interstate private line and special access costs, and costs associated with other interstate message toll services including WATS, would be assigned directly to the interstate jurisdiction. TWX expenses would be separated based on relative state and interstate billed TWX revenues.

8. In making these recommendations, the Joint Board stated that the cost of local service order processing for end users should be assigned directly to the state jurisdiction. The Joint Board found

¹³ The Joint Board concluded that the use of customer contacts to allocate service order processing costs to the service-related subcategories, rather than work time studies as proposed by some commenting parties, should reduce the administrative burdens on the local exchange carriers. The Joint Board noted that its proposal for weighting the contacts when appropriate to reflect differences in work times would provide the increased accuracy produced by work time studies.

¹⁴ In creating end user subcategories for special access, the Joint Board noted that the access charge tariffs permit end users to order special access services directly from the local exchange carrier. See *Memorandum Opinion and Order, Investigation of Access and Divestiture Related Tariffs*, CC Docket No. 83-1145, Phase I and II, Part I, 49 FR 50457 at 50471 (December 28, 1984).

¹⁵ The Joint Board did not recommend prohibiting the use of surrogate allocation factors in lieu of monitoring actual contacts. The Joint Board, however, expressed its view that the use of surrogates or conversion tables must produce accurate results, i.e., they must reflect the actual level of contacts. See *Recommended Decision and Order* at paragraph 25 and footnote 25.

that the parties supporting an interstate allocation of these costs had not identified any common or joint costs that were material and not properly attributable to a specific service subcategory. The Joint Board recognized that customers must subscribe to local telephone service before they can obtain access to interstate services, and that local service order processing, therefore, may arguably provide some benefits to the interstate jurisdiction. However, it found that the ability to access interstate services over the local network also increases the attractiveness of local service. Given the mutual benefits involved, the Joint Board recommended segregating local service order processing costs and presubscription costs, and allocating each directly to the appropriate jurisdiction.¹⁶ The Joint Board distinguished the issues involved in the allocation of local service order processing costs from those involved in allocating local telephone network costs. It stated that it is not possible to identify separately the costs caused by interstate use of local non-traffic sensitive (NTS) facilities, while local service order processing, presubscription, and other interstate service order processing costs can be distinguished.

C. End User Payment and Collection

9. The Joint Board recommended that the end user payment and collection cost category cover expenses associated with the payment and collection of amounts billed to end users, including commissions paid to collection agencies and payment agencies that receive customer payments. The Joint Board recommended that this category exclude payment or collection expenses for services provided to interexchange carriers. As with end user service order processing, the *Recommended Decision and Order* proposed allocating end user payment and collection expenses to service-related subcategories. It recommended allocation of these expenses to the following subcategories based on the relative total state and interstate revenues billed by the carriers involved (excluding revenues billed to interexchange carriers and/or deposited in coin boxes) for services for which end user payment and collection is provided: (1) State private line and special access;

¹⁶ While the Joint Board acknowledged that presubscription orders would apply to state as well as interstate toll services, if state toll competition exists, it found that presubscription costs would not be substantial enough to justify the administrative burdens involved in calculating and recovering a separate intrastate assignment.

(2) interstate private line and special access; (3) state message toll including WATS; (4) interstate message toll including WATS, and interstate subscriber line charge; (5) local, including directory advertising; and (6) TWX. The Joint Board recommended direct assignment to the state jurisdiction of end user payment and collection expenses for state private line and special access, state message toll including WATS, and local service. Payment and collection expenses for interstate private line and special access, and interstate message toll including WATS, and interstate subscriber line charges would be assigned directly to the interstate jurisdiction. TWX expenses would be allocated based on relative state and interstate billed TWX revenues for service for which end user payment and collection is provided.

10. The Joint Board recognized that the use of billed revenues to allocate payment and collection expenses to the service subcategories would not produce entirely cost based separations results. However, it concluded that this approach was reasonable since more precisely cost based allocation procedures appeared to involve undue administrative burdens.

D. End User Billing Inquiry

11. The Joint Board recommended that the end user billing inquiry cost category include expenses related to handling end users' inquiries concerning their bills. The Joint Board recommended the allocation of these costs to service-related subcategories based on the relative number of actual contacts, with the contacts weighted, if appropriate, to reflect variations in the average work time per contact. It proposed the following subcategories: (1) State private line and special access; (2) interstate private line and special access; (3) state message toll including WATS; (4) interstate message toll including WATS; (5) TWX; and (6) other (primarily related to local service bills, but also including directory advertising). The Joint Board recommended direct assignment of the costs in each of these categories to the relevant jurisdiction, with TWX costs separated based on relative billed TWX revenues for service for which end user billing inquiry is provided. As with service order processing, the Joint Board concluded that utilization of customer contacts for purposes of allocating costs to the service-related subcategories would produce cost based separations results with a minimum of administrative burdens.

E. Interexchange Carrier Service

12. The Joint Board recommended that all Account 645 costs incurred for interexchange carrier service order processing, payment and collection, and billing inquiry,¹⁷ be categorized separately from end user costs associated with these functions due to the dissimilar nature of these functions.¹⁸ Under the *Recommended Decision and Order*, Account 645 interexchange carrier service costs would be segregated, based on an analysis of job functions, into three subsidiary categories: (1) Service order processing; (2) payment and collection; and (3) billing inquiry. The expense in each subsidiary category would be further divided into the following subcategories using the same general allocation factors employed for end user functions:¹⁹ (1) State special access and private line; (2) interstate special access and private line; (3) state switched access and message toll including WATS; and (4) interstate switched access and message toll including WATS. As previously discussed in connection with end user functions, the Joint Board concluded that utilization of those allocation procedures would strike a fair balance between the need for an accurate identification of state and interstate costs and the administrative constraints involved in making that identification.

F. Coin Collection and Administration

13. The Joint Board recommended that the coin collection and administration category include expenses for the collection and counting of money deposited in public or semi-public telephones, as well as expenses incurred for required travel and coin security. Costs associated with checking the serviceability of public and semi-public telephones and related functions would also be included in this category. The Joint Board concluded that these

expenses should be allocated between the jurisdictions in proportion to the relative state and interstate revenues deposited in the coin boxes since the expenses included in this category are primarily related to physically retrieving and counting coins deposited in public or semi-public telephones. The Joint Board found that including revenues generated by credit card and collect calls, and calls billed to third parties would not produce appropriate results since no coin collection work is generated by these calls. The Joint Board also concluded that the costs involved in checking public and semi-public telephones for serviceability were not sufficient to justify allocation of these costs based on total pay telephone revenues.

G. Miscellaneous

1. Transition

14. The Joint Board recommended that the new permanent allocation procedures for Account 645 become effective June 1, 1986²⁰ for AT&T and for exchange carrier study areas with more than 50,000 working loops, excluding WATS, wideband, and private line loops.²¹ The interim phase-down procedures previously recommended by the Joint Board and adopted by the Commission would apply to those study areas with more than 50,000 working loops, excluding WATS, wideband and private line loops, for which AT&T begins to provide its own billing inquiry service prior to the effective date of the new permanent procedures.

15. The Joint Board recommended a different transition period for study areas with 50,000 or fewer working loops, excluding WATS, wideband, and private line loops, in order to ensure that the smaller carriers have adequate time to prepare for the anticipated shift of costs to the state jurisdiction due to implementation of the new separations procedures. Under the Joint Board

proposal, the new permanent allocation procedures would not become effective for these study areas until January 1, 1987. In the event AT&T begins to provide its own billing inquiry service in such study areas prior to January 1, 1987, the customer contact factor would be frozen and remain frozen until January 1, 1987, instead of being phased down. The Joint Board concluded that allowing the smaller companies to retain the higher interstate allocation for this extended period of time would: (1) Produce essentially the same benefits as a phase-down but would be somewhat simpler to implement; (2) allow these carriers a substantial period of time to adjust to the anticipated revenue shifts; and (3) reduce administrative burdens by avoiding the need for interim revisions in the access charge tariffs for these small companies.

2. Small Companies

16. The Joint Board did not propose separate permanent allocation procedures for small telephone companies. It noted that certain carriers had suggested simplified procedures for small telephone companies, but concluded that the proposed separations procedures would not place excessive administrative burdens on smaller telephone companies.²² The Joint Board also stated that the existing record was not sufficient to allow development of simplified procedures for small telephone companies.

III. Discussion

17. As previously stated, we adopt the Joint Board's recommendations with a few minor modification.²³ We also adopt, as our own, the Joint Board's reasoning in support of its recommendations. We are modifying the Joint Board's recommendations, however, to create a separate category for each of the interexchange carrier service functional subcategories

¹⁷ These costs would include those related to receiving and processing interexchange carriers' orders for service and their inquiries concerning service, payment and collection of interexchange carrier bills, including commissions paid to payment and collection agents, and the handling of interexchange carrier billing inquiries.

¹⁸ The Joint Board also explained that this approach should be relatively easy to implement since many of the carriers have separate local business office organizations for serving the interexchange carriers.

¹⁹ Thus, interexchange carrier service order processing and billing inquiry expenses would be allocated to the service subcategories based on the relative number of actual contacts, weighted if appropriate, to reflect differences in the average work time per contact. Interexchange carrier payment and collection expenses would be allocated based on relative total state and interstate revenues billed to the interexchange carriers.

²⁰ The Joint Board stated that a delay until June 1, 1986 for implementation of the new permanent procedures may necessitate adjustments in the Commission's interim cost recovery plan, but noted that this implementation date would coincide with that for the direct assignment of closed end WATS access lines, as well as the increase in subscriber line charges, facilitating the adjustment of access charge tariffs in a single filing. The Joint Board also stated that the proposed implementation date would give the carriers ample time to prepare for the new Part 67 rules.

²¹ The Joint Board explained that this loop count methodology is the same as that previously recommended by the Joint Board and adopted by the Commission for purposes of identifying those local exchange carriers which are small enough to qualify for an increased level of high cost assistance. See *Decision and Order*, CC Docket Nos. 78-72 and 80-286, 50 FR. 939 (January 8, 1985).

²² The Joint Board also noted the small telephone companies could request waiver of these procedures if they proved to be burdensome.

²³ If this Commission amends the Part 69 access charge rules to reassign the WATS closed end lines to special access, expenses associated with end user or interexchange carrier service orders, collections or billing inquiries for such "special access" lines would, of course, be included in the relevant private line and special access subcategory rather than an interstate switched access and message toll subcategory. Expenses associated with end user or interexchange carrier service orders, collections or billing inquiries for an end-to-end WATS service or similar message services would still be included in the relevant switched access and message toll subcategory. The subcategory descriptions we are adopting would automatically produce that result without a further amendment of the Part 67 rules.

recommended by the Joint Board. Thus, instead of a single interexchange carrier service category with functional subcategories for service order processing, payment and collection, and billing inquiry, there will be a separate interexchange carrier category for: (1) Interexchange carrier service order processing; (2) interexchange carrier payment and collection; and (3) interexchange carrier billing inquiry. We are making this change so that the treatment of interexchange carrier service will more closely parallel that of end user service. This change will also make the new rules easier to understand. It will not affect the allocation of interexchange carrier service costs between the state and interstate jurisdictions. We are also modifying the Joint Board's recommendations by adding separate state and interstate billing and collection subcategories for the interexchange carrier service order processing, payment and collection, and billing inquiry categories. The billing and collection subcategories will include the service order processing, payment and collection, and billing inquiry costs associated with the provision of billing and collection service to the interexchange carriers.²⁴

F. Regulatory Flexibility Certification

18. We hereby certify that the Regulatory Flexibility Act is not applicable to the rules we are adopting in this proceeding. Although some local exchange carriers are very small, local telephone companies do not appear to fall within the Regulatory Flexibility Act's definition of a "small entity." The Act incorporates the definition of a "small business" in Section 3 of the Small Business Act as the definition of a "small entity." This latter definition excludes any business that is dominant in its field of operation. Exchange carriers, even when small, enjoy a dominant monopoly position in their local service area. This Commission has found all exchange carriers, as well as AT&T, to be dominant in the *Competitive Carrier* proceeding.²⁵ To

²⁴ The billing and collection subcategories are in addition to the service-related subcategories for state special access and private line, interstate special access and private line, state switched access and message toll including WATS, and interstate switched access and message toll including WATS. The term "interstate switched access" in the Part 67 rules we are adopting in this Order includes all access elements except Special Access and Billing and Collection.

²⁵ *First Report and Order, Policy and Rules Concerning Rates and Facilities Authorizations for Competitive Carrier Services*, CC Docket No. 79-252, 85 FCC 2d 1, 23-24 (1980).

the extent that other interexchange carriers may be affected by these rules, we hereby certify that these rules will not have a significant economic effect on a substantial number of small entities.

IV. Ordering Clauses

19. Accordingly, it is ordered, That the recommendations of the Federal-State Joint Board, as modified and clarified herein, are adopted.

20 It is further ordered, That the amendments to Part 67 of the Commission's rules set forth in Appendix A of this *Decision and Order* are adopted effective February 24, 1986.²⁶

Federal Communications Commission
William J. Tricarico,
Secretary.

Appendix A

PART 67—[AMENDED]

47 CFR Part 67 is amended as follows:

1. The authority citation for Part 67 is revised to read:

Authority: (47 U.S.C. 151), 48 Stat. 1064, as amended 50 Stat. 189 (47 U.S.C. 154(i)), 48 Stat. 1064 (47 U.S.C. 154(j)), 48 Stat. 1064 (47 U.S.C. 221(c)), 48 Stat. 1080 (47 U.S.C. 410(c)), 85 Stat. 363, unless otherwise noted.

2. Section 67.365 is amended by adding two sentences before the existing text in the introductory text of paragraph (a), by revising paragraph (a)(1)(i), and by adding paragraphs (b) and (c) to read as follows:

§ 67.365 Local commercial operations-account 645.

(a) The procedures set out in this subsection shall apply to AT&T and study areas with more than 50,000 working loops, calculated as provided in § 67.611(a)(8), through May 31, 1986. Effective June 1, 1986, the procedures set out in subsection (c) of this section shall apply to AT&T and these study areas. * * *

(1) * * *

(i) In the case of study areas for which the American Telephone and Telegraph Co. (AT&T) subscribes to the billing inquiry service offered by the local exchange company, message toll expense is apportioned between state toll and interstate toll operations on the basis of the relative number of business office contacts relating to state toll and interstate toll messages. In the case of study areas for which AT&T begins to

²⁶ These actions are taken pursuant to section 1, 4(i) & (j), 205, 221(c), 403 and 410 of the Communications Act, as amended, 47 U.S.C. 151, 154(i) and (j) 205, 221(c), 403, and 410.

handle its own billing inquiries, the relative number of business office contacts relating to state toll and interstate toll messages is to be frozen at the average level for the twelve months preceding the date on which AT&T began to perform its own billing inquiry service. In the case of study areas for which AT&T begins to handle its own billing inquiries before May 31, 1985, the frozen factor described above will remain in effect through this date. For these study areas, beginning June 1, 1985, the frozen factor is to be reduced by 1/24th each month for twelve consecutive months or until June 1, 1986. In the case of study areas for which AT&T begins to handle its own billing inquiries after May 31, 1985, the relative number of business office contacts relating to state toll and interstate toll messages is to be frozen at the level described above. Beginning on the date on which AT&T begins to perform its own billing inquiry service for that study area, the frozen factor will be reduced by 1/24th each month for twelve consecutive months or until June 1, 1986, whichever comes first.

(b) The procedures set out in subsection (a) shall apply to study areas with 50,000 or fewer working loops, calculated as provided in § 67.611(a)(8), through December 31, 1986, except that the provisions set out in subsection (b)(1) below shall apply to these companies in place of subsection (a)(1)(i). Effective January 1, 1987, the procedures set out in subsection (c) shall apply to these study areas.

(1) In the case of study areas for which the American Telephone and Telegraph Co. (AT&T) subscribes to the billing inquiry service offered by the local exchange company, message toll expense is apportioned between state toll and interstate toll operations on the basis of the relative number of business office contacts relating to state toll and interstate toll messages. In the case of study areas for which AT&T begins to handle its own billing inquiries, the relative number of business office contacts relating to state toll and interstate toll messages is to be frozen at the average level for the twelve months preceding the date on which AT&T began to perform its own billing inquiry service.

(c) The procedures set out in this subsection shall apply to AT&T and study areas with more than 50,000 working loops, calculated as provided in § 67.611(a)(8), effective June 1, 1986. These procedures shall apply to study areas with 50,000 or fewer working loops, calculated as provided in

§ 67.611(a)(8), effective January 1, 1987. The expense in this account for the area under study is first segregated on the basis of an analysis of job functions into the following categories: end user service order processing; end user payment and collection; end user billing inquiry; interexchange carrier service order processing; interexchange carrier payment and collection; interexchange carrier billing inquiry; and coin collection and administration.

(1) *End user service order processing* includes expenses related to the receipt and processing of end users' orders for service and inquiries concerning service. This category does not include any service order processing expenses for services provided to the interexchange carriers. End user service order processing expenses are first segregated into the following subcategories based on the relative number of actual contacts, weighted if appropriate, to reflect differences in the average work time per contact: local service order processing; presubscription; directory advertising; state private line and special access; interstate private line and special access; other state message toll including WATS; other interstate message toll including WATS; and TWX.

(i) *Local service order processing* expense (primarily local telephone service orders) is assigned to the state jurisdiction.

(ii) *Presubscription service order processing* expense is assigned to the interstate jurisdiction.

(iii) *Directory advertising service order processing* expense is assigned to the state jurisdiction.

(iv) *State private line and special access service order processing* expense is assigned to the state jurisdiction.

(v) *Interstate private line and special access service order processing* expense is assigned to the interstate jurisdiction.

(vi) *Other state message toll including WATS service order processing* expense is assigned to the state jurisdiction.

(vii) *Other interstate message toll including WATS service order processing* expense is assigned to the interstate jurisdiction.

(viii) *TWX service order processing* expense is allocated between the jurisdictions based on relative state and interstate billed TWX revenues.

(2) *End user payment and collection* includes expenses incurred in relation to the payment and collection of amounts billed to end users. It also includes commissions paid to payment agencies (which receive payment on customer accounts) and collection agencies. This category does not include any payment or collection expenses for services

provided to interexchange carriers. End user payment and collection expenses are first segregated into the following subcategories based on relative total state and interstate billed revenues (excluding revenues billed to interexchange carriers and/or revenues deposited in coin boxes) for services for which end user payment and collection is provided: state private line and special access; interstate private line and special access; state message toll including WATS; interstate message toll including WATS, and interstate subscriber line charge; local, including directory advertising; and TWX.

(i) *State private line and special access* payment and collection expense is assigned to the state jurisdiction.

(ii) *Interstate private line and special access* payment and collection expense is assigned to the interstate jurisdiction.

(iii) *State message toll including WATS* payment and collection expense is assigned to the state jurisdiction.

(iv) *Interstate message toll including WATS, and interstate subscriber line charge* payment and collection expense is assigned to the interstate jurisdiction.

(v) *Local, including directory advertising* payment and collection expense is assigned to the state jurisdiction.

(vi) *TWX* payment and collection expense is allocated between the jurisdictions based on relative state and interstate billed TWX revenues for service for which end user payment and collection is provided.

(3) *End user billing inquiry* includes expenses related to handling end users' inquiries concerning their bills. This category does not include expenses related to interexchange carrier inquiries concerning their bills. End user billing inquiry costs are first segregated into the following subcategories based on the relative number of actual contacts, weighted if appropriate, to reflect differences in the average work time per contact: state private line and special access; interstate private line and special access; state message toll including WATS; interstate message toll including WATS, and interstate subscriber line charge; TWX; and other.

(i) *State private line and special access* billing inquiry expense is directly assigned to the state jurisdiction.

(ii) *Interstate private line and special access* billing inquiry expense is directly assigned to the interstate jurisdiction.

(iii) *State message toll including WATS* billing inquiry expense is directly assigned to the state jurisdiction.

(iv) *Interstate message toll including WATS, and interstate subscriber line charge* billing inquiry expense is directly assigned to the interstate jurisdiction.

(v) *TWX* billing inquiry expense is allocated between the jurisdictions based on relative state and interstate billed TWX revenues for service for which end user billing inquiry is provided.

(vi) *Other* billing inquiry expense (primarily related to local bills but also including directory advertising) is directly assigned to the state jurisdiction.

(4) *Interexchange carrier service order processing* includes expenses associated with the receipt and processing of interexchange carrier orders for service and inquiries about service. Interexchange carrier service order processing expenses are assigned to the following subcategories based on the relative number of actual contracts, weighted if appropriate, to reflect differences in the average work time per contact: state special access and private line; interstate special access and private line; state switched access and message toll including WATS; interstate switched access and message toll including WATS; state billing and collection; and interstate billing and collection.

(i) *State special access and private line* service order processing expense is directly assigned to the state jurisdiction.

(ii) *Interstate special access and private line* service order processing expense is directly assigned to the interstate jurisdiction.

(iii) *State switched access and message toll including WATS* service order processing expense is directly assigned to the state jurisdiction.

(iv) *Interstate switched access and message toll including WATS* service order processing expense is directly assigned to the interstate jurisdiction.

(v) *State billing and collection* service order processing expense is directly assigned to the state jurisdiction.

(vi) *Interstate billing and collection* service order processing expense is directly assigned to the interstate jurisdiction.

(5) *Interexchange carrier payment and collection* includes expenses associated with the payment and collection of interexchange carrier bills, including commissions paid to payment and collection agents. Interexchange carrier payment and collection expenses are assigned to the following subcategories based on relative total state and interstate revenues billed to the interexchange carriers: state special access and private line; interstate special access and private line; state switched access and message toll including WATS; interstate switched

access and message toll including WATS; state billing and collection; and interstate billing and collection.

(i) *State special access and private line* payment and collection expense is directly assigned to the state jurisdiction.

(ii) *Interstate special access and private line* payment and collection expense is directly assigned to the interstate jurisdiction.

(iii) *State switched access and message toll including WATS* payment and collection expense is directly assigned to the state jurisdiction.

(iv) *Interstate switched access and message toll including WATS* payment and collection expense is directly assigned to the interstate jurisdiction.

(v) *State billing and collection* payment and collection expense is directly assigned to the state jurisdiction.

(vi) *Interstate billing and collection* payment and collection expense is directly assigned to the interstate jurisdiction.

(6) *Interexchange carrier billing inquiry* includes expenses related to the handling of interexchange carrier billing inquiries. Interexchange carrier billing inquiry expenses are assigned to the following subcategories based on the relative number of actual contacts, weighted if appropriate, to reflect differences in the average work time per contact: state special access and private line; interstate special access and private line; state switched access and message toll including WATS; interstate switched access and message toll including WATS; state billing and collection; and interstate billing and collection.

(i) *State special access and private line* billing inquiry expense is directly assigned to the state jurisdiction.

(ii) *Interstate special access and private line* billing inquiry expense is directly assigned to the interstate jurisdiction.

(iii) *State switched access and message toll including WATS* billing inquiry expense is directly assigned to the state jurisdiction.

(iv) *Interstate switched access and message toll including WATS* billing inquiry expense is directly assigned to the interstate jurisdiction.

(v) *State billing and collection* billing inquiry expense is directly assigned to the state jurisdiction.

(vi) *Interstate billing and collection* billing inquiry expense is directly assigned to the interstate jurisdiction.

(7) *Coin collection and administration* includes expenses for the collection and counting of money deposited in public or semi-public phones. It also includes

expenses incurred for required travel, coin security, checking the serviceability of public or semi-public telephones, and related functions. These expenses are apportioned between the state and interstate jurisdictions in proportion to the relative state and interstate revenues deposited in the public and semi-public telephones.

(47 U.S.C. 151, 154(i), 154(j), 205, 221(c), 403, 410)

[FR Doc. 86-679 Filed 1-23-86; 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; Determination of Endangered Status for *Santalum Freycinetianum* var. *lanaiense* (Lanai Sandalwood or 'Iliahi)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The U.S. Fish and Wildlife Service determines *Santalum freycinetianum* var. *lanaiense* (Lanai sandalwood or 'Iliahi) to be an endangered species under the authority of the Endangered Species Act of 1973, as amended. This plant is known only from two areas, one at Kanepu'u, island of Lanai, and the other comprising the summit ridge system of the island of Lanai, County of Maui, Hawaii. The 39 known individuals of this variety are vulnerable to any substantial habitat alteration and face threats of grazing and browsing by feral animals, and rat predation on fruit, and the potential threats of taking and fire. The present rule is intended to provide the Lanai sandalwood the protection available under the Act.

EFFECTIVE DATE: The effective date of this rule is February 24, 1986.

ADDRESS: The complete file for this rule is available for inspection by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Lloyd 500 Building, 500 N.E. Multnomah Street, Suite 1692, Portland, Oregon 97232.

FOR FURTHER INFORMATION CONTACT: Mr. Wayne S. White, Chief, Division of Endangered Species, at the above address (503/231-6131 or FTS 429-6131).

SUPPLEMENTARY INFORMATION:

Background

Santalum freycinetianum var. *lanaiense* is a small, gnarled tree with

leaves that vary from nearly round to twice as long as broad, and are dark green on the upper surface. The tree bears small clusters of bright red flowers. J.F. Rock discovered the sandalwood on the island of Lanai in 1910 and formally described it in 1913. Historically, it has been collected and/or reported from several widely spaced localities on the island. Sandalwood trade prior to this plant's discovery by the scientific community could have already reduced the number of trees by an unknown amount. Thirty-nine individuals of the variety are now known and are widely spaced over its range. These can be divided into two populations, one near Kanepu'u and the other near the summit of the island. Both populations occur on private lands owned by Castle and Cooke, Inc.

The species is found in a range of habitats from dry lowland forests on well drained barren soils to mesic forests on shallow soils at higher elevations. The habitat has been severely degraded by grazing and browsing of livestock and exotic game animals. Much of the native vegetation has been removed, increasing wind erosion of the fragile soils. Rat predation on developing fruit has all but eliminated reproduction (Carr 1981).

Section 12 of the Endangered Species Act of 1973 (Act) directed the Secretary of the Smithsonian Institution to prepare a report on those plants considered to be endangered, threatened, or extinct. This report, designated as House Document No. 94-51, was presented to Congress on January 9, 1975. On July 1, 1975, the Service published a notice in the *Federal Register* (40 FR 27823) of its acceptance of this report as a petition within the context of Section 4(c)(2) of the Act (petition acceptance is now governed by Section 4(b)(3) of the Act, as amended), and of its intention to review the status of the plant taxa named within. On June 16, 1976, the Service published a proposed rule in the *Federal Register* (41 FR 24523) to determine approximately 1,700 vascular plant taxa to be endangered species. This list was assembled on the basis of comments and data received by the Smithsonian Institution and the Service in response to House Document No. 94-51 and the July 1, 1975, *Federal Register* publication. The Lanai sandalwood was included in the July 1, 1975, notice and the June 16, 1976, proposal. General comments on the 1976 proposal were summarized in an April 26, 1978, *Federal Register* publication (43 FR 17909).

The Endangered Species Act Amendments of 1978 required that all proposals over 2 years old be

withdrawn. A one-year grace period applied to those proposals already more than two years old. Subsequently, on December 10, 1979, the Service published a notice of the withdrawal of that portion of the June 16, 1976, proposal that had not been made final, along with four other proposals that had expired (44 FR 70796); the notice of withdrawal included the Lanai sandalwood.

Santalum freycinetianum var. *lanaiense* was included in the December 15, 1980 (45 FR 82480), notice of review of plant taxa as a candidate for listing. On February 15, 1983, the Service published a notice (48 FR 6752) of its prior petition finding that sufficient information exists to indicate that listing of this taxon may be warranted in accordance with section 4(b)(3)(A) of the Act. On October 13, 1983, and again on October 13, 1984, the petition finding was made that listing this taxon was warranted, but precluded by other pending listing actions in accordance with section 4(b)(3)(B)(iii) of the Act; notification of the 1983 finding appeared in the *Federal Register* of January 20, 1984 (48 FR 2485). Such a finding required recycling of the petition pursuant to section 4(b)(3)(C)(i) of the Act. A reproposal, which constituted a finding in accord with Section 4(b)(3)(B)(ii) that listing of this taxon was warranted, was published on March 6, 1985 (50 FR 9086), based on information available at the time of the 1976 proposal and on information gathered after that time and summarized in a detailed status report prepared under contract by a University of Hawaii botanist (Carr 1981). The Service now determines the Lanai sandalwood to be an endangered species with the publication of this final rule.

Summary of Comments and Recommendations

In the March 6, 1985, proposed rule (50 FR 9086) and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule. Appropriate State agencies, the county governments, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. A newspaper notice that invited general public comment was published in the *Honolulu Star Bulletin* and the *Hawaii Tribune-Herald* on April 1, 1985. Three comments were received and are discussed below.

A member of the University of Hawaii Botany Department faculty expressed concern that critical habitat was not being designated for this species. He

stated that the locations of the remnant populations were identified in the proposed rule without according them any protection of their habitat. He continues that "persons seeking sandalwood now know where to find these plants though I believe the threat from this activity to be non-existent." The proposed rule states that "Thirty-nine individuals of the variety are now known and are widely spaced over its range. These can be divided into two populations, one near Kanepu'u and the other near the summit to the island." The Service believes that the distribution information is sufficiently vague so as not to reveal the exact locality of the plants. Few individuals in Hawaii collect rare or native woods, but there are several hobbyists active in this field. Most of these individuals are sincerely interested in the native flora, and would not damage a rare species. However, given the small population of this sandalwood, the loss of a single tree would be significant. Additionally, the Service is required to publish descriptions of critical habitat in local newspapers, making this information even more accessible to collectors, curiosity seekers, and vandals. The commenter also stated that land managers and planners need a definite location in which this plant is protected. The Service works closely with managers, planners, government agencies and others that need specific information on endangered species and their habitats. This is best handled on an individual basis as the needs of various agencies differ.

Castle and Cooke, Inc., the landowners, opposed the listing of the Lanai sandalwood as an endangered species, but stated that they are sensitive to the efforts to protect the species and will fully cooperate with conservation actions by Federal and State agencies should the plant be listed. Their main concern is the impact that the listing of the Lanai sandalwood would have upon their long-term land management plans. As this species is not involved in exportation or interstate or foreign commerce, and as no individuals are growing on Federal property, the prohibitions of Section 9 of the Act are not pertinent. However, the listing of the plant automatically invokes the Hawaii State Law with its more restrictive prohibition of "take." Castle and Cooke noted that, " * * * a significant modification of the environment can be prohibited as 'taking.' As a result, Castle and Cooke's long term plans and operations on Lanai will be affected by custodial responsibilities for the endangered

species to avoid litigation to enjoin activities that allegedly have an effect on the species." The Service recognizes that prohibitions applied to private entities under State law are more restrictive than those of the Act; however, the Service is required to base its decision in listing a species solely on biological grounds.

A letter from the Director of the Waimea Arboretum and Botanical Garden strongly supported the listing of the Lanai sandalwood as an endangered species.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that *Santalum freycinetianum* var. *lanaiense* should be classified as an endangered species. Procedures found at Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations promulgated to implement the listing provisions of the Act (codified at 50 CFR Part 424) were followed. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in Section 4(a)(1). These factors and their application to *Santalum freycinetianum* Gaud. var. *lanaiense* Rock (Lanai sandalwood or 'ilahi) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* Only 39 individuals of this taxon are presently known to be extant (Peter Connally, State Conservation Officer, Lanai City, pers. comm.). The recent decline in numbers of the species is largely due to loss of habitat. Natural vegetation has been eliminated over vast areas of Lanai and native dryland forests have been severely degraded (Spence and Montgomery 1976). Agricultural development has removed large tracts of native vegetation, first for pasture and later for pineapple production. Cattle, sheep, and axis deer, which have been introduced into this area, have removed and trampled vegetation, contributing to severe erosion of soils.

B. *Overutilization of commercial, recreational, scientific, or educational purposes.* Extensive removal of Hawaiian sandalwoods for trade occurred from 1790 to 1820. The wood is valued for its fragrance and beauty and was used in making incense and in decorative woodworking. Although the species is no longer common enough for profitable commercial use, it may be threatened by individuals seeking the wood.

C. *Disease or predation.* The Lanai sandalwood is grazed by introduced animals, including axis deer maintained for hunting, as demonstrated by the high browse line on the few remaining trees. Fruit predation by rats has resulted in virtual lack of reproduction in this taxon.

D. *The inadequacy of existing regulatory mechanisms.* No regulatory mechanisms exist at the present time to protect this taxon. Federal listing would automatically invoke listing under Hawaii State law, which prohibits taking and encourages conservation by State government agencies.

E. *Other natural or manmade factors affecting its continued existence.* Only one sapling has recently been observed, indicating that reproduction of *Santalum freycinetianum* var. *lanaiense* is almost non-existent. Several factors may contribute, including reduction of the breeding population and rodent damage to fruit. The low numbers of individuals remaining has greatly reduced the gene pool for the species and may threaten its adaptive potential.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to make this rule final. Based on this evaluation, the preferred action is to list *Santalum freycinetianum* var. *lanaiense* as endangered. The species is listed as endangered due to the imminent threat of extinction. This choice reflects the strong likelihood that, without the institution of appropriate conservation measures, the species will become extinct. The conditions leading to a listing without critical habitat designation are discussed below.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that to the maximum extent prudent and determinable, the Secretary designate any habitat of a species which is considered to be critical habitat at the time the species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for this species at this time. As discussed under Factor "B" in the "Summary of Factors Affecting the Species," and the University faculty member's comments in the "Summary of Comments and Recommendations," sandalwood is used for incense and decorative wood products and in the past Hawaiian species of *Santalum* were extensively harvested; today there is a limited interest in sandalwood by hobbyists. Collecting is an activity difficult to enforce against and is not regulated by the Endangered Species

Act with respect to plants, except for prohibitions against exportation, interstate or foreign commerce, or removal and reduction to possession of endangered plants from lands under Federal jurisdiction. Publication of critical habitat descriptions would make this species even more vulnerable to collection and increase enforcement problems. Therefore, it would not be prudent to determine critical habitat for *Santalum freycinetianum* var. *lanaiense* at this time.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States, and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. The protection required of Federal agencies and the prohibitions against taking are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened, and with respect to its critical habitat, if any is designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402, and are now under revision (see proposal at 48 FR 29990; June 29, 1983). Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service. *Santalum freycinetianum* var. *lanaiense* is found on private land. No Federal action currently exists or is anticipated with regard to this species.

The Act and its implementing regulations found at 50 CFR 17.61, 17.62, and 17.63, set forth a series of general trade prohibitions and exceptions that apply to all endangered plant species. With respect to *Santalum freycinetianum* var. *lanaiense*, all trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, apply.

These prohibitions, in part, make it illegal for any persons subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, or sell or offer for sale this species in interstate or foreign commerce. Certain exceptions can apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered species under certain circumstances. No trade in this species has been known since 1820. It is anticipated that few trade permits will be sought or issued for *Santalum freycinetianum* var. *lanaiense*.

Section 9(a)(2)(B) of the Act, as amended in 1982, prohibits the removal and reduction to possession of endangered plant species from areas under Federal jurisdiction. This prohibition applies to *Santalum freycinetianum* var. *lanaiense* if it were to be found on Federal land or if any of the land it is now found on should pass into Federal jurisdiction. Permits for exception to this prohibition are available under regulations to be codified at 50 CFR 17.62 (50 FR 39681, September 30, 1985). As all known plants occur on private lands, it is anticipated that no collecting permits will be requested for *Santalum freycinetianum* var. *lanaiense*. Requests for copies of the regulations on plants and inquiries regarding them may be addressed to the Federal Wildlife Permit Office, U.S. Fish and Wildlife Service, Washington, D.C. 20240 (703/235-1903).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the Federal Register on October 25, 1983 (48 FR 49244).

Literature Cited

- Carr, G.D. 1981. Status report on *Santalum freycinetianum* var. *lanaiense*. Research Corporation of the University of Hawaii, under contract 14-16-001-79096 to the U.S. Fish and Wildlife Service. 29 pp.
- Spence, G.E., and S. Montgomery, 1976. Ecology of the dryland forest at Kanepu'u, Island of Lana'i. *Hawaii Botanical Society Newsletter* 15:62-80.

Author

The primary author of this final rule is Dr. Derral Herbst, U.S. Fish and Wildlife Service, P.O. Box 50167, Honolulu, Hawaii 96850 (808/546-7530 or FTS 546-7530).

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants, (agriculture).

Regulation Promulgation

PART 17—[AMENDED]

Accordingly, Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, is amended, as set forth below:

1. The authority citation for Part 17 continues to read as follows:

Authority: Pub. L. 93-205, 87 Stat. 884; Pub. L. 94-359, 90 Stat. 911; Pub. L. 95-632, 92 Stat.

3751; Pub. L. 96-159, 93 Stat. 1225; Pub. L. 97-304, 96 Stat. 1411 (16 U.S.C. 1531 *et seq.*).

2. Amend § 17.12(h) by adding the following, in alphabetical order under the family Santalaceae, to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

* * * * *
(h) * * *

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
Santalaceae—Sandalwood family:						
<i>Santalum freycinetianum</i> var. <i>lanaiense</i> .	Lanai sandalwood or 'iliali	U.S.A. (HI)	E	215	NA	NA

Dated: January 9, 1986.

P. Daniel Smith,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 86-1474 Filed 1-23-86; 8:45 am]

BILLING CODE 4310-55-M

Proposed Rules

Federal Register

Vol. 51, No. 16

Friday, January 24, 1986

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

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release Nos. 33-6619; 34-22791; IC-14897; File No. S7-01-86]

Proposed Amendments to Tender Offer Rules

AGENCY: Securities and Exchange Commission.

ACTION: Proposed amendments to rules.

SUMMARY: The Securities and Exchange Commission ("Commission") today is publishing for comment proposed amendments to its issuer and third-party tender offer rules. The amendments would provide that any security holder must be paid the highest consideration paid to any other security holder. To facilitate the revised best price rules, the Commission is proposing to amend existing rules concerning minimum offering periods and withdrawal rights. With respect to minimum offering periods, a tender offer would remain open for ten business days upon announcement of an increase or decrease in the percentage of securities being sought or consideration offered by the offeror. With respect to withdrawal rights, two alternative proposals are being published for comment:

(1) That upon announcement of a decrease in the percentage of securities being sought or consideration offered, additional withdrawal rights attach for ten business days; and (2) that withdrawal rights extend throughout the offer, and the extension of withdrawal rights upon commencement of a competing bid be eliminated.

DATE: Comments should be received on or before February 24, 1986.

ADDRESSES: Comments should be submitted in triplicate to John Wheeler, Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Comment letters should refer to File No. S7-01-86. All comments received will be available for

public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street NW., Washington, DC 20549.

FOR FURTHER INFORMATION CONTACT:

For information regarding proposed amendments to the third-party tender offer rules, contact Sarah A. Miller, (202) 272-2589, Office of Disclosure Policy, Division of Corporation Finance, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. For information regarding proposed amendments to the issuer tender offer rule, contact Nancy J. Burke, (202) 272-2848, or Deren E. Manasevit, (202) 272-7494, Office of Legal Policy and Trading Practices, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The Commission is proposing for comment amendments to Rule 13e-4¹ and Regulations 14D and 14E² pertaining to tender offers.

I. Executive Summary

In July 1985, the Commission proposed rules that would require that all bidders and issuers making a tender offer pay every tendering security holder the highest consideration offered to any other security holder at any time during the tender offer ("best-price provision").³ At the same time, the Commission also proposed rules to require that all bidders and issuers making a tender offer extend the offer to all security holders who own shares of the class of securities subject to the offer ("all-holders requirement").

The Commission also proposed to require that a tender offer remain open for at least ten business days from the date of announcement of an increase in the amount of securities being sought by the offeror. The Commission proposed that such amended offers remain open for the same period of time currently required after increases in the consideration offered or the dealer's soliciting fee in order to allow time for

security holders to consider the offer as amended.⁴

Seventy-six letters were received from 68 commentators.⁵ Commentators were divided in their position on the best price provision for issuer tender offers, while the majority of commentators supported adoption of the third-party best-price proposal. The majority of those commentators who opposed the best-price provision for issuer and third-party tender offers did so based upon their belief that the Commission lacked authority to promulgate the proposals. Commentators who supported the best-price provision did so for a variety of policy reasons, including the need to protect security holders from discriminatory tender offers. Three commentators suggested revising the best-price proposal to require that all security holders to whom a tender offer is made must be paid the highest consideration paid, rather than offered, to any other security holder. The Commission agrees with the suggested reformulation of the best-price provision. Certain relatively new defensive tender offer techniques employed by targets, including, *inter alia*, sales of assets, may result in the offeror determining that it is appropriate to offer a lower price for the target's securities. The Commission believes it may be appropriate to recognize such developing techniques by revising the best-price rule to focus on the best price paid rather than offered. The Commission, however, believes that it is necessary to balance the actions taken by the offeror and target on the one hand and the needs of investors confronted with such an amended offer on the other. When a decrease in consideration offered occurs, investors

⁴ In Release No. 33-6596, *supra*, the Commission proposed to require that an issuer tender offer remain open for increases in the consideration offered or the dealer's soliciting fee. The Commission also proposed amendments to the time periods for issuer tender offers to bring the provisions governing the conduct of issuer tender offers into conformity with third-party tender offers, to eliminate the advantages afforded defensive issuer tender offers, and to alleviate the confusion that may arise from disparate time periods. The Commission today is publishing a release announcing adoption of those amendments. See Release No. 33-6618 (January 14, 1986).

⁵ The letters of comment, as well as a copy of the summary of the comment letters prepared by the staff, are available for public inspection and copying at the Commission's Public Reference Room. (See File Nos. S7-34-85, S7-35-85).

¹ 17 CFR 240.13e-4.

² 17 CFR 240.14d-1 - 14d-101 and 240.14e-1 - 14e-3.

³ For third-party tender offers, see Release No. 33-6595 (July 1, 1985) [50 FR 27976]; for issuer tender offers, see Release No. 33-6596 (July 1, 1985) [50 FR 28210].

may need to be afforded sufficient time to consider the amended offer. Similarly, those investors who have tendered prior to the decrease in price offered may wish to reconsider their tenders in light of that decrease.

The reformulation of the best-price rule necessitates that the Commission also propose amendments pertaining to withdrawal rights and requiring the offering period to remain open for ten business days upon an increase in the amount of securities sought or consideration offered. Specifically, these proposals include: (1) The best-price provisions in Rule 13e-4(f)(8) and proposed Rule 14d-10; (2) the withdrawal rights provisions in Rules 13e-4(f)(2) and 14d-7,⁶ and (3) the requirement in Rules 13e-4(f)(1) and 14e-1(b)⁷ that the offering period remain open for a minimum time period upon the increased or decrease in consideration offered or percentage of shares sought. The Commission will consider the all-holders requirement for issuer and third-party tender offers when it considers adoption of the best-price proposal.

This release discusses the specific proposed amendments to the rules. Persons interested in further information regarding the extensive history and background surrounding the equal treatment proposals, as well as a discussion of the Commission's position, are directed to the recent releases proposing the all-holders and best-price provisions.⁸

II. Proposed Amendments

A. Best-Price Provision

1. *General requirements.* The Commission has revised the best-price provision in proposed Rules 13e-4(f)(8)(a)(ii) and 14d-10(a)(2) to provide that "[t]he consideration paid to any security holder pursuant to the tender offer is the highest consideration paid to any other security holder. . . ." Thus, under this proposal, offers may be made at prices higher than that eventually paid. The highest price paid to any tendering security holder, however, must be paid to a tendering security holder. For example, under the proposed best-price provision, a bidder makes a tender offer at \$10.00 per share. In response to the bid, the target company announces that it has sold a significant portion of its assets to a third party resulting in the

bidder lowering the price offered to reflect the sale of the target's assets and, eventually, paying to all tendering security holders the lower price offered.⁹ In this example, the bidder has lowered its offering price in the face of the target's actions. Security holder who tender their shares in response to the bidder's revised offer will still be paid the same, albeit lower, price paid to any other security holder.

In Release Nos. 33-6595 and 6596, the Commission addressed in the context of the best-price provision those situations where more than one type of consideration is offered. The Commission proposed that in such a situation, alternative types of consideration would be allowed so long as the various types of consideration are substantially equivalent, and all security holders have the same choice among the types of consideration offered.

A few commentators stated that it was unnecessary to require alternative forms of consideration to be substantially equivalent in value, so long as security holders have the same choice among the forms of consideration offered. Some of these commentators opined that the substantial equivalence standard would present problems in valuation, attract litigation and serve as a deterrent to tender offers where more than one form of consideration is offered.

The Commission agrees with these commentators that determination of whether or not proffered alternatives are substantially equivalent in value is a decision that may best be left to the individual security holder. Accordingly, the Commission has revised the best-price proposal to provide that where more than one type of consideration is offered those types of consideration do not have to be substantially equivalent in value. Security holders, however, must be offered the right to elect among all types of consideration offered.¹⁰ If

⁹The decrease in consideration also will require that the offering period remain open for a minimum ten day time period. See proposed amendments to Rules 13e-4(f)(1) and 14e-1(b) (minimum offering period). See § II.B. *infra*. Such time periods are to run concurrently.

¹⁰Although each alternative type of consideration generally must be offered, the Commission will not object if an offeror offers cash or other qualified securities in a state where there are Blue Sky law issues involved. This unusual situation will occur only in the context of an exchange offer made to residents of a state that has merit regulation of tender offers and the state administrator has determined that the tender offer is neither fair, just or equitable. If such a situation does occur, the Commission will consider an application for exemptive relief on a timely basis while processing the registration statement. See rule 13e-4(g)(6), 17 CFR 240.13e-4(g)(6), and proposed rule 14d-10(b).

the bidder or issuer increases or decreases the consideration offered, security holders still must be afforded the right to elect among the types of consideration offered, including any increases or decreases in that consideration. By revising the best-price provision to provide that security holders must be afforded the right to elect among all types of consideration offered and that those types of consideration offered do not have to be substantially equivalent in value, the Commission anticipates that any problems associated with valuation, encouraging litigation and deterring tender offers where more than one form of consideration is offered will be eliminated.

2. Exemption from Operation of the Best-Price Provisions

a. *General Exemptive Authority:* In Release Nos. 33-6595 and 6596, the Commission proposed general exemptive provisions in connection with the all-holders and best-price rules. These provisions would be contained in proposed paragraph (b) of Rule 14d-10 and present paragraph (g)(6) of Rule 13e-4. These general exemptive provisions provide that the Commission, upon written request or its own motion, may determine that the best-price provision, either conditionally or unconditionally, need not apply to a particular transaction.

b. *Specific Exemption from Rule 13e-4:* Rule 13e-4 would codify those few special and recurring circumstances where relief from the all-holders requirement for issuer repurchases through tender offers is warranted.¹¹ In Release No. 33-6596, the Commission proposed to amend paragraph (g)(5) of Rule 13e-4¹² to permit odd-lot offers to be made without complying with the general all-holders proposals contained in Rule 13e-4(f)(8). The Commission notes, however, that the all-holders proposal would apply within the context of an odd-lot offer.¹³

Similarly, the best-price requirement would apply to require the issuer to pay to all security holders who tender pursuant to the odd-lot offer the highest consideration paid to any other security holder during the odd-lot offer.

¹¹No corresponding exemptions are being proposed for third-party tender offers. Such transactions are rare in the third-party tender offer context. To the extent that these transactions do arise, they could be addressed under the general exemptive authority of proposed Rule 14d-10(b).

¹²17 CFR 240.13e-4(g)(5).

¹³For a complete understanding of how odd-lot offers would comply with the all-holders proposal, see Release No. 33-6596, *supra*.

⁶17 CFR 240.13e-4(f)(2) and 240.14d-7.

⁷17 CFR 240.13e-4(f)(1) and 240.14e-1(b).

⁸See Release Nos. 33-6595, 6596 (July 1, 1985) [50 FR 27976, 29210].

However, in the special context of issuer odd-lot offers, the Commission believes that an exception is appropriate to allow an issuer to use a formula to determine the amount that will be paid to a particular security holder, provided that formula is based on the market price for the security and is applied uniformly.¹⁴ Accordingly, paragraph (g)(5) is proposed to be amended to reflect that an issuer odd-lot offer must comply with the best-price requirement of proposed paragraph (f)(8)(ii) or the issuer must pay an amount of consideration based on a uniformly applied formula that, in turn, is based on the market price for the security.

In Release No. 33-6596, the Commission indicated that it may be appropriate to exempt modified "Dutch auction" issuer tender offers from application of the best-price provision.¹⁵ The revised best-price provision would require that all security holders whose securities are accepted in a modified Dutch auction issuer tender offer be paid the highest consideration paid to any other security holder whose securities are accepted. Accordingly, there would no longer be any need to exempt these transactions from the operation of the best-price provision.

B. Minimum Offering Period

Rules 14e-1(b) and 13e-4(f)(1)¹⁶ currently provide that a tender offer

¹⁴ See, e.g., *Letter regarding Great American Industries, Inc.* (letter dated April 6, 1983).

¹⁵ Under current staff interpretation, issuers have been permitted to make modified "Dutch auction" issuer tender offers, although pure issuer "Dutch auction" tender offers currently are not permitted under Rule 13e-4. In a pure Dutch auction cash tender offer, the bidder invites security holders to tender securities to it at a price to be specified by the tendering security holder, rather than at a price specified by the bidder. Securities are accepted, beginning with those for which the lowest price has been specified, until the bidder has purchased the desired number of securities. Modified issuer Dutch auction tender offers have been permitted under Rule 13e-4 subject to several conditions: (i) disclosure in the tender offer materials of the minimum and maximum consideration to be paid; (ii) pro rata acceptance throughout the offer with all securities purchased participating equally in prorationing; (iii) withdrawal rights throughout the offer; (iv) prompt announcement of the purchase price, if determined prior to the expiration of the offer, and (v) purchase of all accepted securities at the highest price paid to any security holder under the offer. The staff has not addressed defensive modified issuer Dutch auction tender offers.

¹⁶ The Commission today amended Rules 13e-4(f)(1) and 14e-1(b) to require that the offering period of any issuer tender offer be open for a minimum of ten business days from the date that an increase in the consideration offered or the dealer's soliciting fee is first published, sent or given to security holders. See Release No. 33-6618.

must remain open for ten business days upon an increase in the offered consideration or the dealer's soliciting fee. In Release Nos. 33-6595 and 6596, the Commission proposed to add, as an additional trigger for the ten business day period, an increase in the amount of securities sought pursuant to a tender offer. The proposed revisions to the best-price provision necessitate, however, that additional amendments to Rules 13e-4(f)(1) and 14e-1(b) be made. Because the proposed best-price provision provides that the consideration paid may be lower than that initially offered, the Commission proposes corresponding amendments to Rules 13e-4(f)(1) and 14e-1(b) to provide that a decrease in consideration offered will require that tender offer's remain open for a minimum ten business day period from the date of such decrease. These proposed amendments will ensure that security holders receive information pertaining to the amended offer and will have additional time to analyze that offer.

The Commission also proposes to amend Rules 13e-4(f)(1) and 14e-1(b) to provide that a decrease in securities sought will require the offering period to remain open for a minimum ten business day time period rather than resulting in the commencement of a new tender offer. The Commission believes that a decrease in securities sought does not, in itself, constitute a new tender offer, and that a ten business day time period would be appropriate for the same reasons that it is proposing to extend the minimum offering period for an increase in securities sought, i.e., investors' need for time to evaluate the amended offer.

The Commission proposes to revise the language in Rule 14e-1(b) from "amount of securities sought" to "percentage of securities sought." This proposed revision from the July proposal recognizes those circumstances where an increase in the number of shares sought does not increase the percentage of shares ultimately sought. This situation may occur in a partial tender offer where a bidder, in the face of an issuance of securities by the issuer, continues to offer for the same desired percentage of securities even though the total amount of securities sought increases.

C. Withdrawal Rights

The reformulated best-price provisions necessitate that certain changes be made to withdrawal rights. The Commission is proposing, therefore, to amend Rules 13e-4(f)(2) and 14d-7 in one of two alternate ways. The first alternative would provide for additional

withdrawal rights for ten business days from the date that notice of a decrease in consideration or percentage of securities sought is first communicated to security holders.¹⁷ This proposed alternative would assure that security holders who tendered prior to the decrease have the ability to reconsider their tender in light of the disclosure.

The Commission is also proposing as an alternative a broader approach to withdrawal rights that causes more far-reaching changes to the applicable rules. The Advisory Committee on Tender Offers recommended that the withdrawal period should run coextensively with proration and minimum offering periods and that the extension of withdrawal rights upon commencement of a competing bid could be eliminated.¹⁸ The Commission notes, however, that the Committee's withdrawal period recommendations were made in the context of other more extensive recommendations as to tender offer time periods. In light of the existing offering period framework, the Commission, as an alternative proposal, seeks comment on a rule amendment that would extend withdrawal rights until the expiration of the tender offer. This proposal would protect security holders by a system that provides for prorationing and withdrawal throughout the offering period.¹⁹ In this connection, the Commission wishes to point out that if the proposal to extend withdrawal rights throughout the offer is adopted no additional withdrawal rights will attach in the event of the commencement of a competing bidder's offer.

The first alternative requires additional amendments to Rule 13e-4(f)(2) pertaining to issuer notice of a subsequent third party offer and withdrawal rights. Commencement of a third party tender offer triggers the withdrawal rights specified by Rule 14d-7(a)(2) in a preceding third party offer only if the preceding third party offeror receives notice or otherwise has

¹⁷ See 17 CFR 240.13e-4(e) and 240.14d-4(c).

¹⁸ See Recommendations 17 and 18 of Advisory Committee on Tender Offers Report of Recommendations at 28-29 (July 8, 1983). The Advisory Committee's recommendation to eliminate the extension of withdrawal rights upon commencement of a competing bid was premised on the idea "that each bidder should control its own bid" and that the other recommendations concerning withdrawal periods "provide shareholders protections comparable to those under the current system."

¹⁹ The Commission has previously expressed a view that there may, in certain situations, be benefits to coextensive withdrawal periods. See Statement of John S. R. Shad, Chairman of the Securities and Exchange Commission, before the House Subcommittee on Telecommunications, Consumer Protection, and Finance, March 28, 1984.

knowledge of the commencement of the subsequent third party tender offer.²⁰ Two commentators noted that there is no corresponding requirement in Rule 13e-4, so that the commencement of a third party tender offer may trigger the withdrawal rights specified by paragraph (f)(2)(ii) of Rule 13e-4 whether or not the issuer receives notice or otherwise has knowledge of the subsequent third party offer. The likelihood that a third party could initiate a tender offer without the issuer's knowledge is, however, small.²¹ In such cases, the issuer may take steps that it would not otherwise pursue if it were thereafter required to reopen withdrawal rights. In order to address these relatively rare cases, the Commission believes that, should the first proposal be adopted, the issuer should not be required to afford security holders the withdrawal rights specified by Rule 13e-4(f)(2)(ii) unless the issuer receives notice or otherwise has knowledge of the commencement of a subsequent third party offer, and is proposing to amend paragraph (f)(2)(ii) accordingly.

III. Initial Regulatory Flexibility Analysis

This initial regulatory flexibility analysis concerns proposed Rule 14d-10 and proposed amendments to Rules 13e-4, 14d-7 and 14e-1 and has been prepared by the Securities and Exchange Commission ("Commission") in accordance with 5 U.S.C. 604.

Reasons for Proposal

The proposed amendments to Rule 13e-4 and proposed Rule 14d-10 will require that an offeror making a tender offer pay to any security holders who tender pursuant to the tender offer the highest consideration paid to any other security holder during the tender offer ("best-price provision"). The Commission has recognized the need to provide clarity and certainty in the regulatory scheme applicable to tender offers with respect to equal treatment of security holders, and accordingly is proposing the best-price provision for issuer and third-party tender offers.

Certain of the amendments to Rules 13e-4, 14d-7 and 14e-1(b) are necessitated by the proposed amendments to Rule 13e-4 and proposed Rule 14d-10. In addition, certain of the proposed amendments to Rules 14e-1 and 13e-4 would implement a recommendation of the Commission's Advisory Committee on Tender Offers.

Objectives

The Objective of the best-price provisions are to make explicit the requirement that issuers and bidders must pay to any security holder who tenders pursuant to the tender offer the highest consideration paid to any other security holder during the tender offer.

The Commission proposes amending Rules 13e-4 and 14e-1 to add, as a trigger to the current ten business day period specified in those rules, an increase or decrease in the amount of securities sought and a decrease in the consideration offered.

Legal Basis

The proposed amendments would be promulgated pursuant to Sections 3(b), 9(a)(6), 10(b), 13(e), 14(d), 14(e) and 23(a) of the Securities Exchange Act and Section 23(c) of the Investment Company Act of 1940.

Small Entities Subject to the Rule

If the proposed amendments to Rule 14e-1(b) were adopted, certain small entities, including those not subject to Rule 13e-4 and Regulation 14D, would become subject to its requirements. It therefore appears likely that a substantial number of small entities would be affected by proposed Rules 13e-4 and 14e-1(b). Those entities not subject to Rule 13e-4 and Regulation 14D could include issuers who have publicly traded securities that are not registered with the Commission, issuers who report to the Commission pursuant to 15(d) of the Exchange Act and issuers whose securities are not publicly traded.

An unknown portion of these classes of issuers are small entities. At this time the Commission is unable to determine the costs to small entities of compliance with the proposal. With respect to the proposed best-price provision and proposed amendments to withdrawal rights for issuer tender offers, Rule 13e-4 only applies to issuers that have a class of equity securities registered pursuant to Section 12 of the Exchange Act, or that are required to file periodic reports pursuant to Section 15(d) of the Exchange Act. Under Rule 12g-1 under the Exchange Act, an issuer is exempt from Section 12(g)(1) of the Exchange Act if, on the last day of its last fiscal year, it had total assets of \$3,000,000 or

less. Most issuers who register pursuant to Section 12(g) of the Exchange Act are required to do so because they have total assets of \$3,000,000 or more. Therefore, such issuers would not be considered small for purposes of Rule 0-10(a). As a result, the only small issuers to whom the Rule applies are those who voluntarily register pursuant to Section 12(g), and those who are required to file periodic reports under Section 15(d), of the Exchange Act.

In a review of a random sample of twenty percent of the Schedule 13E-4s filed pursuant to Rule 13e-4 in fiscal year 1984, every issuer who filed a Schedule 13E-4 has assets of over \$3,000,000. Thus, it appears that few if any small issuers would be affected by the proposed amendments to Rule 13e-4. The Commission also believes that the proposed amendments would not have a significant economic impact on a substantial number of small entities that might be third party offerors. With respect to the proposed best-price provision and proposed amendments to withdrawal rights for third-party tender offers, there should be no significant economic impact on small entities, because the proposal: (i) Represents a proposed codification of existing Commission interpretations that currently govern the conduct of tender offers subject to Section 14(d) of the Exchange Act;²² and (ii) entities currently exempt from the Commission's interpretations would not be brought within the scope of the proposed rule.

Reporting, Recordkeeping and Other Compliance Requirements

The Commission believes that the best-price provision would not result in any significant increase in reporting or recordkeeping requirements. The proposed amendments to Rules 13e-4 and 14e-1(b), however, would require that, in a tender offer involving a small entity, an increase in the percentage of securities sought would cause the offering period to remain open for an additional ten business days. In addition, one of the proposed amendments to Rules 13e-4 and 14d-7 would require that, in a tender offer involving a small entity, a decrease in the percentage of securities sought or consideration offered would cause withdrawal rights to be extended for an additional ten business days. The alternative proposal would require that, in a tender offer involving a small entity, withdrawal rights under Rules 13e-4 and 14d-7 would be extended throughout the offer.

²² 15 U.S.C. 78n(d).

²⁰ 17 CFR 240.14d-7(a)(2).

²¹ Rule 14d-3(a)(2), 17 CFR 240.14d-3(a)(2), requires a third party offeror, as soon as practicable on the date of commencement of the tender offer, to hand deliver to the target the Schedule 14D-1 filed with the Commission in connection with the tender offer. Accordingly, if the third party tender offer is for a class of equity securities registered pursuant to Section 12 of the Exchange Act, 15 U.S.C. 78f, the third party offeror must provide notice to the issuer of the commencement of the third party tender offer by operation of Rule 14d-3(a)(2). The proposed amendment to Rule 13e-4 would apply to all tender offers subject to that rule.

Overlapping or Conflicting Federal Rules

The Commission does not believe that the proposed rules duplicate or conflict with any existing rule provisions.

Significant Alternatives

The Commission has considered imposing fewer requirements on tender offers by small issuers, such as exempting from the rule affected small entities, or limiting the rules' applicability to those tender offers that meet certain standards, such as tender offers for the securities of issuers subject to section 15(d) of the Exchange Act or tender offers made to residents of more than one state. The Commission does not believe that such alternative proposals would be consistent with the Commission's statutory mandate of investor protection. Similarly, the Commission does not consider the use of performance rather than design standards to be a significant alternative because a performance standard would be inconsistent with the Commission's statutory mandate.

IV. Request for Comments

Any interested person wishing to submit written comments on the proposals as well as on other matters that might have an impact on the proposals, are requested to do so.

The Commission also requests comment on whether the proposed rule, if adopted would have an adverse effect on competition or would impose a burden on competition that is neither necessary nor appropriate in furthering the purposes of the Exchange Act. Comments on this inquiry will be considered by the Commission in complying with its responsibilities under section 23(a)(2) of the Exchange Act.²³

The Commission also encourages the submission of written comments with respect to any aspect of the initial regulatory flexibility analysis. Such written comments will be considered in the preparation of the final regulatory flexibility analysis, if the proposed rules are adopted.

Persons wishing to submit written comments should file three copies thereof with John Wheeler, Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Comment letters should refer to File No. S7-01-86. All comments received will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street NW., Washington, DC 20549.

V. Statutory Basis and Text of Proposed Amendments

The Commission hereby proposes to amend Rule 13e-4 and Regulations 14D and 14E pursuant to sections 3(b), 9(a)(6), 10(b), 13(e), 14(d), 14(e) and 23(a) of the Exchange Act and section 23(c) of the Investment Company Act of 1940.

List of Subjects in 17 CFR Part 240

Reporting and recordkeeping requirements, Securities, Tender offers, Issuers.

VI. Text of Proposed Amendments

In accordance with the foregoing, Title 17, Chapter II, of the Code of Federal Regulations is proposed to be amended as follows:

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

1. The authority citation for Part 240 is revised to read as follows: (Citations before * * * indicate general rulemaking authority).

Authority. Sec. 23, 48 Stat. 901 as amended; 15 U.S.C. 78w. * * * §§240.13e-4, 14d-7, 14d-10 and 14e-1 also issued under secs. 3(b), 9(a)(6), 10(b), 13(e), 14(d) and 14(e), 15 U.S.C. 78c(b), 78i(a), 78j(b), 78m(e), 78n(d) and 78n(e) and sec. 23(c) of the Investment Company Act of 1940, 15 U.S.C. 89a-23(c).

2. By revising paragraph (f)(1)(ii) of § 240.13e-4 to read as follows:

§ 240.13e-4 Tender offers by issuers.

(f) * * *
(1) * * *
(ii) At least ten business days from the date that notice of an increase or decrease in the percentage of securities being sought or the consideration offered or the dealer's, soliciting fee to be given is first published, sent or given to security holders.

3. By amending paragraph (f)(2) of § 240.13e-4 in one of the two following respects.

Proposal I (redesignating current paragraphs (f)(2) (ii) and (iii) as (f)(2) (iii) and (iv), adding new paragraph (f)(2)(ii), and revising paragraphs (f)(2)(i), and newly redesignated (f)(2)(iii)):

(f) * * *
(2) * * *
(i) At any time until the expiration of fifteen business days from the commencement of the issuer tender offer;
(ii) Until the expiration of ten business days from the date that notice of a decrease in the percentage of securities being sought or consideration offered is

first published, sent or given to security holders; and

(iii) If not yet accepted for payment, on the date and until the expiration of ten business days following the date of commencement of another bidder's tender offer other than pursuant to Rule 14d-2(b) [§ 240.14d-2(b)] for securities of the same class provided that the issuer has received notice or otherwise has knowledge of the commencement of such other tender offer;

Proposal II (revising (f)(2)(i), removing paragraph (f)(2)(ii) and redesignating paragraph (f)(2)(iii) as (f)(2)(ii)):

(f) * * *
(2) * * *

(i) At any time during the period such issuer tender offer remains open.

4. By revising paragraph (f)(8) introductory text and (f)(8)(ii) as proposed in the Federal Register of July 11, 1985 (50 FR 28218) and by revising paragraph (g)(5) of § 240.13e-4 to read as follows:

(f) * * *
(8) No issuer shall make a tender offer unless:

(ii) The consideration paid to any security holder pursuant to the tender offer is the highest consideration paid to any other security holder at any time during such tender offer; *Provided, however,* That in a tender offer in which more than one type of consideration is offered, including increases or decreases in any such type of consideration. (A) security holders must be afforded the right to elect among the types of consideration offered; and (B) the highest consideration of each type paid to any security holder is paid to any other security holder electing that type of consideration.

(g) * * *
(5) Offers to purchase from security holders who own as of a specified date prior to the announcement of the offer an aggregate of not more than a specified number of shares that is less than one hundred; *Provided however,* That: (i) the offer complies with paragraph (f)(8)(i) of this section with respect to security holders who own the specified number of shares as of the specified date, except that an issuer can elect to exclude participants in an issuer's plan as that term is defined in Rule 10b-6(c)(4) under the Act [§ 240.10b-6(c)(4)], and (ii) the offer complies with paragraph (f)(8)(ii) of this section or the consideration paid

²³ 15 U.S.C. 78w(a)(2).

pursuant to the offer is determined on the basis of a uniformly applied formula based on the market price of the subject security.

5. By amending § 240.14d-7 in one of the two following respects:

Proposal I (revising paragraph (a))

§ 240.14d-7 **Additional withdrawal rights**

(a) *Rights.* In addition to the provisions of section 14(d)(5) of the Act, any person who has deposited securities pursuant to a tender offer has the right to withdraw any such securities during the following periods:

(1) At any time until the expiration of fifteen business days from the date of commencement of such tender offer;

(2) Until the expiration of ten business days from the date that notice of a decrease in the percentage of securities being sought or consideration offered is first published, sent or given to security holders; and

(3) On the date and until the expiration of ten business days following the date of commencement of another bidder's tender offer other than pursuant to Rule 14d-2(b) (§ 240.14d-2(b)) for securities of the same class *Provided*, That the bidder has received notice or otherwise has knowledge of the commencement of such other tender offer and, *Provided further*, That withdrawal may only be effected with respect to securities which have not been accepted for payment in the manner set forth in the bidder's tender offer prior to the date such other tender offer is first published, sent or given to security holders.

Proposal II (deleting paragraphs (b) and (c), and redesignating paragraph (d) as (b), and revising paragraph (a)):

§ 240.14d-7 **Additional withdrawal rights.**

(a) *Rights.* In addition to the provisions of section 14(d)(5) of the Act, any person who has deposited securities pursuant to a tender offer has the right to withdraw any such securities during the period such offer request or invitation remains open.

6. By revising paragraph (a) introductory text and (a) (2) of § 240.14d-10 as proposed in the *Federal Register* of July 9, 1985 (50 FR 27980):

§ 240.14d-10 **Equal treatment of security holders.**

(a) No bidder shall make a tender offer unless:

(2) In addition to the provisions of section 14(d)(7) of the Act, the consideration paid to any security holder pursuant to the tender offer is the

highest consideration paid to any other security holder at any time during such tender offer: *Provided, however*, in a tender offer in which more than one type of consideration is offered, including increases or decreases in any such type of consideration: (i) security holders must be afforded the right to elect among the types of consideration offered; and (ii) the highest consideration of each type paid to any security holder is paid to any other security holder electing that type of consideration.

7. By revising paragraph (b) of § 240.14e-1 to read as follows:

§ 240.14e-1 **Unlawful tender offer practices.**

(b) Increase or decrease the percentage of securities being sought or the consideration offered or the dealer's soliciting fee to be given in a tender offer unless such tender remains open for at least ten business days from the date that notice of such increase or decrease is first published or sent or given to security holders;

By the Commission.

Shirley E. Hollis,

Assistant Secretary.

January 14, 1986.

[FR Doc. 86-1589 Filed 1-23-86; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Part 656

Labor Certification Process for the Permanent Employment of Aliens in the United States

AGENCY: Employment and Training Administration, Labor.

ACTION: Proposed rule.

SUMMARY: The Employment and Training Administration of the Department of Labor is proposing to amend its regulations relating to the labor certification process for the permanent employment of immigrant aliens in the United States. The proposed amendment would delete alien graduates of foreign medical schools from the *Schedule A* recertification list.

DATES: Interested persons are invited to submit written comments on the proposed rule on or before February 24, 1986.

ADDRESSES: Send written comments to: Richard C. Gilliland, Director, U.S. Employment Service, Employment and

Training Administration, U.S. Department of Labor, Suite 8100, Patrick Henry Building, 601 D Street, NW., Washington, DC 20213.

FOR FURTHER INFORMATION CONTACT: Thomas M. Bruening, Telephone: 202-376-6228.

SUPPLEMENTARY INFORMATION: The Employment and Training Administration (ETA) of the Department of Labor (DOL) is proposing to amend its regulations at 20 CFR Part 656 by deleting from the *Schedule A* precertification list alien graduates of foreign medical schools. Those alien physicians (and surgeons) who are of exceptional ability in a science or art will remain on *Schedule A*.

Permanent Alien Employment Certification Process

Pursuant to the Immigration and Nationality Act (INA), before the Department of State (DOS) and the Immigration and Naturalization Service (INS) issue visas and admit certain immigrant aliens to work permanently in the United States, the Secretary of Labor must first certify to the Secretary of State and to the Attorney General that:

(a) There are not sufficient United States workers, who are able, willing, qualified, and available at the time of the application for a visa and admission into the United States and at the place where the alien is to perform the work; and

(b) The employment of the alien will not adversely affect the wages and working conditions of similarly employed United States workers. 8 U.S.C. 1182(a)(14).

Department of Labor Regulations

Pursuant to 8 U.S.C. 1182(a)(14), DOL has promulgated regulations at 20 CFR Part 656 to implement the labor certification process for the permanent employment of immigrant aliens in the United States.

The regulations at 20 CFR Part 656 set forth the factfinding process designed to develop information sufficient to support the granting or denial of a permanent labor certification. Part 656 also sets forth the responsibilities of employers who desire to permanently employ immigrant aliens in the United States, and the responsibilities of the alien beneficiaries of permanent alien labor certifications.

Schedule A Precertification List

DOL has published, at 20 CFR 656.10, a list of occupations (*Schedule A*) for which the U.S. Employment Service has determined that there are not sufficient United States workers who are able, willing, qualified, and available, and that the wages and working conditions

of U.S. workers similarly employed will not be adversely affected by the employment of aliens. DOL has delegated to the DOS and the INS the authority to determine if an alien falls within one of the occupational categories on *Schedule A*, and, if so, to issue a permanent alien labor certification for the alien. 20 CFR 656.22. The *Schedule A* determination of the INS or Department of State is conclusive and final, and is not appealable within DOL. 20 CFR 656.22(h)(2).

Alien Graduates of Foreign Medical Schools

Regulations at 20 CFR 656.10(a)(2) and 20 CFR 656.22(b) provide for the precertification of alien graduates of foreign medical schools in specific shortage areas for specific medical specialties as designated by the Department of Health and Human Services (HHS). ETA is proposing to amend these regulations by deleting physicians from the DOL's *Schedule A* precertification list. Physicians would still, however, be allowed to be the beneficiaries of permanent labor certification applications. No change is contemplated in DOL's regulations which allow employers to file applications for labor certification under the basic labor certification process at 20 CFR 656.21. Further, alien physicians (and surgeons) of exceptional ability in a science or art would continue on *Schedule A*. 20 CFR 656.10(b).

Under the current regulations, a signed statement is required from the appropriate Regional Health Administrator (RHA), Public Health Service (PHS) Regional Office, HHS, as documentation of physicians (and surgeons) *Schedule A* eligibility. The signed statement from the RHA certifies that the alien will be employed as a physician (or surgeon) in a geographic area which has been designated by the Secretary of HHS as a Health Manpower Shortage Area (HMSA) for the alien's medical specialty, or has been identified otherwise by the Secretary of HHS as having an insufficient number of physicians in the alien's medical specialty (hereinafter referred to as an inadequately served area).

In August of 1984, HHS wrote to the Assistant Secretary of Labor for Employment and Training informing him that as a result of an internal HHS study of the current labor certification program, HHS had come to the conclusion that major changes in HHS participation in the program were warranted. HHS proposed discontinuing, beginning with Fiscal

Year 1985, making labor shortage certifications through PHS regional offices. The reasons for this decision were as follows:

- Neither the Congress or HHS recognizes the existence of a national shortage of physicians in the U.S.;
- Methodological problems exist in developing and keeping accurate information for inadequately served areas for other than the primary care specialties;
- The recent HHS Report to the President and the Congress on the Status of Health Personnel in the United States indicated that the aggregate number of physicians in the United States is projected to exceed requirements in 1990 and 2000;
- Scarce PHS resources for this activity, given its apparent limited utility; and
- Less than one-third of the physicians certified remain for any significant amount of time providing direct patient care in the shortage areas for which they were certified.

To date, 90 percent of all positive certifications issued by PHS have been based on the lists of HMSAs and only 10 percent have been based on the lists of inadequately served areas. The HMSA lists, which are maintained only for primary care physicians and psychiatrists, according to HHS have a high degree of currency and reliability, are published annually in the *Federal Register*, and are widely recognized as being accurate and correct.

PHS recommended removal of physicians from *Schedule A*, or, in the alternative, leaving only those physicians on *Schedule A* that are to be employed in the HMSAs. However, as indicated above, less than one-third of the physicians certified for direct patient care work in the shortage areas or specialties for which they obtained certification for any length of time. Thus, the labor certification program has not had significant effect in alleviating the shortage of physicians in the HMSAs or in the inadequately served areas. Consequently, DOL proposes to remove physicians (and surgeons) from *Schedule A*.

Regulatory Impact

The economic and other impact of this proposed rule is not so great as to make it a major rule requiring the development of a regulatory impact analysis. See Executive Order No. 12291, 3 CFR, 1981 comp., p. 127 (February 17, 1981).

The proposed rule would not have a significant impact on a substantial number of small entities. It would only

affect those few employers who petition for foreign medical graduates pursuant to DOL's *Schedule A* precertification list. Only 103 *Schedule A* physicians were certified in Fiscal Year 1984. For this reason, the Department of Labor has certified to the Chief Counsel for Advocacy, Small Business Administration, pursuant to the Regulatory Flexibility Act, that this rule will not have a significant impact on a substantial number of small entities. 5 U.S.C. 605(b).

Catalog of Federal Domestic Assistance Number

This program is listed in the Catalog of Federal Domestic Assistance at Number 17.203, "Certification for Immigrant Workers."

List of Subjects in 20 CFR Part 656

Administrative practice and procedure, Aliens, Employment, Fraud, Labor, Unemployment, and Wages.

Proposed rule

Accordingly, it is proposed to amend Part 656 of Chapter V of Title 20, Code of Federal Regulations, as follows:

PART 656—[AMENDED]

1. The authority citation for Part 656 is revised to read as follows:

Authority: 8 U.S.C. 1182(a)(14); 29 U.S.C. 49 *et seq.*

§ 656.10 [Amended]

2. Section 656.10 is amended by removing paragraphs (a)(2) and (a)(4)(ii) from *Schedule A*, and by redesignating paragraphs (a)(3) and (a)(4)(iii) of *Schedule A* as (a)(2) and (a)(4)(ii) respectively.

§ 656.22 [Amended]

3. Section 656.22 is amended by removing paragraph (c)(2) and redesignating paragraph (c)(3) as (c)(2).

§ 656.50 [Amended]

4. Section 656.50 is amended by removing the definitions for "Regional Health Administration" and "Secretary of Health and Human Services (HHS)".

§ 656.61 [Removed]

5. Section 656.61 is removed.

Signed at Washington, DC, this 14th day of January, 1986.

William E. Brock,

Secretary of Labor.

[FR Doc. 86-1503 Filed 1-23-86; 8:45 am]

BILLING CODE 4510-30-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

(LR-3-77)

Income Tax; Recapture of Overall Foreign Losses**AGENCY:** Internal Revenue Service, Treasury.**ACTION:** Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations relating to the recapture of overall foreign losses. Changes to the applicable tax law were made by the Tax Reform Act of 1976. These regulations provide the public with the guidance needed to comply with that Act and would affect all taxpayers receiving income from sources without the United States.

DATES: Written comments and requests for a public hearing must be delivered or mailed by March 25, 1986. The amendments are proposed to be effective in general for taxable years ending after December 31, 1975, except for the amendments under paragraph 2, which are proposed to be effective for taxable years for which the due date (without extensions) for filing returns is after (date that is 30 days after the date these regulations are published in the Federal Register as final regulations).

ADDRESS: Send comments and requests for a public hearing to: Commissioner of Internal Revenue, Attention: CC:LR:T (LR-3-77), Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Neran D. Hubbard of the Legislation and Regulations Division, Office of the Chief Counsel, Internal Revenue, 1111 Constitution Avenue, NW., Washington, DC 20224, Attention: CC:LR:T (LT-3-77), (202) 566-3289, not a toll-free call.

SUPPLEMENTARY INFORMATION:

This document contains proposed amendments to the Income Tax Regulations (26 CFR Part 1) under section 904(f) of the Internal Revenue Code of 1954. These amendments are proposed to conform the regulations to section 1032 of the Tax Reform Act of 1976 (90 Stat. 1624) and are to be issued under the authority contained in section 7805 of the Internal Revenue Code of 1954 (68A Stat. 917, 26 U.S.C. 7805). The amendments under paragraph 2 are also to be issued under the authority contained in section 1502 of the Internal Revenue Code (68A Stat. 637, 26 U.S.C. 1502).

Statutory Provisions

In 1975, Congress enacted section 907 containing a separate overall foreign tax credit limitation for foreign oil related income. This new separate limitation (section 907(b)) required that foreign oil related income and expenses and deductions related thereto be kept separate from other types of foreign source taxable income and that the provisions of section 904 be applied separately to foreign oil related income. It thus, prevented the averaging of taxes on foreign oil related income with taxes on other types of foreign source income and required foreign oil related losses to offset U.S. source income instead of other foreign source income. At the same time, Congress was also concerned about the potential double benefit of having the foreign tax credit reduce U.S. tax on foreign oil related income in a subsequent tax year. As a consequence, Congress provided for the recapture of foreign oil related losses under section 907(f).

Recognizing that the same double benefit could occur when non-oil related foreign source losses offset U.S. source income, Congress broadened its original recapture rule to cover other foreign source losses by enacting section 904(f) in the Tax Reform Act of 1976. It also consolidated all the overall foreign loss recapture rules into section 904(f) by repealing section 907(f) and providing a separate definition of foreign oil related losses in section 904(f)(4).

Section 904(f) provides that a taxpayer that sustains an overall foreign loss in any taxable year beginning after December 31, 1975, or a foreign oil related loss in any taxable year ending after December 31, 1975 (and beginning before January 1, 1983), is required to recapture such loss in a succeeding taxable year in which it seeks the benefits of the foreign tax credit under section 901 or the Puerto Rico and possession tax credit under section 936. Recapture is accompanied by recharacterizing a portion of the taxpayer's foreign source taxable income as U.S. source income for purposes of the foreign tax credit limitation under section 904 and the allowable possession tax credit under section 936(a)(1). The effect of such recharacterization is a reduction in the taxpayer's foreign tax credit limitation or possession credit. Such reduction occurs annually until such times as the entire overall foreign loss has been recaptured.

Effect of Separate Limitations of Section 904(f)

When Congress repealed section 907(f) and added the separate definition of a foreign oil related loss to section 904(f), it evidenced its intent that foreign oil related losses were to be determined separately without regard to other types of foreign source taxable income. It did not, however, enact a separate recapture provision for foreign oil related losses. This was unnecessary because the separate limitation for foreign oil related income under section 907(b) required the separate application of all the provisions of section 904, including 904(f), to foreign oil related income. Thus, a foreign oil related loss, as defined in section 904(f)(4) (prior to September 3, 1982), is to be recaptured by applying the recapture rules of section 904(f) separately to foreign oil related income.

Even if Congress has not included a separate definition of a foreign oil related loss in section 904(f)(4), the separate determination of foreign oil related losses and the recapture of such losses only out of foreign oil related income is consistent with the operative effect of the separate limitation for foreign oil related income. Such limitation required that foreign oil related income and expenses and deductions properly allocated and apportioned thereto be placed in a separate basket. The fact that the netting of foreign oil related income and expenses in the basket results in a loss does not change the fact that the foreign oil related basket must be kept separate from other baskets. Accordingly, foreign oil related losses are determined without regard to foreign source income or losses subject to another separate limitation. (The separate limitation for foreign oil related income was repealed in 1982; transitional rules are discussed below.)

Similarly, the separate limitations for certain interest income (section 904(d)(1)(A)), DISC dividend income (section 904(d)(1)(B)), foreign trade income (section 904(d)(1)(C)), distributions from a FSC (section 904(d)(1)(D)), and other foreign source income (section 904(d)(1)(EA)), require a determination of taxable income (or loss) under each separate limitation without taking into consideration foreign source income and deductions subject to another separate limitation. In addition, section 936 requires a qualifying corporation to make separate determinations of its foreign taxable income from sources within a possession (income eligible for the

section 936 credit) and other foreign source taxable income (income eligible for the section 901 credit). It thus creates another separate limitation.

As a consequence, for purposes of section 904(f), there are seven types of overall foreign losses, one under each of the above mentioned separate limitations. For instance, there can be an overall foreign "interest income" loss, an overall foreign "DISC dividend" loss, and overall "foreign trade income" loss, and overall "FSC distributions" loss, an overall "other" foreign loss, an overall foreign oil related loss, and an overall foreign "section 936" loss. For purposes of recapture it is necessary and consistent with the concept of the separate limitations that any overall foreign loss under a separate limitation be recaptured only out of foreign source taxable income subject to such separate limitation.

Determination of Overall Foreign Losses

Section 1.904(f)-1(c) of the proposed regulations sets forth rules for determining a taxpayer's overall foreign losses in any taxable year. Generally, a taxpayer sustains an overall foreign loss in any taxable year in which its gross income from sources without the United States is exceeded by the sum of the deductions properly allocated or apportioned to such income. However, this is determined separately with respect to each of the seven separate limitations discussed above. For example, a taxpayer sustains an overall "other" foreign loss under the section 904(d)(1)(E) separate limitation in any taxable year in which its gross income subject to such separate limitation is exceeded by the sum of the deductions properly allocated and apportioned thereto. Thus, a taxpayer may have an overall foreign loss under its section 904(d)(1)(E) limitation in the same taxable year in which it has foreign DISC dividend income subject to the section 904(d)(1)(B) limitation which exceeds the sum of the deductions properly allocated or apportioned thereto.

The Overall Foreign Loss Accounts

A taxpayer sustaining any type of overall foreign loss is required under § 1.904(f)-1(b) to establish an overall foreign loss account. A taxpayer is required to make additions and reductions to the account as specified in § 1.904(f)-1(d) and (e). Generally, the amount of overall foreign loss sustained in the taxable year is added to the overall foreign loss account. In subsequent taxable years in which the loss is recaptured, the amount recaptured is subtracted from such

account. Thus, the balance in an overall foreign loss account represents the amount of an overall foreign loss which is subject to recapture. Separate overall foreign loss accounts must be established for losses under each separate limitation.

"Benefit" Rule

Although a literal reading of the statute would require recapture of any overall foreign loss, these regulations adopt a tax benefit rule that limits recapture to those overall foreign losses which offset U.S. source income. Thus, in a taxable year in which the taxpayer has no U.S. source income, the exact amount of an overall foreign loss that will be subject to recapture can only be determined after application of the net operating loss deduction rules. To the extent that such foreign source net operating loss offsets foreign source taxable income in the year to which it is carried, there will be no recapture. The "benefit" concept is accomplished under § 1.904(f)-1(d) by providing that overall foreign losses are added to the overall foreign loss account only to the extent that they reduce U.S. source income. A similar "benefit" rule is provided for an overall foreign loss that is part of a net capital loss. As a result, an overall foreign capital loss is only recapturable to the extent it offsets U.S. source capital gain net income.

Paragraphs (d) (2) and (3) provide for further adjustments to the amount of overall foreign loss to be added to the applicable account if such amount includes net capital losses. A corporate taxpayer's foreign source net capital loss is reduced by the rate differential between the highest U.S. tax rate on ordinary income under section 11 and the U.S. tax on net capital gain under section 1201(a) before being added to the overall foreign loss account. A noncorporate taxpayer's foreign source net capital loss is reduced by the amount deducted from gross income under section 1202. These reductions are made in order to reflect the lower U.S. tax rate with respect to net capital gains, and thereby to take into account the actual benefit received by the taxpayer from foreign source capital losses that are subject to recapture.

Effect of Section 904(b) Adjustments on Treatment of Foreign Capital Losses as Overall Foreign Loss

When a taxpayer's capital gain net income is reduced by foreign net capital losses, section 904(b) requires the numerator of the taxpayer's foreign tax credit limitation fraction to be reduced by the amount of the reduction in capital gain net income. To the extent that the

reduction of capital gain net income is a reduction of U.S. source net capital gain, a further adjustment is made to the numerator of the foreign tax credit limitation fraction to reflect the tax rate differential between ordinary income and net capital gain. If these reductions of the numerator result in a reduction of foreign source taxable income (but not below zero), then, to that extent, the foreign capital loss is already being recaptured for purposes of the foreign tax credit, because the foreign tax credit limitation is already being reduced. Therefore, the amount of the foreign capital losses will not be treated as a recapturable overall foreign loss to the extent of the reduction of foreign source taxable income in the numerator of the foreign tax credit limitation fraction.

Recapture of Overall Foreign Losses

Section 1.904(f)-2 provides rules for determining the amount of an overall foreign loss subject to recapture in a given year, and for calculating the recapture. In general, the taxpayer is required to recapture a portion of any overall foreign loss equal to the lesser of the balance in the applicable overall foreign loss account or 50 percent of its foreign source taxable income subject to the separate limitation under which the loss arose. Recapture is accomplished by recharacterizing such foreign source taxable income as U.S. source income for purposes of the foreign tax credit limitation fraction. Section 1.904(f)-2(b) provides an ordering rule for determining the amount of a taxpayer's foreign source taxable income for purposes of recapture. Only the amount of foreign source income in the numerator of the foreign tax credit limitation fraction after making the adjustments required under section 904(a) and section 904(b) is subject to recapture. If this ordering rule were not applied, the overall foreign loss account would be reduced by recapturing amounts that were, in effect, already recaptured under other provisions, and thus should not be subject to recapture. Section 1.904(f)-2(c)(2) provides that a taxpayer may elect to recapture a greater portion of any overall foreign loss than is required by statute. If the taxpayer has foreign source taxable income subject to a separate limitation other than the limitation under which the loss arose, such income is not taken into account in determining the amount of overall foreign loss to be recaptured in such year, nor is such other income subject to recharacterization. Therefore, a taxpayer's DISC dividend income subject to the section 904(d)(1)(B) limitation is not taken into account in

determining how much of an overall foreign loss under the section 904(d)(1)(E) limitation is subject to recapture, nor is such income recharacterized for purposes of recapturing the section 904(d)(1)(E) overall foreign loss.

Relationship of Recapture to Foreign Source Capital Gain

Foreign source capital gain net income is included in the foreign tax credit limitation fraction, and is therefore included in foreign source taxable income for purposes of recapture. The ordering rule for determining the amount of foreign source taxable income subject to recapture incorporates the section 904(b) adjustments for the tax rate differential between ordinary income and net capital gain. These adjustments have also been made in determining the amount of overall foreign loss that has been added to the applicable account. Thus, when recapture is applied to foreign source taxable income in the numerator of the limitation fraction, it applies to ordinary income and capital gain simultaneously.

Disposition Rule

Section 1.904(f)-2 (d) sets forth rules for recapturing an overall foreign loss in a taxable year in which a taxpayer disposes of property used predominantly outside of the United States in a trade or business. Under section 904(f)(3), a taxpayer making such a disposition is required to recapture an amount of any overall foreign loss equal to the lesser of the taxpayer's remaining overall foreign loss or 100 percent of the foreign source taxable income realized on such disposition.

The rules contained in § 1.904(f)-2(d) apply regardless of whether or not the taxpayer actually recognized gain on such disposition. In the case of a disposition of property in which gain is recognized irrespective of § 1.904(f)-2(d), paragraph (d)(3) provides that the general recapture rule of § 1.904(f)-2(c) is applied prior to applying the special recapture rule for dispositions. If the taxpayer makes a disposition of property from which gain would otherwise not be recognized in that taxable year, § 1.904(f)-2(d)(4) provides that the taxpayer will be deemed to have recognized gain to the extent of the lesser of: (1) The balance in its overall foreign loss account (plus any overall foreign loss that is part of a net operating loss carryover from a prior year, or that would otherwise be part of a net operating loss for the year of the disposition), or (2) the excess of the fair market value of the property over its adjusted basis. The accelerated

recapture rules of § 1.904(f)-2(d) are applied first to dispositions in which gain is recognized irrespective of such section, and then to dispositions in which gain is deemed recognized by application of section 904(f)(3) and § 1.904(f)-2(d)(4). The ordering rule of § 1.904(f)-2(b) applies to determine the amount of gain which is deemed to be recognized, and which therefore will be recaptured. Since this ordering rule is applied before recapture, in some circumstances the application of section 904(b)(3) will recharacterize foreign source gain as U.S. source gain after it has been deemed to be recognized under section 904(f)(3) and § 1.904(f)-2(d)(4), but before such gain can be recaptured under § 1.904(f)-2(a). If this occurs in a case where the gain would not be recognized but for the application of section 904(f)(3), the overall foreign loss account will, nevertheless, be reduced by the amount of the gain deemed recognized even though the gain was not recharacterized by section 904(f).

Section 1.904(f)-2(d)(5) provides definitions of relevant terms.

Special Rules for Net Operating Loss and Capital Loss Carrybacks and Carryovers

Section 904(f)(2) defines an overall foreign loss as the amount by which the gross income for the taxable year from sources without the United States is exceeded by the deductions properly apportioned or allocated thereto. This definition includes not only amounts that reduce income from sources within the United States in the taxable year of the loss, but also amounts that, in carryback and carryover years, reduce income from sources both within and without the United States. Thus, under the statute, all such amounts are overall foreign losses in the loss year and are subject to recapture. In view of this, a foreign source loss that is part of a net operating loss deduction in a taxable year to which carried back or over should not be included in the determination of overall foreign loss for such year because it was included in the overall foreign loss for the year in which it arose. To prevent double counting of such a foreign source loss, section 904(f)(2)(A) specifically excludes net operating loss deductions from the determination of overall foreign losses in carryback or carryover years.

However, these proposed regulations take the position that a foreign source loss cannot be considered an overall foreign loss that is subject to recapture (and, therefore, included in the overall foreign loss account) unless it has reduced income from sources within the United States either in the loss year or

in a carryback or carryover year. This position is more liberal than the rule under section 904(f)(2)(A), which would also reduce the foreign tax credit "benefit" in situations in which there has been no countervailing benefit to the taxpayer, i.e., the loss did not reduce its U.S. source income. To implement Congress' intent to prevent a double benefit in such a way as to avoid creating a detriment, these proposed regulations consider a foreign source loss to be an overall foreign loss (and thus added to the overall foreign loss account in the loss year) only to the extent that it has reduced U.S. source income in the loss year or in carryback years. Since the losses which are carried forward cannot be determined to have reduced U.S. source income until income in those years has been determined, the net operating loss rules must be applied. If the foreign source loss reduces U.S. source income in those carryforward years, it is added to the overall foreign loss account to that extent in those years. Section 1.904(f)-3 provides that net operating loss and net capital loss carrybacks and carryforwards from foreign source losses are first allocated to foreign source income, which does not give rise to overall foreign losses subject to recapture. This allocation is consistent with the rules applied in *Motors Insurance Corp. v. United States*, 530 F.2d 864 (Ct. Cl. 1976). To the extent that these losses exceed foreign source income in the year to which carried, they are allocated to U.S. source income in that year and are subject to recapture to the same extent as if they had reduced U.S. source income in the year in which they arose.

Recapture Out of Accumulation Distributions of a Foreign Trust

Section 1.904(f)-4 provides rules for recapture of overall foreign losses out of accumulation distributions of a foreign trust. A taxpayer receiving accumulation distributions that are deemed distributed in preceding years under section 666 first applies the general recapture rules of § 1.904(f)-2 to its other foreign source income, after which the amounts of foreign source taxable income deemed distributed in prior years are subject to recapture to the extent of 100 percent of such income or the remaining balance in the overall foreign loss account, if less. An exception from recapture is provided for income deemed distributed in a year for which the taxpayer elects under section 667(d) (1)(B) to deduct, rather than credit, foreign taxes deemed distributed with respect to the accumulation distribution.

Recapture of Foreign Losses of Domestic Trusts

Section 1.904(f)-5 provides special rules for recapturing overall foreign losses of a domestic trust. In general, the rules of §§ 1.904(f)-1 through 1.904(f)-4 apply to domestic trusts, except that if foreign source taxable income subject to the separate limitation under which the trust's overall foreign loss arose is distributed to beneficiaries, a portion of the amount of the trust's loss to be recaptured in such year will be allocated to the beneficiaries receiving such income. The overall foreign loss of a trust so allocated to a beneficiary is recaptured by the beneficiary in the same year, in accordance with the rules of § 1.904(f)-1 through § 1.904(f)-4. If such trust distributes its income in whole or in part, paragraph (c) provides rules for apportioning the amount of the overall foreign loss subject to recapture in that taxable year between the trust and the beneficiaries.

Repeal of Separate Limitation for Foreign Oil Related Income

Section 211 of the Tax Equity and Fiscal Responsibility Act of 1982 repealed the separate limitation for foreign oil related income contained in section 907(b). As a consequence, for taxable years beginning after December 31, 1982 there will no longer be a separate basket of foreign oil related income and no separately determined foreign oil related loss. Instead, foreign oil related income and deductions properly allocated and apportioned thereto are to be netted with other foreign source income subject to the section 904(d)(1)(E) limitation for purposes of determining the amount of foreign source taxable income or overall foreign loss under this limitation.

Section 211 of TEFRA also provided a transitional rule for recapture of pre-1983 foreign oil related and non-oil related losses out of post-1982 section 904(d)(1)(E) foreign source taxable income (which includes foreign oil related income). The transitional rule provides that a pre-1983 foreign source non-oil related loss may not be recaptured out of post-1982 foreign oil related income more rapidly than ratably over an 8-year period (or such shorter period as the taxpayer may select). Likewise, a pre-1983 foreign oil related loss may not be recaptured out of post-1982 non-oil related income more rapidly than ratably over an 8-year (or shorter) period. Section 1.904(f)-6 provides transitional rules for recapturing pre-1983 section 904(d)(1)(E) overall foreign losses and section 907(b) overall foreign losses (foreign oil related

losses) out of taxable income subject to the section 904(d)(1)(E) limitation in taxable years beginning after December 31, 1982.

Consolidated Overall Foreign Losses

Section 1.1502-9(a) requires affiliated corporations filing consolidated returns to calculate their overall foreign losses on a consolidated basis and requires the establishment of consolidated overall foreign loss accounts. It also provides rules for allocating an overall foreign loss sustained by a member of the group in a separate return year or a separate return limitation year to a consolidated overall foreign loss account when such corporation joins in filing a consolidated return. Once the consolidated overall foreign losses have been determined, the rules contained in § 1.904(f)-1 through 1.904(f)-6 are applied to recapture such losses. Section 1.1502-9(c) requires that individual members of an affiliated group keep separate national loss accounts reflecting their portion of any consolidated overall foreign losses. Such notional accounts are reduced, when the consolidated overall foreign losses are recaptured, by the pro rata share (of the total amount recaptured) of each member that contributed to the consolidated overall foreign loss. Further, § 1.1502-9 provides rules for allocating a portion of the balance in any consolidated overall foreign loss account to a member that leaves the group before such balance has been fully recaptured. This section also provides rules for recapturing an overall foreign loss that was incurred in a member's separate return limitation year. Such a loss is only recaptured to the extent of the foreign source taxable income of the member that incurred the loss. Finally, this section provides rules for recapturing a consolidated overall foreign loss in taxable years in which the excess loss account of a member is triggered.

Section 1.1502-9 of these proposed regulations provides for recapture of an overall foreign loss which arose in a separate return limitation year only from the separate foreign taxable income of the member of the consolidated group which incurred such overall foreign loss. The appropriateness of this position and whether there should be a recapture of such losses from the consolidated foreign taxable income, rather than solely from the separate foreign taxable income of the member of the consolidated group which sustained the loss will be reconsidered in the final regulations. Taxpayers are invited to comment as to whether the rule in the proposed regulations is the correct one, or whether the alternative, which would

recapture an overall foreign loss from a separate return limitation year from consolidated foreign taxable income, is the more appropriate rule.

Drafting Information

The principal author of these proposed regulations is David J. Dean formerly 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.

Comments and Requests for a Public Hearing

Before adopting these proposed regulations, consideration will be given to any written comments that are submitted (preferably eight 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*.

The collection of information requirements contained in this notice of proposed rulemaking have been submitted to the Office of Management and Budget (OMB) for review under section 3504(h) of the Paperwork Reduction Act. Comments on these requirements should be sent to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for Internal Revenue Service, New Executive Office Building, Washington, DC 20503. The Internal Revenue Service requests that persons submitting comments on these requirements to OMB also send copies of those comments to the Service.

Regulatory Flexibility Act and Executive Order 12291

Although this document is a notice of proposed rulemaking which solicits public comment, the Internal Revenue Service has concluded that the regulations proposed herein are interpretative and that the notice and public comment procedural requirements of 5 U.S.C. do not apply. Accordingly, these proposed regulations do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. Chapter 6). The Commissioner of Internal Revenue has determined that this proposed rule is not a major regulation as defined in Executive Order

12291 and therefore a regulatory impact analysis is not required.

List of Subjects

26 CFR 1.861-1 Through 1.997-1

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

26 CFR 1.1501-1 Through 1.1564-1

Income taxes, Controlled group of corporations, Consolidated returns.

Proposed Amendments to the Regulations

Accordingly, the proposed amendments to 26 CFR Part 1 are as follows:

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

Authority: 26 U.S.C. 7805. * * * Sections 1.904(f)-2 and 1.1502-9 are also issued under 26 U.S.C. 904(f)(3)(B) and 26 U.S.C. 1502. * * *

Par. 2. The following new §§ 1.904(f)-1 through 1.904(f)-6 are added immediately following § 1.904(b)-4 to read as set forth below:

§ 1.904(f)-1 Overall foreign loss and the overall foreign loss account.

(a) *Overview of regulations.* In general, section 904(f) and these regulations apply to any taxpayer that sustains an overall foreign loss (as defined in paragraph (c)(1) of this section) in a taxable year beginning after December 31, 1975. There can be seven types of overall foreign losses: An overall foreign loss under each of the five separate limitations contained in section 904(d)(1), a foreign oil related loss under the section 907(b) limitation (for taxable years ending after December 31, 1975 and beginning before January 1, 1983), and an overall foreign loss with respect to income subject to section 936. Section 1.904(f)-1 provides rules for determining a taxpayer's overall foreign losses, for establishing overall foreign loss accounts, and for making additions to and reductions of such accounts for purposes of section 904(f). Section 1.904(f)-2 provides rules for recapturing the balance in any overall foreign loss account under the general recapture rule of section 904(f)(1) and under the special recapture rule of section 904(f)(3) when the taxpayer disposes of property used predominantly outside the United States in a trade or business. Section 1.904(f)-3 provides rules for allocating overall foreign losses that are part of net operating losses or net capital losses to foreign source income in years to which such losses are carried. Section 1.904(f)-

4 provides rules for recapture out of an accumulating distribution of a foreign trust. Section 1.904(f)-5 provides rules for recapture of overall foreign losses of domestic trusts. Section 1.904(f)-6 provides a transitional rule for recapturing a taxpayer's pre-1983 overall foreign losses under the section 904(d)(1)(C) and section 907(b) limitations, prior to their amendment by TEFRA, out of taxable income subject to the section 904(d)(E) limitation (and its predecessor) in taxable years beginning after December 31, 1982. See § 1.1502-9 for rules concerning the application of these regulations to corporations filing consolidated returns.

(b) *Overall foreign loss accounts.* Any taxpayer that sustains an overall foreign loss must establish an account for such loss. Separate types of overall foreign losses must be kept in separate accounts. The balance in any overall foreign loss account represents the amount of such overall foreign loss subject to recapture by the taxpayer in a given year. From year to year, amounts may be added to or subtracted from the balance in such account as provided in paragraphs (d) and (e) of this section. The taxpayer must report the balance in its overall foreign loss accounts annually on a Form 116 or 1118 which is filed after these regulations are published as final regulations. The balance in each account does not have to be attributed to the year or years in which the loss was incurred.

(c) *Determination of a taxpayer's overall foreign loss—(1) Overall foreign loss defined.* A taxpayer sustains an overall foreign loss in any taxable year in which its gross income from sources without the United States subject to a separate limitation (as defined in paragraph (c)(2) of this section) is exceeded by the sum of the deductions properly allocated and apportioned thereto. Such losses are to be determined separately in accordance with the principles of the separate limitations. Accordingly, income and deductions subject to a separate limitation are not to be netted with income and deductions subject to another separate limitation for purposes of determining the amount of a overall foreign loss. A taxpayer may, for example, have an overall foreign loss under the section 904(d)(1)(E) limitation in the same taxable year in which it has taxable income under the section 904(d)(1)(B) limitation.

(2) *Separate limitation define.* For purposes of paragraph (c) (1) of this section and these regulations, the term separate limitation means any of the

separate limitations under section 904(d)(1) (A), (B), (C), (D), and (E); the separate limitation for foreign oil related income under section 907(b) (for taxable years ending after December 31, 1975 and beginning before January 1, 1983); or the separate limitation for the Puerto Rico and possession tax credit under section 936.

(3) *Method of allocation and apportionment of deductions.* In determining its overall foreign loss the taxpayer shall allocate and apportion expenses, losses, and other deductions to the appropriate category of gross income in accordance with section 862(b) and § 1.861-8 of the regulations. However, the following deductions shall not be taken into account:

(i) The amount of any net operation loss deduction for such year under section 172(a); and

(ii) The amount of any—
(A) Expropriation losses for such year (as defined in section 172(h), or
(B) Loss for such year which arises from fire, storm, shipwreck, or other casualty, or from theft,

to the extent such loss is not compensated for by insurance or otherwise.

(d) *Additions to the overall foreign loss account—(1) General rule.* A taxpayer's overall foreign loss as determined under paragraph (c) of this section shall be added to the applicable overall foreign loss account at the end of its taxable year to the extent that the overall foreign loss has reduced U.S. source income during the taxable year or during a year to which the loss has been carried back. For rules to which the loss has been carried back. For rules with respect to carryovers see paragraph (d)(4) of this section and § 1.904(f)-3.

(2) *Overall foreign net capital loss.* An overall foreign net capital loss shall be added to the overall foreign loss account at the end of the taxable year to the extent that the foreign source capital loss has reduced U.S. source capital gain net income during the current taxable year and during the years to which the loss has been carried back, subject to the adjustments in paragraph (d)(3) of this section. For rules with respect to carryovers, see paragraph (d)(5) of this section and § 1.904(f)-3.

(3) *Adjustments.* The amount of overall foreign loss determined in paragraph (d)(1) of this section and the amount of overall foreign net capital loss determined in paragraph (d)(2) of this section shall be subject to the following adjustments:

(i) *Adjustment due to reduction in foreign source income under section*

904(b). A taxpayer's overall foreign loss account shall not include any net capital loss from sources without the United States to the extent that the application of section 904(b) would result in a reduction of foreign source taxable income (but not below zero) for purposes of the numerator of the foreign tax credit limitation fraction.

(ii) *Adjustment to account for rate differential between ordinary income rate and capital gain rate.* Subject to the provisions of paragraph (d)(30)(i) of this section, if an overall foreign loss for a taxable year includes an overall foreign net capital loss, such amount shall be reduced as follows, in accordance with the provisions of section 904(b), before being added to the overall foreign loss account:

(A) In the case of a corporate taxpayer, to the extent that the U.S. source capital loss consists of U.S. source net capital gain, by an amount equal to the rate differential portion (as defined in section 904(b)(3)(F) of the Code and the regulations thereunder) of the U.S. source net capital gain; or

(B) In the case of a taxpayer other than a corporate taxpayer, by 50 percent (for taxable years beginning prior to January 1, 1979) or 60 percent (for taxable years beginning after December 31, 1978) of the taxpayer's U.S. source net capital gain that is offset by such foreign source net capital loss.

(iii) *Illustrations.* The provisions of this paragraph (d)(3) may be illustrated by the following examples, which assume that all foreign source income and losses are under the section 904(d)(1)(E) separate limitation.

Example (1). V Corporation has \$1000 of foreign source taxable income and \$500 of foreign source net capital loss which has reduced \$500 of U.S. source capital gain net income (none of which is net capital gain). Under section 904(b), the numerator of V Corporation's foreign tax credit limitation fraction is reduced by \$500 (see § 1.904(b)-1(a)(3)). Under paragraph (d)(3)(i) of this section, none of that \$500 goes into its overall foreign loss account.

Example (2). W Corporation has \$1000 of foreign source taxable income and \$2000 of foreign source net capital loss, which has reduced \$2000 of U.S. source capital gain net income (all of which is U.S. source net capital gain). Under section 904(b), \$1000 of W Corporation's foreign source net capital loss has reduced foreign source income in the numerator of the foreign tax credit limitation fraction (reducing the numerator to zero). As in example (1), that \$1000 will not be included in W Corporation's overall foreign loss account. The additional amount of foreign source net capital loss which reduced U.S. source capital gain net income must be added to the overall foreign loss account. Since the U.S. source capital gain net income which was reduced by the foreign source net capital

loss was net capital gain, a rate differential adjustment must be made under paragraph (d)(3)(ii) of this section before adding the overall foreign net capital loss to the account. The overall foreign loss is, therefore, \$217.40 determined as follows. Under section 1.904(b)-1(a)(3) the \$2000 foreign source net capital loss which has reduced \$2000 of U.S. source net capital gain has resulted in a reduction in the numerator of the foreign tax credit limitation fraction of \$1217.40

$$(\$2,000 - \frac{46.28}{46} (\$2,000))$$

\$1000 of the \$1217.40 will result in a reduction of foreign source taxable income (but not below zero) for purposes of the numerator of the foreign tax credit limitation fraction and is not included in the overall foreign loss account. Therefore \$217.40 is included in the overall foreign loss account.

(4) *Overall foreign losses of another taxpayer.* If any portion of any overall foreign loss of another taxpayer is allocated to the taxpayer in accordance with § 1.904(f)-5 (relating to overall foreign losses of domestic trusts) or § 1.1502-9 (relating to consolidated overall foreign losses), the taxpayer shall add such amount to its applicable overall foreign loss account.

(5) *Loss carryovers.* Subject to the adjustments under paragraph (d)(3) of this section, the taxpayer shall add to the overall foreign loss account—

(i) All net operating loss carryovers to the current taxable year to the extent that overall foreign losses included in the net operating loss carryovers have reduced U.S. source income for the taxable year, and

(ii) All capital loss carryovers to the current taxable year to the extent that foreign source capital loss carryovers have reduced U.S. source capital gain net income for the taxable year.

(e) *Reduction of the overall foreign loss accounts.* The taxpayer shall subtract the following amounts from its overall foreign loss accounts at the end of its taxable year in the following order, if applicable:

(1) *Pre-recapture reduction for amounts allocated to other taxpayers.* The amount of any type of overall foreign loss which is allocated to another taxpayer in accordance with § 1.904(f)-5 (relating to overall foreign losses of domestic trusts) or § 1.1502-9 (relating to consolidated overall foreign losses).

(2) *Reduction for amounts recaptured.* The amount of any type of overall foreign loss which is recaptured in such year in accordance with §§ 1.904(f)-2(c) (relating to recapture under section 904(f)(1)), 1.904(f)-2(d) (relating to

recapture when the taxpayer disposes of certain properties under section 904(f)(3)), and § 1.904(f)-4 (relating to recapture when the taxpayer receives an accumulation distribution from a foreign trust under section 904(f)(4)).

(f) *Illustrations.* The rules of this section may be illustrated by the following examples.

Example (1). X Corporation is a domestic corporation with foreign branch operations in country C. X Corporation's taxable income and (losses) for its taxable year 1979 are as follows:

U.S. source taxable income	\$1,000
Foreign source taxable income (loss) subject to section 904(d)(1)(E).....	(500)
Foreign oil related income (loss) subject to section 907(b).....	\$200

X Corporation has a section 904(d)(1)(E) overall foreign loss of \$500 for 1979 in accordance with paragraph (c)(1) of this section. Since the section 904(d)(1)(E) overall foreign loss is not considered to offset income under any other separate limitation described in paragraph (c)(1) of this section, it therefore offsets \$500 of U.S. source taxable income. This amount is added to X Corporation's section 904(d)(1)(E) overall foreign loss account at the end of 1979 in accordance with paragraph (d)(1) of this section.

Example (2). X Corporation is a domestic corporation with foreign branch operations in country C. For its taxable year 1980, X Corporation has a net operating loss of \$1,250, determined as follows:

U.S. source taxable income (loss).....	(\$250)
Foreign source taxable income (loss) subject to section 904(d)(1)(E).....	(\$1,000)

The only prior year to which the net operating loss can be carried under section 172 is 1977. For its taxable year 1977, X Corporation had the following taxable income:

U.S. source taxable income	\$1,900
Foreign source taxable income subject to section 904(d)(1)(E)...	400

X Corporation has a section 904(d)(1)(E) overall foreign loss for 1980 of \$1,000. X Corporation's overall foreign loss is part of a net operating loss of \$1,250 for 1980. Since, in accordance with § 1.904(f)-3(a), the foreign loss carried back to 1977 is first allocated to X Corporation's foreign source taxable income subject to the limitation under which the loss arose, the amount of overall foreign loss to be added to X Corporation's overall foreign loss account in 1980 is \$600 under paragraph (d)(1) of this section after the foreign loss carryback is first applied to foreign source income of \$400 (which does

not result in an overall foreign loss that is subject to recapture).

Example (3). The facts are the same as in example (2), except that in 1977 X Corporation's U.S. source taxable income was zero. Nothing is added to X Corporation's overall foreign loss account at the end of 1980. X Corporation's income and deductions for 1981 are as follows:

U.S. source taxable income	\$1,250
Foreign source taxable income subject to section 904(d)(1)(E).....	300

X Corporation has a net operating loss carryover of \$850 (\$1250-\$400) to 1981. The \$600 of foreign losses that are part of this net operating loss (\$1000 of 1980 loss, minus \$400 offset by foreign source income in the carryback year) are allocated to X Corporation's foreign source taxable income subject to the section 904(d)(1)(e) limitation in such year, in accordance with § 1.904(f)-3, prior to reducing U.S. source income. Thus, \$300 of the remaining \$600 of foreign source net operating loss carryover is first applied to foreign source income in the carryover year, leaving \$300 which offsets U.S. source income in the carryover year. Therefore, \$300 is added to X Corporation's section 904(d)(1)(E) overall foreign loss account in 1981 in accordance with paragraph (d)(5)(f) of this section. Since the entire net operating loss carryforward was absorbed in 1981, there are no further additions to X Corporation's overall foreign loss account under paragraph (d) as a result of this loss.

Example (4). Z Corporation is a domestic corporation with foreign branch operations. For the taxable year 1981, Z Corporation's taxable income and (losses) are as follow:

U.S. Source taxable ordinary income	\$1,000
U.S. Source net capital gain	460
Foreign source taxable ordinary income subject to section 904(d)(1)(E)	200
Foreign source net capital loss subject to section 904(d)(1)(E) ...	(800)

Z Corporation had no capital gain net income in any prior taxable year. Under paragraph (d)(2) and (3) of this section, the amount to be added to Z Corporation's section 904(d)(1)(E) overall foreign loss account is the excess of the amount which has reduced U.S. source capital gain net income for the taxable year (\$460), adjusted for the rate differential because it has reduced U.S. source net capital gain (\$460 × 28/46 = \$280), over the amount which has reduced the numerator of Z Corporation's foreign tax credit limitation fraction under section 904(b)(2), which is \$200. (The \$200 amount is foreign source net capital loss that has reduced U.S. source net capital gain in the denominator of the fraction, but not exceeding the amount of foreign source income in the numerator before the section 904(b)(2) adjustment.) Thus, Z Corporation must add \$80 (the excess of the \$280 over \$200) to its section 904(d)(1)(E) overall foreign loss account in 1981. It should be noted that an over-

all foreign loss can occur in the absence of foreign branch operations.

§ 1.904(f)-2 Recapture of overall foreign losses.

(a) *In general.* A taxpayer electing the benefits of section 901 or 936 with respect to foreign source taxable income subject to a separate limitation under which the taxpayer has sustained an overall foreign loss shall be required to recapture such loss as provided in this section. Recapture is accomplished by treating as U.S. source income a portion of the taxpayer's foreign source taxable income subject to the limitation under which the loss arose. As a result, the taxpayer's foreign tax credit limitation (or section 936 credit) with respect to such income is decreased. Recapture continues until such time as the amount of foreign source taxable income recharacterized as U.S. source income equals the U.S. source income which was previously offset by the overall foreign loss. As provided in § 1.904(f)-1(e)(2), the balance in a taxpayer's overall foreign loss account is reduced by the amount of loss recaptured. Recapture is only applied to the extent that it will produce a reduction in the foreign tax credit limitation or the section 936 credit. This is accomplished by applying recapture to foreign source taxable income in the numerator of the foreign tax credit limitation fraction only after applying the section 904(a) limitation and section 904(b) adjustments, as provided in paragraph (b) of this section.

(b) *Determination of taxable income from sources without the United States for purposes of recapture.* For purposes of determining the amount of an overall foreign loss subject to recapture, the taxpayer's taxable income from sources without the United States, as determined in the numerator of the foreign tax credit limitation fraction, shall be computed with respect to each of the separate limitations described in § 1.904(f)-1(c)(2) in accordance with § 1.904(f)-1(c)(1) and (3). This computation is made without taking into account foreign source taxable income (and deductions properly allocated and apportioned thereto) subject to another separate limitation. Before applying the recapture rules to such foreign source taxable income, the following provisions shall be applied to such income in the following order:

(1) Section 904 (b)(3)(C) and the regulations thereunder shall be applied to treat certain foreign source gain as U.S. source gain;

(2) Section 904(b)(2) and the regulations thereunder shall be applied to make adjustments in the foreign tax

credit limitation fraction for certain capital gains and losses; and

(3) Section 904(a) shall be applied to determine foreign source taxable income in the numerator of the foreign tax credit limitation fraction.

An overall foreign loss under a separate limitation shall only be recaptured by recharacterizing foreign source taxable income subject to the same separate limitation as U.S. source income, except as provided in § 1.904(f)-6. However, for purposes of recapturing an overall foreign loss incurred before a corporation elected to use section 936, the possession source income of a section 936 corporation shall be used to recapture the previously incurred overall foreign loss.

(c) *Section 904(f)(1) recapture—(1) In general.* The amount of any overall foreign loss subject to recapture in a taxable year in which paragraph (a) of this section is applicable is the lesser of the balance in the applicable overall foreign loss account (after reduction of such account in accordance with § 1.904(f)-1(e)(1)) or 50 percent of the taxpayer's foreign source taxable income subject to the limitation under which the loss arose, as determined under paragraph (b) of this section.

(2) *Election to recapture more of the overall foreign loss than is required under paragraph (c)(1).* A taxpayer may make a revocable election to recapture a greater portion of the balance in an overall foreign loss account than is required to be recaptured under paragraph (c)(1) of this section. A taxpayer may make such an election or amend an election by attaching a statement to its Form 1116 or 1118 for the taxable year for which the election is made. This statement must indicate the percentage of the taxpayer's foreign source taxable income that is being recharacterized as U.S. source income and the percentage of the balance in the overall foreign loss account that is being recaptured. The taxpayer may not elect to recapture an amount in excess of the taxpayer's foreign source taxable income subject to the same separate limitation as the loss after applying paragraph (b) of this section to such income.

(3) *Illustrations.* The rules of this paragraph (c) may be illustrated by the following examples, all of which assume a U.S. corporate tax rate of 50 percent unless otherwise stated.

Example (1). X Corporation is a domestic corporation which does business in the United States and abroad. On December 31, 1980, the balance in X Corporation's section 904(d)(1)(E) overall foreign loss account is \$600. For 1981, X Corporation has U.S. source

taxable income of \$500 and foreign source taxable income subject to section 904(d)(1)(E) of \$500. For 1981, X Corporation pays \$200 in foreign taxes and elects section 901. Under paragraph (c)(1) of this section, X Corporation is required to recapture \$250 (the lesser of \$600 or 50 percent of \$500) of its overall foreign loss. As a consequence, X Corporation's foreign tax credit limitation under section 904(d)(1)(E) is \$250/\$1000×\$500, or \$125, instead of \$500/\$1000×\$500, or \$250. The balance in X Corporation's section 904(d)(1)(E) overall foreign loss account is reduced by \$250 in accordance with § 1.904(f)-1(e)(2).

Example (2). The facts are the same as in example (1) except that X Corporation makes an election to recapture its overall foreign loss to the extent of 80 percent of its foreign source taxable income subject to the section 904(d)(1)(E) limitation (or \$400) in accordance with paragraph (c)(2) of this section. As a result of recapture, X Corporation's foreign tax credit limitation under section 904(d)(1)(E) for 1981 is \$100/\$1000×\$500, or \$50, instead of \$500/\$1000×\$500, or \$250. X Corporation's overall foreign loss account is reduced by \$400 in accordance with § 1.904(f)-1(e)(2).

Example (3). The facts are the same as in example (1) except that X Corporation does not elect the benefits of section 901 or 936 in 1981 and deducts its foreign taxes paid in 1981. The balance in X Corporation's section 904(d)(1)(E) overall foreign loss account on December 31, 1981 is \$600. There is no recapture of the overall foreign loss since X Corporation did not elect the foreign tax credit.

Example (4). The facts are the same as in example (1) except that in 1981, X Corporation also has \$1,000 of foreign source DISC dividend income subject to section 904(d)(1)(B) which carries a foreign tax of \$50. Under paragraph (c)(1) of this section the amount of X Corporation's section 904(d)(1)(E) overall foreign loss subject to recapture is \$250 (the lesser of the balance in the overall foreign loss account or 50 percent of the foreign source taxable income subject to the section 904(d)(1)(E) limitation (which excludes taxable income subject to the separate limitation of section 904(d)(1)(E)(B))). X Corporation's separate limitation under section 904(d)(1)(B) for DISC dividend income is \$1000/\$2000×\$1000, or \$500. Its limitation under section 904(d)(1)(E) for other foreign source taxable income is \$250/\$2000×\$1000, or \$125, instead of \$500/\$2000×\$1000, or \$250. The balance in X Corporation's section 904(d)(1)(E) overall foreign loss account is reduced by \$250 in accordance with § 1.904(f)-1(e)(2).

Example (5). The facts are the same as in example (1) except that on December 31, 1980 X Corporation also has a balance in its section 907(b) overall foreign loss account of \$900. For 1981, X Corporation also has foreign source taxable income subject to the section 907(b) limitation of \$800. As in example (1), X Corporation is required to recapture \$250 of its section 904(d)(1)(E) overall foreign loss, and its section 904(d)(1)(E) foreign tax credit limitation is \$250/\$1800×\$900, or \$125, instead of \$500/\$1800×\$900, or \$250. X Corporation is also required to recapture \$400

of its section 904(b) overall foreign loss (the lesser of \$900 or 50 percent of \$600). X Corporation's foreign tax credit limitation under section 907(b) is \$400/\$1800×\$900, or \$200, instead of \$800/\$1800×\$900, or \$400. The balance in X Corporation's section 907(b) overall foreign loss account is reduced to \$500 in accordance with § 1.904(f)-1(e)(2).

Example (6). This example assumes a U.S. corporate tax rate of 46% (under section 11(b)) and an alternative rate of tax under section 1201(a) of 28%. W is a U.S. corporation that does business in the United States and abroad. On December 31, 1980, W has \$350 in its section 904(d)(1)(E) overall foreign loss account. For 1981, W has \$500 of U.S. source taxable income, and has foreign source income subject to section 904(d)(1)(E) as follows:

Foreign source taxable income other than net capital gain.....	\$720
Foreign source net capital gain.....	460

Under paragraph (b)(2) of this section, foreign source taxable income for purposes of recapture includes foreign source capital gain net income, reduced, under section 904(b)(2), by the rate differential portion of foreign source net capital gain, which adjusts for the reduced tax rate for net capital gain under section 1201(a):

Foreign source capital gain net income	\$460
Rate differential portion of foreign source net capital gain (18/46 of \$460).....	-180
Foreign source capital gain included in foreign source taxable income	280

The total foreign source taxable income of W for purposes of recapture in the 1981 is \$1000 (\$720 + \$280). Under paragraph (c)(1) of this section, W is required to recapture \$350 (the lesser of \$350 or 50 percent of \$1000), and W's section 904(d)(1)(E) overall foreign loss account is reduced to zero. W's section 904(d)(1)(E) foreign tax credit limitation is \$650/\$1500×\$690, or \$299, instead of \$1000/\$1500×\$690, or \$460.

(d) Recapture of overall foreign losses from dispositions under section 904(f)(3)—(1) In general. If the taxpayer disposes of property used or held for use predominantly without the United States in a trade or business during a taxable year in which paragraph (a) of this section is applicable, its overall foreign loss shall be recaptured as provided in paragraphs (d)(2), (d)(3), and (d)(4) of this section. See paragraph (d)(5) of this section for definitions. For the purposes of this paragraph (d), gain recognized on the disposition of property that was used or held for use to generate foreign source taxable income subject to a separate limitation will be treated as foreign source gain subject to the same separate limitation.

(2) Treatment of net capital gain. If the gain from a disposition of property to which this paragraph (d) applies is treated as net capital gain, all references to such gain in paragraphs (d)(3) and (d)(4) of this section shall mean such gain as adjusted under paragraph (b) of this section. The amount by which the overall foreign loss account shall be reduced shall be determined from such adjusted gain.

(3) Dispositions where gain is recognized irrespective of section 904(f)(3). If the taxpayer recognized foreign source gain subject to a separate limitation on the disposition of property described in paragraph (d)(1) of this section, and there is a balance in the taxpayer's overall foreign loss account under such separate limitation after applying paragraph (c) of this section, and additional portion of such balance shall be recaptured in accordance with paragraphs (a) and (b) of this section. The amount recaptured shall be the lesser of such balance or 100 percent of the foreign source gain recognized on the disposition that was not previously recharacterized under this section. The amount of gain not previously recharacterized shall be determined by subtracting 50 percent (or the percentage recaptured under paragraph (c)(2) of this section) of the gain recognized on such disposition from the entire amount of such gain.

(4) Dispositions in which gain is not otherwise recognized—(i) Recognition of gain to the extent of overall foreign loss. If the taxpayer makes a disposition of property described in paragraph (d)(1) of this section in which any amount of gain otherwise would not be recognized in the year of the disposition, and such property was used or held for use to generate foreign source taxable income subject to a separate limitation under which the taxpayer had an overall foreign loss (including an overall foreign loss incurred in the year of the disposition), the taxpayer shall recognize foreign source taxable income in an amount equal to the lesser of:

(A) The sum of the balance in the applicable overall foreign loss account (but only after such balance has been increased by amounts added to the account for the year of the disposition or has been reduced by amounts recaptured for the year of the disposition under paragraph (c) and paragraph (d)(3) of this section) plus the amount of any overall foreign loss that would be part of a net operating loss for the year of the disposition if gain from the disposition were not recognized under section 904(f)(3), plus the amount of any overall foreign loss that is part of

a net operating loss carryover from a prior year, or

(B) The excess of the fair market value of such property over the taxpayer's adjusted basis in such property.

The excess of the fair market value of such property over its adjusted basis shall be determined on an asset by asset basis. Losses from the disposition of an asset shall not be recognized. Any foreign source taxable income deemed received and recognized under this paragraph (d)(4)(i) will have the same character as if the property had been sold or exchanged in a taxable transaction.

(ii) *Basis adjustment.* The basis of the property received in an exchange to which this paragraph (d)(4) applies shall be increased by the amount of gain deemed recognized, in accordance with applicable sections of subchapters C (relating to corporate distributions and adjustments), K (relating to partners and partnerships), O (relating to gain or loss on disposition of property), and P (relating to capital gains and losses). If the property to which this paragraph (d)(4) applies was transferred by gift, the basis of such property in the hand of the donor immediately preceding such gift shall be increased by the amount of the gain deemed recognized.

(iii) *Recapture of overall foreign loss of the extent of amount deemed recognized.* The provisions of paragraphs (a) and (b) of this section shall be applied to the extent of 100% of the foreign source taxable income which is recognized under paragraph (d)(4)(i) of this section. However, amounts of foreign source gain that would not be recognized except by application of section 904(f)(3) and paragraph (d)(4)(i) of this section, and which are treated as U.S. source gain by application of section 904(b)(3)(C) and paragraph (b)(1) of this section, shall reduce the overall foreign loss account, subject to the adjustments described in paragraph (d)(2) of this section if such gain is net capital gain, notwithstanding the fact that such amounts were precluded from recapture by paragraph (a) of this section due to the ordering rules in paragraph (b) of this section.

(iv) *Priorities among dispositions in which gain is deemed to be recognized.* If the taxpayer makes more than one disposition to which this paragraph (d)(4) is applicable, the rules of this paragraph (d)(4) shall be applied to each disposition in succession starting with the disposition which occurred earliest, until the balance in the applicable overall foreign loss account is reduced to zero.

(5) *Definitions—(i) Disposition.* A disposition to which this paragraph (d) applies includes a sale (including a sale in lease back transaction); exchange; distribution; gift; transfer upon the foreclosure of a security interest (but not a mere transfer of title to a creditor upon the creation of a security interest or to a debtor upon termination of a security interest); involuntary conversion; contribution to a partnership, trust, or corporation; transfer at death; or any other transfer of property whether or not gain or loss is recognized. However, a disposition to which this paragraph (d) applies does not include:

(A) A distribution or transfer of property to a domestic corporation described in section 381 (a) (provided that paragraph (d)(6) of this section applies), or

(B) A disposition of property which is not a material factor in the realization of income by the taxpayer (as defined in paragraph (d)(5)(iv) of this section).

(ii) *Property used in a trade or business.* Property is used in a trade or business if it is held for the principal purpose of promoting the present or future conduct of the trade or business. This generally includes property acquired and held in the ordinary course of a trade or business or otherwise held in a direct relationship to a trade or business. In determining whether an asset is held in a direct relationship to a trade or business, principal consideration shall be given to whether the asset is used in the trade or business. Property will be treated as held in a direct relationship to a trade or business if the property was acquired with funds generated by that trade or business or if income generated from the asset is retained or reinvested in that trade or business. Property used in a trade or business may be tangible or intangible, real or personal property. It includes property, such as equipment, which is subject to an allowance for depreciation under section 167 or cost recovery under section 168. Property may be considered used in a trade or business even if it is a capital asset in the hands of the taxpayer. Stock of another corporation held only for investment purposes shall not be considered property used in a trade or business. However, stock acquired or held to assure a source of supply for the trade or business shall be considered property used in a trade or business. Stock in trade is generally not considered property used in a trade or business. However, when disposed of in a manner not in the ordinary course of a trade or business, stock in trade will be considered as property used in the trade or business.

(iii) *Property used predominantly outside the United States.* Property will be considered used predominantly outside the United States if for a 3-year period ending on the date of the disposition (or, if shorter, the period during which the property has been used in the trade or business) such property was located outside the United States more than 50 percent of the time. An aircraft, railroad rolling stock, vessel, motor vehicle, container, or other property used for transportation purposes is deemed to be used predominantly outside the United States if, during the 3-year (or shorter) period, either such property is located outside the United States more than 50 percent of the time or more than 50 percent of the miles traversed in the use of such property are traversed outside the United States.

(iv) *Property which is a material factor is the realization of income.* For the purposes of this section, property used in a trade or business will be considered a material factor in the realization of income unless that taxpayer establishes that it is not (or, if the taxpayer did not realize income from the trade or business in the taxable year, would not be expected to be) necessary to the realization of income by the taxpayer.

(6) *Carryover of overall foreign loss account in a corporate acquisition to which section 381(a) applies.* In the case of a distribution or transfer described in section 381(a), an overall foreign loss of the distributing or transferor corporation shall be treated as the overall foreign loss of the acquiring or transferee corporation as of the close of the date of the distribution or transfer. If the transferee corporation has an overall foreign loss account under the same separate limitation prior to the distribution or transfer, the balance in the transferor's account may be added to the transferee's account. If not, the transferee must establish a new overall foreign loss account. An overall foreign loss of the transferor will be treated as incurred by the transferee in a year prior to the year of the transfer.

(7) *Illustrations.* The rules of this paragraph (d) may be illustrated by the following examples which assume that the U.S. corporate tax rate is 50 percent (unless otherwise stated). For purposes of these examples, none of the foreign source gains are treated as net capital gains (unless so stated).

Example (1). X Corporation has a balance in its section 904 (d)(1)(E) overall foreign loss account of \$600 at the close of its taxable year ending December 31, 1980. In 1981, X Corporation sells assets used predominantly

outside the United States in a trade or business and recognizes \$1,000 of gain on the sale under section 1001. This gain is subject to the section 904(d)(1)(E) limitation. This sale is a disposition within the meaning of paragraph (d)(4)(i) of this section, and to which this paragraph (d) applies. X Corporation has no other foreign source taxable income in 1981 and has \$1,000 of U.S. source taxable income. X Corporation is required to recapture \$500 (the lesser of the balance in X's section 904(d)(1)(E) overall foreign loss account (\$600) or 50 percent of \$1000) of its overall foreign loss under paragraph (c) of this section. The balance in X Corporation's section 904(d)(1)(E) overall foreign loss account is reduced to \$100 in accordance with § 1.904(f)-1 (e)(2). In addition, under paragraph (d)(3) of this section, X Corporation is required to recapture \$100 (the lesser of the remaining balance in its section 904(d)(1)(E) overall foreign loss account (\$100) or 100 percent of its foreign source taxable income recognized on such disposition that has not been previously recharacterized (\$500)). The total amount recaptured is \$600. X Corporation's section 904(d)(1)(E) foreign tax credit limitation for 1981 is \$200 (\$400/\$2,000x\$1,000) instead of \$500 (\$1,000/\$2,000x\$1,000). The balance in X Corporation's section 904(d)(1)(E) overall foreign loss account is reduced to zero in accordance with § 1.904(f)-1 (e)(2).

Example (2). On December 31, 1980, Y Corporation has a balance in its section 904(d)(1)(E) overall foreign loss account of \$1,500. In 1981, Y Corporation has \$500 of U.S. source taxable income and \$200 of foreign source taxable income subject to the section 904(d)(1)(E) limitation. Y Corporation's foreign source taxable income is from the sale of property used predominantly outside of the United States in a trade or business. This sale is a disposition to which this paragraph (d) is applicable. In 1981, Y Corporation also transferred property used predominantly outside of the United States in a trade or business to another corporation. Under section 351, no gain was recognized on this transfer. Such property had been used to generate foreign source taxable income subject to the section 904(d)(1)(E) limitation. The excess of the fair market value of the property transferred over the corporation's adjusted basis in such property was \$2,000. In accordance with paragraph (c) of this section, Y Corporation is required to recapture \$100 (the lesser of \$1500, the amount in Y Corporation's overall foreign loss account, or 50 percent of \$200, the amount of foreign source taxable income for the current year) of its section 904(d)(1)(E) overall foreign loss. Y Corporation is then required to recapture an additional \$100 of its overall foreign loss under paragraph (d)(3) of this section out of gain recognized on the sale of assets which has not been previously recharacterized, since 100 percent of such gain is subject to recapture. The balance in Y Corporation's section 904(d)(1)(E) over all foreign loss account is reduced to \$1,300 in accordance

with § 1.904(f)-1 (e) (2). Y Corporation is then required to recognize \$1,300 of foreign source taxable income on its section 351 transfer under paragraph (d)(4) of this section. Under paragraph (d)(4), 100 percent of the amount so recognized is treated as U.S. source taxable income, and Y Corporation's section 904(d)(1)(E) overall foreign loss account is reduced to zero.

X Corporation's entire taxable income for 1981 is:

U.S. source taxable income	\$500
Foreign source taxable income subject to section 904(d)(1)(E) that is recharacterized as U.S. source income by paragraphs (c) and (d)(3) of this section	200
Gain recognized under section 904(f)(3) and paragraph (d)(4) of this section, and recharacterized as U.S. source income	1,300
Total	2,000

Y Corporation's section 904(d)(1)(E) foreign tax credit limitation for 1981 is 0 (\$0/\$2,000 x \$1,000) instead of \$100 (\$200/\$700 x \$350).

Example (3). Z Corporation has a balance in its section 907 (b) overall foreign loss (foreign oil related loss) account of \$1,500 at the end of its taxable year 1980. In 1981, Z Corporation has \$1,600 of foreign oil related income subject to the section 907 (b) limitation and no U.S. source income. In addition, in 1981, Z Corporation makes two dispositions of property used predominantly outside the United States in a trade or business on which no gain was recognized. Such property generated foreign oil related income. The excess of the fair market value of the property transferred in the first disposition over the taxpayer's adjusted basis in such property is \$575. The excess of the fair market value of the property transferred in the second disposition over the taxpayer's adjusted basis in such property is \$1,000.

Under paragraph (c) of this section, Z Corporation is required to recapture \$800 (the lesser of 50 percent of its foreign oil related income of \$1600 or the balance (\$1500) of its foreign oil related loss. In accordance with paragraph (d)(4) (i) and (iv) of this section Z Corporation is required to recognize foreign oil related income in the amount of \$575 on the first disposition and, since the foreign oil related loss account is now reduced by \$1375 (the \$800 and \$575 amounts previously recaptured), Z Corporation is required to recognize foreign oil related income in the amount of \$125 on the second disposition. In accordance with paragraph (d)(4) (iii) of this section, the entire amount recognized is treated as U.S. source income, the balance in its section 907(b) overall foreign loss account is reduced to zero under § 1.904(f)-1 (e) (2). Z Corporation's foreign tax credit limitation under section 907(b) is \$400 (\$800/\$2,300 x \$1150) instead of \$800 (\$1,600/\$1,600 x \$800). Z Corporation has \$700 of U.S. source taxable

income with respect to which no foreign tax credit is allowed.

Example (4). The facts are the same as in example (3), except that the gain from the two dispositions of property is treated as net capital gain and the U.S. corporate tax rate is assumed to be 46 percent. As in example (3), Z Corporation is required to recapture \$800 of its foreign oil related loss from its ordinary foreign oil related income. In accordance with paragraph (d)(4)(i) and (iv) of this section, Z Corporation is first required to recognize foreign oil related income (which is net capital gain) on the first disposition in the amount of \$575. Under paragraphs (b) and (d)(2) of this section, this net capital gain is adjusted by subtracting the rate differential portion of such gain from the total amount of such gain to determine the amount by which the foreign oil related loss account is reduced, which is \$350 (\$575 - (\$575 x 18/46)). The balance remaining in Z Corporation's foreign oil related loss account after this step is \$350. Therefore, this process will be repeated, in accordance with paragraph (d)(4)(iv) of this section, to recapture that remaining balance out of gain deemed recognized on the second disposition, resulting in reduction of the foreign oil related loss account to zero and net capital gain required to be recognized from the second disposition in the amount of \$575, which must also be adjusted by subtracting the rate differential portion to determine the amount by which the foreign oil related loss account is reduced (which is \$350). The \$575 of net capital gain is also recharacterized as U.S. source net capital gain. Z Corporation's section 907(b) foreign tax credit limitation is the same as in example (3), and Z Corporation has an additional \$1,150 (\$575 + \$575) of U.S. source net capital gain for which no credit is available.

§ 1.904(f)-3 Allocation of net operating losses and net capital losses.

(a) *Allocation of net operating loss carrybacks and carryovers attributable to overall foreign losses.* If the taxpayer sustains an overall foreign loss that is part of a net operating loss for the year, then, in carrying such net operating loss back or over in accordance with section 172, (or §§ 1.1502-21(b) and 1.1502-79(a)), the portion of the net operating loss attributable to an overall foreign loss shall be allocated to foreign source taxable income subject to the same separate limitation in the carryback or carryover year. To the extent that such overall foreign loss exceeds foreign source taxable income subject to the same separate limitation in the year to which it is carried, it shall be allocated to the taxpayer's U.S. source income for such year and not to foreign source taxable income subject to another separate limitation. See § 1.904(f)-1(d) for additions to the applicable overall

foreign loss account to the extent that U.S. source taxable income is reduced in the taxable year to which the loss is carried.

(b) *Allocation of net capital loss carrybacks and carryovers attributable to overall foreign losses.* If the taxpayer sustains an overall foreign loss that is part of a net capital loss for the year, then in carrying the net capital loss back or over in accordance with section 1212 (or § 1.1502-22 and 1.1502-79(b)), the portion of the net capital loss that is attributable to a foreign source capital loss shall be allocated to foreign source capital gain net income subject to the same separate limitation in the carryback or carryover year. To the extent that such foreign source capital loss exceeds foreign source capital gain net income subject to the same separate limitation in the year to which carried, it shall be allocated to U.S. source capital gain net income in such year and not to foreign source capital gain net income subject to another separate limitation. An overall foreign source net capital loss carried over to a later year in accordance with this paragraph (b) shall be taken into consideration in determining the taxpayer's overall foreign loss in the year to which carried and shall be added to the applicable loss account for such year in accordance with § 1.904(f)-1(d).

§ 1.904(f)-4 Recapture of foreign losses out of accumulation distributions from a foreign trust.

(a) *In general.* If the taxpayer receives a distribution of foreign source taxable income that is treated under section 666 as having been distributed by a foreign trust in a preceding taxable year, a portion of the balance in the taxpayer's overall foreign loss account shall be subject to recapture under this section. The amount subject to recapture shall be an amount equal to the lesser of the balance in the taxpayer's overall foreign loss account (after applying §§ 1.904(f)-1, 1.904(f)-2, 1.904(f)-3, and 1.904(f)-6 to the taxpayer's other income or less in the current taxable year) or the entire amount of foreign source taxable income deemed distributed in a preceding year or years under section 666.

(b) *Effect of recapture on foreign tax credit limitation under section 667(d).* If paragraph (a) of this section is applicable, then in applying the separate limitation (in accordance with section 667(d)(1) (A) and (C)) to determine the amount of foreign taxes deemed distributed under section 666 (b) and (c) that can be credited against the increase in tax in a computation year, a portion of the foreign source taxable income deemed distributed in such computation

year shall be treated as U.S. source income. Such portion shall be determined by multiplying the amount of foreign source taxable income deemed distributed in the computation year by a fraction. The numerator of this fraction is the balance in the taxpayer's overall foreign loss account (after application of §§ 1.904(f)-1, 1.904(f)-2, 1.904(f)-3, and 1.904(f)-6), and the denominator of the fraction is the entire amount of foreign source taxable income deemed distributed under section 666. However, the numerator of this fraction shall not exceed the denominator of the fraction.

(c) *No recapture if taxpayer chooses to deduct foreign taxes deemed distributed.* The provisions of this section shall not apply to the income deemed distributed in any computation year of a taxpayer making an election under section 667 (d) (1) (B) to deduct foreign taxes deemed distributed under section 666 (b) or (c) for such computation year.

(d) *Illustration.* The provisions of this section may be illustrated by the following example:

Example. X Corporation is a domestic corporation that has a balance of \$10,000 in its overall foreign loss account on December 31, 1980. For its taxable year beginning January 1, 1981, X Corporation's only income is an accumulation distribution from a foreign trust of \$20,000 of foreign source taxable income. Under section 666, the amount distributed and the foreign taxes paid on such amount (\$4,000) are deemed distributed in 2 prior taxable years. In determining the partial tax on such distribution under section 667 (b), the amount added to each computation year is \$12,000 (the sum of the actual distribution plus the taxes deemed distributed (\$24,000) divided by the number of accumulation years (2)). Of that amount, \$5,000 ($\$10,000/\$24,000 \times \$12,000$) is treated as U.S. source taxable income in accordance with paragraph (b) of this section. X Corporation's separate foreign tax credit limitation against the increase in tax in each computation year is \$7,000/ $\$12,000 \times \$6,000$ instead of $\$12,000/\$12,000 \times \$6,000$. X Corporation's overall foreign loss account is reduced to zero in accordance with paragraph (a) of this section.

§ 1.904(f)-5 Special rules for recapture of overall foreign losses of a domestic trust.

(a) *In general.* Except as provided in this section, the rules contained in §§ 1.904(f)-1, 1.904(f)-2, 1.904(f)-3, 1.904(f)-4, and 1.904(f)-6 apply to domestic trusts.

(b) *Recapture of trust's overall foreign loss.* In taxable years in which a trust has foreign source taxable income subject to a separate limitation under which the trust had an overall foreign loss, the balance in the trust's overall foreign loss account shall be recaptured as follows:

(1) *Trust accumulates income.* If the trust accumulates all of its foreign source taxable income subject to the limitation under which the loss arose, its overall foreign loss shall be recaptured out of such income in accordance with §§ 1.904(f)-1, 1.904(f)-2, 1.904(f)-3, 1.904(f)-4, and 1.904(f)-6.

(2) *Trust distributes income.* If the trust distributes all of its foreign source taxable income subject to the limitation under which the loss arose, the amount of the overall foreign loss that would be subject to recapture by the trust under paragraph (b) (1) of this section shall be allocated to the beneficiaries in proportion to the amount of such income which is distributed to each beneficiary over the total amount of such income.

(3) *Trust accumulates and distributes income.* If the trust accumulates part of its foreign source taxable income subject to the limitation under which the loss arose and distributes part of such income, the portion of the overall foreign loss that would be subject to recapture by the trust under paragraph (b) (1) of this section if the distributed income were accumulated shall be allocated to the beneficiaries receiving income distributions. The amount of overall foreign loss to be allocated to such beneficiaries shall be the same portion of the total amount of such overall foreign loss that would be subject to recapture as the amount of such income which is distributed to each beneficiary bears to the total amount of such income of the trust for such year. That portion of the overall foreign loss subject to recapture in such year that is not allocated to the beneficiaries in accordance with this paragraph (b) (3) shall be recaptured by the trust in accordance with §§ 1.904(f)-1, 1.904(f)-2, 1.904(f)-3, 1.904(f)-4, and 1.904(f)-6.

(c) *Amounts allocated to beneficiaries.* Amounts of a trust's overall foreign loss allocated to any beneficiary in accordance with paragraph (b)(2) or (3) of this section shall be added to the beneficiary's applicable overall foreign loss account and treated as an overall foreign loss of the beneficiary incurred in the taxable year preceding the year of such allocation. Such amounts shall be subject to recapture in accordance with §§ 1.904(f)-1, 1.904(f)-2, 1.904(f)-3, 1.904(f)-4, and 1.904(f)-6 out of foreign source taxable income subject to the same separate limitation which is distributed to the beneficiaries.

(d) *Section 904 (f) (3) dispositions to which § 1.904(f)-2, (d) (4) (i) is applicable.* Foreign source taxable income recognized by a trust under 1.904(f)-2, (d) (4) on a disposition of

property used in a trade or business outside the United States shall be deemed to be accumulated by the trust. One hundred percent of such income shall be used to recapture the trust's overall foreign loss in accordance with § 1.904(f)-2(d) (4).

(e) *Illustrations.* The provisions of this section are illustrated by the following examples:

Example (1). T, a domestic trust, has a balance of \$2000 in its overall foreign loss account on December 31, 1979. For its taxable year ending on December 31, 1980, T has foreign source taxable income (subject to the same separate limitation as that under which the overall foreign loss was incurred) of \$1600, all of which it accumulates. Under paragraph (d) (1) of this section, T is required to recapture \$800 in 1980 (the lesser of the overall foreign loss or 50 percent of the foreign source taxable income). At the end of its 1980 taxable year, T has a balance of \$1200 in its overall foreign loss account.

Example (2). The facts are the same as in example (1). In 1981, T has foreign source taxable income (subject to the same separate limitation) of \$1000, which it distributes to its beneficiaries as follows: \$500 to A, \$250 to B, and \$250 to C. Under paragraph (b) (1) of this section, T would have been required to recapture \$500 of its overall foreign loss if it had accumulated all of such income. Therefore, under paragraph (b)(2) of this section, T must allocate \$500 of its overall foreign loss to A, B, and C as follows: \$250 to A ($\$500 \times \$500/\1000), \$125 to B ($\$500 \times \$250/\1000), and \$125 to C ($\$500 \times \$250/\1000). Under paragraph (c) of this section and § 1.904(f)-1(d) (4), A, B, and C must add the amounts of overall foreign loss allocated to them from T to their overall foreign loss accounts and treat such amounts as overall foreign loss incurred in 1980. A, B, and C must then apply the rules of § 1.904(f)-1, -2, -3, -4, and -6 to recapture their overall foreign losses. T's overall foreign loss account is reduced, in accordance with § 1.904(f)-1(e) (1), by the \$500 that is allocated to A, B, and C. At the end of 1981, T's overall foreign loss account has a balance of \$700.

Example (3). The facts are the same as in example (2), except that in 1981 T's foreign source taxable income under the applicable separate limitation is \$1500 instead of \$1000, and T accumulates the additional \$500. Under paragraph (b)(1) of this section, T would be required to recapture \$750 of its overall foreign loss if it accumulated all of the \$1500. Under paragraph (b) (3) of this section, T must allocate \$500 of its overall foreign loss A, B, and C as follows: \$250 to A ($\$750 \times \$500/\1500) and \$125 each to B and C ($\$750 \times \$250/\1500). T must also recapture \$250 of its overall foreign loss, which is the portion of the amount subject to recapture in 1981 that is not allocated to the beneficiaries ($\$750 - \$500 = \$250$). Under § 1.904(f)-1(e) (1), T subtracts \$500 from its overall foreign loss account, and under § 1.904(f)-1(e) (2), T subtracts \$250 from its overall foreign loss account, leaving a balance at the end of 1981 of \$450.

§ 1.904(f)-6 Transitional rule for recapture of old section 907 (b) and section 904 (d)(1) (E) overall foreign losses incurred in taxable years beginning before January 1, 1983 from foreign source taxable income subject to the section 904 (d)(1)(E) limitation in taxable years beginning after December 31, 1982.

(a) *General rule.* For taxable years beginning after December 31, 1982, foreign source taxable income subject to the section 904 (d) (1) (E) limitation includes foreign oil related income (as defined in section 907 (c) (2) prior to its amendment by section 211 of the Tax Equity and Fiscal Responsibility Act of 1982). However, for purposes of recapturing section 904 (d) (1) (E) overall foreign losses incurred in taxable years beginning before January 1, 1983 (pre-1983) out of foreign source taxable income subject to the section 904 (d) (1) (E) limitation in taxable years beginning after December 31, 1982 (post-1982), the taxpayer shall make separate determinations of foreign oil related income and other section 904 (d) (1) (E) income (as if the "old section 907 (b)" separate limitation, under section 907 (b) prior to its amendment by section 211 of the Tax Equity and Fiscal Responsibility Act of 1982, were still in effect), and shall apply the rules set forth in this section. The taxpayer shall maintain separate accounts for its pre-1983 old section 907 (b), pre-1983 section 904 (d) (1) (E), and post-1982 section 904 (d) (1) (E) overall foreign losses. The taxpayer shall continue to maintain such separate accounts, make such separate determinations, and apply the rules of this section until the earlier of—

(1) Such time as the taxpayer's entire pre-1983 old section 907 (b) and pre-1983 section 904 (d) (1) (E) overall foreign losses have been recaptured, or

(2) The end of the taxpayer's eighth post-1982 taxable year, at which time the taxpayer shall add any remaining balance in its pre-1983 old section 907 (b) and pre-1983 section 904 (d) (1) (E) overall foreign loss accounts to its post-1982 section 904 (d) (1) (E) overall foreign loss account,

after which time the taxpayer shall recapture all overall foreign losses as provided in §§ 1.904(f)-1 through 1.904(f)-5.

(b) *Recapture of pre-1983 old section 907(b) and section 904(d)(1)(E) overall foreign losses from post-1982 income.* A taxpayer having a balance in a pre-1983 old section 907(b) or section 904(d)(1) (E) overall foreign loss account in a post-1982 taxable year shall recapture a portion of such overall foreign loss as follows:

(1) *Recapture from income subject to the same limitation.* The taxpayer shall

first apply the rules of §§ 1.904(f)-1 through 1.904(f)-5 to the taxpayer's separately determined foreign oil related income to recapture pre-1983 old section 907(b) overall foreign losses, and shall apply such rules to the taxpayer's separately determined section 904(d)(1)(E) income (exclusive of foreign oil related income) to recapture pre-1983 section 904(d)(1)(E) overall foreign losses.

(2) *Recapture from income subject to the other limitation.* The taxpayer shall next apply the rules of §§ 1.904(f)-1 through 1.904(f)-5 to the taxpayer's separately determined foreign oil related income to recapture pre-1983 section 904(d)(1)(E) overall foreign losses, and shall apply such rules to the taxpayer's separately determined section 904(d)(1)(E) income to recapture pre-1983 old section 907(b) overall foreign losses, but only to the extent that—

(i) The amount recaptured from such separately determined income under paragraph(b)(1) of this section is less than 50 percent (or such larger percentage as the taxpayer elects) of such separately determined income, and

(ii) The amount recaptured from such separately determined income under this paragraph (b)(2) does not exceed an amount equal to 12½ percent of the balance in the taxpayer's pre-1983 old section 907(b) or section 904(d)(1)(E) (as applicable) overall foreign loss account at the beginning of the taxpayer's first post-1982 taxable year, multiplied by the number of post-1982 taxable years (including the year to which this rule is being applied) which have elapsed, less the amount (if any) recaptured in prior post-1982 taxable years under this paragraph(b)(2) from such separately determined income.

The taxpayer may elect to recapture a pre-1983 overall foreign loss from post-1982 income subject to the section 904(d)(1)(E) limitation at a faster rate than is required by this paragraph(b)(2). This election shall be made in the same manner as an election to recapture more than 50 percent of income subject to recapture under section 904(f)(1), as provided in § 1.904(f)-2(c)(2).

(c) *Coordination of recapture of pre-1983 and post-1982 overall foreign losses.* A taxpayer incurring a section 904(d)(1)(E) overall foreign loss in any post-1982 taxable year in which the taxpayer has a balance in a pre-1983 old section 907(b) or section 904(d)(1)(E) overall foreign loss account shall establish a separate overall foreign loss account for such loss. The taxpayer shall recapture its overall foreign losses in succeeding taxable years by first applying the rules of this section to

recapture its pre-1983 overall foreign losses, and then applying the rules of §§ 1.904(f)-1 through 1.904(f)-5 to recapture its post-1982 section 904(d)(1)(E) overall foreign loss. A post-1982 section 904(d)(1)(E) overall foreign loss may only be recaptured to the extent that the amount of foreign source taxable income recharacterized under paragraph (b) of this section is less than 50 percent (or such greater percentage as the taxpayer elects) of the taxpayer's total section 904(d)(1)(E) foreign source taxable income (including foreign oil related income) for such taxable year (except as required by section 904(f)(3)).

(d) *Illustrations.* The provisions of this section may be illustrated by the following examples:

Example (1). X Corporation is a U.S. corporation which has the calendar year as its taxable year. On December 31, 1982, X Corporation has a balance of \$1,000 in its section 904(d)(1)(E) overall foreign loss account and does not have a balance in an old section 907 (b) overall foreign loss account. For 1983, X Corporation has section 904(d)(1)(E) income of \$1,200, which includes foreign oil related income of \$1,000 and other section 904(d)(1)(E) income of \$200. In 1983 X Corporation is required to recapture \$225 of its pre-1983 section 904(d)(1)(E) overall foreign loss, computed as follows:

Amount recaptured under paragraph (b)(1) of this section	\$100
The amount recaptured from section 904(d)(1)(E) income exclusive of foreign oil related income is the lesser of \$1,000 (the pre-1983 section 904(d)(1)(E) overall foreign loss) or 50 percent of \$200 (the separately determined section 904(d)(1)(E) income exclusive of foreign oil related income).	
Amount recaptured under paragraph (b)(2) of this section	125
The amount recaptured from foreign oil related income is the lesser of \$900 (the remaining pre-1983 section 904(d)(1)(E) overall foreign loss after recapture under paragraph (b)(1) of this section) or 50 percent of \$1,000 (the separately determined foreign oil related income), but is limited by paragraph (b)(2)(ii) of this section to (12½ percent of \$1,000×1)=\$0, which is \$125.	
Total amount recaptured in 1983.....	225

Example (2). The facts are the same as in example (1), except that X Corporation has section 904(d)(1)(E) income of \$50 for 1984

and \$600 for 1985, all of which is foreign oil related income. X Corporation is required to recapture \$25 in 1984 and \$225 in 1985 of its pre-1983 section 904(d)(1)(E) overall foreign loss, computed as follows:

Amount recaptured under paragraph (b)(2) of this section in 1984	\$25
The amount recaptured from foreign oil related income is the lesser of \$775 (the remaining pre-1983 section 904(d)(1)(E) overall foreign loss) or 50 percent of \$50 (the separately determined foreign oil related income). This amount is within the limitation of paragraph (b)(2)(ii) of this section, (12½ percent of \$1,000×2)=\$125, which is \$125.	
Amount recaptured under paragraph (b)(2) of this section in 1985	225
The amount recaptured from foreign oil related income is the lesser of \$750 (the remaining pre-1983 section 904(d)(1)(E) overall foreign loss) or 50 percent of \$600 (the separately determined foreign oil related income), but is limited by paragraph (b)(2)(ii) of this section to (12½ percent of \$1,000×3)=\$125+\$25, which is \$225. (\$125 is the amount recaptured in 1983 under paragraph (b)(2) of this section, and \$25 is the amount recaptured in 1984 under paragraph (b)(2) of this section.)	

Example (3). Y Corporation is a U.S. corporation which has the calendar year as its taxable year. On December 31, 1982, Y Corporation has a balance of \$400 in its section 904(d)(1)(E) overall foreign loss account and does not have a balance in a section 907(b) overall foreign loss account. For 1983, Y Corporation has a section 904(d)(1)(E) overall foreign loss of \$200. For 1984, Y Corporation has section 904(d)(1)(E) income of \$1,200, all of which is foreign oil related income. In 1984 Y Corporation is required to recapture a total of \$300 computed as follows:

Amount of pre-1983 overall foreign loss recaptured under paragraph (b)(2) of this section	\$100
The amount of pre-1983 section 904(d)(1)(E) overall foreign loss recaptured from foreign oil related income is the lesser of \$400 (the loss) or 50 percent of \$1,200 (the separately determined foreign oil related income), but is limited by paragraph (b)(2)(ii) of this section to (12½ percent of \$400×2)=\$0, which is \$100.	

Amount of post-1982 overall foreign loss recaptured under paragraph (c) of this section..... 200

The amount of post-1982 section 904(d)(1)(E) overall foreign loss recaptured is the amount computed under § 1.904(f)-2(c)(1), which is the lesser of \$200 (the post-1982 loss) or 50 percent of \$1,200 (the income), but only to the extent that the amount of pre-1983 loss recaptured under paragraph (b) of this section is less than 50 percent of such income ((50 percent of \$1,200)=\$600) recaptured under paragraph (b)=\$500.

Total amount recaptured in 1984..... 300

At the end of 1984, Y Corporation has a balance in its pre-1983 section 904(d)(1)(E) overall foreign loss account of \$300, and has reduced its post-1982 section 904(d)(1)(E) overall foreign loss account to zero.

Example (4). Z Corporation is a U.S. corporation which has the calendar year as its taxable year. On December 31, 1982, Z Corporation has a balance of \$400 in its section 904(d)(1)(E) overall foreign loss account and a balance of \$1,000 in its old section 907(b) overall foreign loss account. For 1983, Z Corporation has section 904(d)(1)(E) income of \$2,000, which includes foreign oil related income of \$1,000 and other section 904(d)(1)(E) income of \$1,000. Keeping these amounts separate for purposes of this section, Z Corporation is required to recapture a total of \$1,000 in 1983, computed as follows:

Amount recaptured under paragraph (b)(1) of this section	\$900
The amount of pre-1983 old section 907(b) overall foreign loss recaptured from foreign oil related income, in accordance with § 1.904(f)-2(c)(1), is the lesser of \$1,000 (the old section 907(b) overall foreign loss) or 50 percent of \$1,000 (the foreign oil related income), which is \$500.	
The amount of pre-1983 section 904(d)(1)(E) overall foreign loss recaptured from section 904(d)(1)(E) income exclusive of foreign oil related income, in accordance with § 1.904(f)-2(c)(1), is the lesser of \$400 (the section 904(d)(1)(E) overall foreign loss) or 50 percent of \$1,000 (the section 904(d)(1)(E) income exclusive of foreign oil related income which is \$400).	
Amount recaptured under paragraph (b)(2) of this section	100

The amount of pre-1983 old section 907(b) overall foreign loss recaptured from section 904(d)(1)(E) income exclusive of foreign oil related income is the lesser of \$500 (the remaining balance in that loss account) or 50 percent of \$1,000 (the section 904(d)(1)(E) income exclusive of foreign oil related income), but only to the extent that the amount recaptured from such income under paragraph (b)(1) of this section is less than 50 percent of such income, or \$100 (50 percent of \$1,000) — \$400 recaptured due to section 904(d)(1)(E) overall foreign loss, and only up to the amount permitted by paragraph (b)(2)(ii) of this section, which is $(12\frac{1}{2}\text{ percent of } \$1,000 \times 1) - \$0$, or \$125.

Total amount recaptured in 1983.....	1,000
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At the end of 1983, Z Corporation has reduced its pre-1983 section 904(d)(1)(E) overall foreign loss account to zero, and has a balance in its pre-1983 old section 907(b) overall foreign loss account of \$400.

Par. 3. A new § 1.1502-9 is added in the appropriate place to read as set forth below:

§ 1.1502-9 Application of overall foreign loss recapture rules to corporations filing consolidated returns.

(a) *In general.* An affiliated group of corporations filing a consolidated return sustains an overall foreign loss (a consolidated overall foreign loss) in any taxable year in which its gross income from sources without the United States subject to a separate limitation (as defined in § 1.904(f)-1 (c) (2)) is exceeded by the sum of the deductions properly allocated and apportioned thereto. The rules contained in §§ 1.904(f)-1 through 1.904(f)-6 are applicable to affiliated groups filing consolidated returns. This section provides special rules for applying those sections to such groups. Paragraph (b) provides rules for additions and subtractions of overall foreign losses to and from consolidated overall foreign loss accounts. Paragraph (c) requires that separate national overall foreign loss accounts be kept for each member of the group that contributes to a consolidated overall foreign loss account and provides for allocation of overall foreign losses when a member leaves the group prior to recapture of the entire amount of such losses. Paragraph (d) provides rules for recapture of amounts in consolidated overall foreign loss accounts. Paragraph (e) provides special

rules pertaining to section 904 (f) (3) dispositions between members of a group. Paragraphs (b), (c), and (e) also contain special rules applying to overall foreign losses arising in separate return limitation years; the principles therein shall also apply to overall foreign losses where there has been a consolidated return change of ownership (as defined in § 1.1502-1(g)).

(b) *Consolidated overall foreign loss accounts.* Any group sustaining an overall foreign loss (or acquiring a member having an overall foreign loss) must establish a consolidated overall foreign loss account for such loss, and amounts shall be added to and subtracted from such account as provided in §§ 1.904(f)-1 through 1.904(f)-6 and this section.

(1) *Additions to the consolidated overall foreign loss accounts—(i) Consolidated overall foreign losses.* Any consolidated overall foreign loss shall be added to the applicable consolidated overall foreign loss account for such separate limitation, to the extent that the overall foreign loss has reduced U.S. source income, in accordance with the rules of §§ 1.904(f)-1 and 1.904(f)-3.

(ii) *Overall foreign losses from separate return years.* If a corporation joins in the filing of a consolidated return in a taxable year in which such corporation has a balance in an overall foreign loss account from a prior separate return year that is not a separate return limitation year, such balance shall be added to the applicable consolidated overall foreign loss account in such year and treated as a consolidated overall foreign loss incurred in the previous year (and shall therefore be subject to recapture, in accordance with paragraph (d) of this section, beginning in the same year in which it is added to the consolidated overall foreign loss account).

(iii) *Overall foreign losses from separate return limitation years.* If a corporation joins in the filing of a consolidated return in a taxable year in which such corporation has a balance in an overall foreign loss account from a prior separate return limitation year, such balance shall be added to the applicable consolidated overall foreign loss account in such consolidated return year to the extent of consolidated foreign source taxable income subject to the same separate limitation (computed in accordance with §§ 1.904(f)-2(b) and 1.1502-4(d)(1)) minus such consolidated foreign source taxable income recomputed by excluding the items of income and deduction of such corporation (but not less than zero). The amount added to a consolidated overall

foreign loss account in any taxable year under this paragraph (b)(1)(iii) shall be treated as a consolidated overall foreign loss in the previous year (and shall therefore be subject to recapture, in accordance with paragraph (d) of this section, beginning in the same year in which it is added to the consolidated overall foreign loss account).

(iv) *Overall foreign losses that are part of net operating losses or net capital losses carried over from a separate return limitation year.* Overall foreign losses that are part of a net operating loss or net capital loss carryover from a separate return limitation year of a member that is absorbed in a consolidated return year are treated as though they were added to an overall foreign loss account in a separate return limitation year of such member. See paragraph (c)(2) of this section for rules regarding the addition of such losses to the applicable overall foreign loss account of such member.

(2) *Reductions of the consolidated overall foreign loss accounts—(i) Amounts allocated to members leaving the group.* When a member leaves the group, each applicable consolidated overall foreign loss account shall be reduced by the amount allocated from such account to such member in accordance with paragraph (c)(3)(i) of this section.

(ii) *Amounts recaptured.* Each applicable consolidated overall foreign loss account shall be reduced by the amount of the overall foreign loss under the same separate limitation that is recaptured from consolidated income in accordance with § 1.904(f)-2.

(c) *Allocation of overall foreign losses among members of an affiliated group—(1) Notional overall foreign loss accounts.* Separate notional overall foreign loss accounts shall be established for each member of a group that contributes to a consolidated overall foreign loss account. Additions to and reduction of such notional accounts shall be made when additions or reductions are made to consolidated overall foreign loss accounts in accordance with paragraph (b) of this section and § 1.904(f)-1.

(i) *Additions to notional accounts—(A) Consolidated overall foreign losses.* When a consolidated overall foreign loss is added to a consolidated overall foreign loss account, each member shall add its pro rata share of the amount of such loss added to a consolidated overall foreign loss account to such member's notional overall foreign loss account. A member's pro rata share of the amount of such loss added to a consolidated overall foreign loss

account for any taxable year is determined by multiplying such amount by a fraction. The numerator of this fraction is the amount by which the member's separate gross income for the taxable year from sources without the United States is exceeded by the sum of the deductions properly allocated and apportioned thereto (including such member's share of any consolidated net operating loss deduction and consolidated net capital loss carryovers and carrybacks to the taxable year), for each member with such deductions in excess of such income. The denominator of this fraction is the sum of the numerators of this fraction for all such members of the group.

(B) *Overall foreign losses from separate return years and separate return limitation years.* When an amount from a member's overall foreign loss account from a separate return year or separate return limitation year is added to a consolidated overall foreign loss account in accordance with paragraph (b)(1)(ii) or (iii) of this section, such amount shall also be added to that member's notional overall foreign loss account for such separate limitation.

(ii) *Reductions of notional accounts.* When a consolidated overall foreign loss account is reduced by recapture, in accordance with paragraph (b)(2)(ii) of this section, each member of the group shall reduce its notional overall foreign loss account for such separate limitation by its pro rata share of the amount by which the consolidated overall foreign loss account is reduced. A member's pro rata share of the amount by which a consolidated overall foreign loss account is reduced is determined by multiplying such amount by a fraction, the numerator of which is the amount in such member's notional account under such separate limitation, and the denominator of which is the amount in the consolidated overall foreign loss account under such separate limitation before reduction for the amount recaptured for that taxable year.

(2) *Overall foreign losses that are part of net operating losses or net capital losses from separate return limitation years.* An overall foreign loss that is part of a net operating loss or net capital loss carryover from a separate return limitation year of a member that is absorbed in a consolidated return year shall be treated as an overall foreign loss of such member (rather than the group) and shall be added to such member's separate overall foreign loss account (for losses added to the member's overall foreign loss account under such separate limitation in prior

separate return limitation years), to the extent it reduces U.S. source income, in accordance with § 1.904(f)-1(d)(5). Such overall foreign losses shall be added to the appropriate consolidated overall foreign loss account in later years in accordance with paragraph (b)(1)(iii) of this section.

(3) *Allocation of overall foreign losses to a member leaving the group—(i) Consolidated overall foreign losses.* When a corporation ceases to be a member of an affiliated group filing consolidated returns, a portion of the balance in each applicable consolidated overall foreign loss account shall be allocated to such corporation. The amount allocated to such corporation shall be equal to the amount in such member's notional overall foreign loss account under the same separate limitation.

(ii) *Overall foreign losses from separate return limitation years.* When a corporation ceases to be a member of an affiliated group filing consolidated returns, it shall take with it the remaining portion of its separate overall foreign loss account for its overall foreign losses from separate return limitation years (including amounts added to such account under paragraph (c)(2) of this section) that has not been added to a consolidated overall foreign loss account under paragraph (b)(1)(iii) of this section.

(d) *Recapture of consolidated overall foreign losses.* The amount in any consolidated overall foreign loss account shall be recaptured under §§ 1.904(f)-1 through 1.904(f)-6 by recharacterizing consolidated foreign source taxable income subject to the limitation under which the loss arose as U.S. source taxable income. For purposes of recapture, consolidated foreign source taxable income subject to the limitation under which the loss arose shall be determined in accordance with §§ 1.904(f)-2 and 1.1502-4. Amounts in a member's excess loss account that are included in income under § 1.1502-19 shall be subject to recapture to the extent that they are included in consolidated foreign source taxable income subject to the limitation under which the loss arose.

(e) *Dispositions of property between members of the same affiliated group during a consolidated return year—(1) Recapture of overall foreign loss from a separate return limitation year.* To the extent of any balance in a separate account for overall foreign losses from a separate return limitation year of a member (a "selling member") making a disposition of property to which section 904(f)(3)(A) applies to another member

of the same affiliated group, no gain from such disposition shall be deferred under the rules of § 1.1502-13(c).

(2) *Recapture of consolidated overall foreign loss not from a separate return limitation year.* Except as provided in paragraph (e)(1) of this section, the rules of § 1.1502-13 with respect to deferral of gain shall apply to dispositions of property to which section 904(f)(3)(A) applies.

(f) *Illustrations.* The provisions of this section are illustrated by the following examples. All foreign source income or loss in these examples is subject to the section 904(d)(1)(E) limitation.

Example (1). A, B, and C are the members of an affiliated group of corporations (as defined in section 1504), and all use the calendar year as their taxable year. For 1983, A, B, and C file a consolidated return. ABC has U.S. source income of \$1000 and foreign source losses (overall foreign loss) of \$400. In accordance with paragraph (b)(1)(i) of this section, ABC adds \$400 to its consolidated overall foreign loss account at the end of 1983. For 1983, the separate foreign source taxable income (or loss) of A is \$400, of B is (\$200), and of C is (\$600). Under paragraph (c)(1) of this section, B and C must establish separate notional overall foreign loss accounts. Under paragraph (c)(1)(i)(A) of this section, the amount added to each notional account is the pro rata share of the consolidated overall foreign loss of each member contributing to such loss. The pro rata share is determined by multiplying the consolidated loss by the member's proportionate share of the total foreign source losses of all members having such losses. B's foreign source loss is \$200 and C's foreign source loss is \$600, totalling \$800. B must add $\$400 \times 200/800$, or \$100, to its notional overall foreign loss account. C must add $\$400 \times 600/800$, or \$300, to its notional overall foreign loss account.

Example (2). The facts are the same as in example (1). In 1984, ABC has consolidated foreign source taxable income of \$200. Under paragraph (d) of this section and § 1.904(f)-2, ABC is required to recapture \$100 of the amount in its consolidated overall foreign loss account, which reduces that account by \$100 under paragraph (b)(2)(ii) of this section. In accordance with paragraph (c)(1)(ii) of this section, B reduces its notional account by $\$100 \times 100/400$, or \$25, and C reduces its notional account by $\$100 \times 300/400$, or \$75. At the end of 1984 ABC has \$300 in its consolidated overall foreign loss account, B has \$75 in its notional account, and C has \$225 in its notional account.

Example (3). D and E are members of an affiliated group and file separate returns using the calendar year as their taxable year for 1980. In 1980, D has an overall foreign loss of \$200, which it adds to its overall foreign loss account, and E has no overall foreign losses. For 1981, D and E file a consolidated return, and DE must establish a consolidated overall foreign loss account, to which D's overall foreign loss from 1980 is added under paragraph (b)(1)(ii) of this section. D also

adds the same amount to its notional account under paragraph (c)(1)(i)(B) of this section. In 1981, DE has consolidated foreign source taxable income of \$300. Since the amount added to the consolidated overall foreign loss account in 1981 is treated as a consolidated overall foreign loss from 1980, DE must recapture \$150 in 1981 under paragraph (d) of this section and § 1.904(f)-2. DE's consolidated overall foreign loss account is reduced by \$150 under paragraph (b)(2)(ii) of this section, and D's notional account is reduced by \$150 under paragraph (c)(1)(ii) of this section, leaving balances of \$50 in each of those accounts at the end of 1981.

Example (4). F and G are not members of an affiliated group in 1980, and G has an overall foreign loss of \$200, which it adds to its overall foreign loss account. F has no overall foreign loss. On January 1, 1981, F acquires G, and FG files a consolidated return for the calendar year 1981. In 1981, F has no foreign source taxable income or loss, and G has \$100 of foreign source taxable income. FG's consolidated foreign source taxable income, \$100, minus such income without G's items of income and deduction, \$0, is \$100. Therefore \$100 of G's overall foreign loss from its 1980 separate return limitation year is added to FG's consolidated overall foreign loss account under paragraph (b)(1)(iii) of this section, and the same amount is added to G's notional account under paragraph (c)(1)(i)(B) of this section. In accordance with paragraph (d) of this section and § 1.904(f)-2, FG must recapture \$50 of the balance in its consolidated overall foreign loss account in 1981 because the amount added from G's separate return limitation year is treated as a 1980 consolidated overall foreign loss. At the end of 1981, FG has a balance of \$50 in its consolidated overall foreign loss account, G has \$50 in its notional account, and G also has \$100 remaining from its 1980 overall foreign loss that has not yet been added to the consolidated overall foreign loss account.

On January 1, 1982, F sells G and G leaves the affiliated group. Under paragraph (c)(3)(i) of this section, \$50 of the consolidated overall foreign loss account is allocated to G (an amount equal to the amount in G's notional account), and G also takes with it the balance in its overall foreign loss account from 1980 (its prior separate return limitation year) that has not been added to the consolidated account. The FG consolidated overall foreign loss account is reduced by \$50 (to zero) and G has \$150 of overall foreign loss in its overall foreign loss account.

Example (5). (i) In 1982 corporation H has U.S. source income of \$300 and foreign source losses of \$500, resulting in a net operating loss of \$200 and a balance in H's overall foreign loss account at the end of 1982 of \$300.

(ii) On January 1, 1983, H is acquired by J, and for the calendar year 1983 JH files a consolidated return. JH has consolidated taxable income of \$700 in 1983, including a consolidated net operating loss deduction of \$100. This net operating loss deduction is \$100 of H's \$200 net operating loss from 1982 (a separate return limitation year), which is limited by § 1.1502-21(c). For 1983, H has separate taxable income of \$100, comprised

of \$100 of U.S. source taxable income and zero foreign source taxable income, and J has separate taxable income of \$700, comprised of \$700 of U.S. source taxable income and zero foreign source taxable income. Under paragraph (c)(2) of this section, H adds \$100 to its separate overall foreign loss account, since that amount of its net operating loss has reduced U.S. source income. H has \$400 in its separate overall foreign loss account at the end of 1983, none of which has been added to a consolidated overall foreign loss account.

(iii) In 1984, H has separate taxable income of \$400, comprised of \$100 of U.S. source taxable income and \$300 of foreign source taxable income. J has separate taxable income of \$900, comprised of \$700 of U.S. source taxable income and \$200 of foreign source taxable income. JH has consolidated taxable income of \$1200, which includes \$100 of consolidated net operating loss deduction from H's 1982 net operating loss. Since this net operating loss deduction is allocated to foreign source income, it does not reduce U.S. source income and will not be added to an overall foreign loss account. Under paragraph (b)(1)(iii) of this section, \$200 from H's overall foreign loss is added to the consolidated overall foreign loss account computed as follows:

Consolidated foreign source taxable income	\$400
Consolidated foreign source taxable income recomputed by excluding H's foreign source income and deductions	-200
Amount from H's separate return limitation year overall foreign loss account added to the consolidated overall foreign loss account	200

This amount is subject to recapture beginning in the same taxable year, as it is treated as a consolidated overall foreign loss incurred in a previous year. Therefore, under paragraph (d) of this section and § 1.904(f)-2, JH also recaptures this \$200, reducing the consolidated overall foreign loss account to zero. H has \$200 remaining in its separate overall foreign loss account at the end of 1984.

(iv) In 1985, H has separate taxable income of \$400, comprised of \$100 of U.S. source taxable income and \$300 of foreign source taxable income. J has separate taxable income of \$300 comprised of \$600 of U.S. source taxable income and \$300 of foreign source losses. JH has consolidated taxable income of \$700, all of which is U.S. source. Under paragraph (b)(1)(iii) of this section, the remaining \$200 from H's separate overall foreign loss is added to the consolidated overall foreign loss account, computed as follows:

Consolidated foreign source taxable income	0
Consolidated foreign source taxable income recomputed by excluding H's foreign source income and deductions	(-\$300)

Amount from H's separate return limitation year overall foreign loss account that may be added to the consolidated overall foreign loss account	300
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Thus, the entire \$200 balance of H's separate overall foreign loss is added to the consolidated overall foreign loss account, and, under paragraph (c)(1)(i)(B) of this section, the same amount is added to H's notional account. While this amount is subject to recapture beginning in the same taxable year, JH has no consolidated foreign source taxable income in 1985, so no overall foreign loss is recaptured.

Rosco L. Egger, Jr.,
Commissioner of Internal Revenue.
[FR Doc. 86-1468 Filed 1-23-86; 8:45 am]
BILLING CODE 4830-01-M

Bureau of Alcohol, Tobacco and Firearms

27 CFR Parts 5 and 19

[Notice No. 580]

Labeling of Distilled Spirits in Percent-Alcohol-by-Volume

AGENCY: Bureau of Alcohol, Tobacco and Firearms, Department of the Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Bureau of Alcohol, Tobacco and Firearms (ATF) proposes to amend regulations in 27 CFR Parts 5 and 19 to provide for labeling and advertising the alcohol content of distilled spirits products in percent-alcohol-by-volume rather than in proof. This notice of proposed rulemaking is based on a petition submitted by Joseph E. Seagram and Sons, Inc. ATF invites comments from the public and industry as to whether these regulations should be amended.

DATE: Written comments must be received by May 27, 1986.

ADDRESSES: Send written comments to: Chief, FAA, Wine, and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, P.O. Box 385, Washington, DC 20044-0385 (Attn: Notice No. 580).

Copies of the petition, the November 1980 Report to the President and the Congress on *Health Hazards Associated with Alcohol and Methods to Inform the General Public of these Hazards*, and the written comments will be available for public inspection during normal business hours at: ATF Reading Room, Office of Public Affairs and Disclosure, Room 4406, Federal Building, 12th and

Pennsylvania Avenue, NW.,
Washington, DC.

FOR FURTHER INFORMATION CONTACT:

John A. Linthicum, FAA, Wine, and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, 1200 Pennsylvania Avenue, NW., Washington, DC 20226 (202-566-7626).

SUPPLEMENTARY INFORMATION:

Background

The alcohol content is specifically required to be shown on labels and in advertisements of distilled spirits products under 27 U.S.C. 205 (e) and (f). The purpose of this requirement, stated in this section, is to ". . . provide the consumer with adequate information as to the identity and quality of the products, [including] the alcoholic content thereof. . .". The alcohol content is also required to be shown on labels of distilled spirits products under the authority conferred by 26 U.S.C. 5301(a). This section reads, in part, "Whenever in his judgment such action is necessary to protect the revenue, the Secretary is authorized, by the regulations prescribed by him . . . to regulate the kind, size, branding, marking, . . . of containers (of a capacity of not more than 5 wine gallons) designed or intended for use for the sale of distilled spirits. . .".

Since the repeal of Prohibition, ATF and its predecessor agencies have regulated the labeling and advertising of the alcohol content of distilled spirits products by requiring a statement expressed in degrees of proof. (Degrees of proof are equal to the percent-alcohol-by-volume multiplied by two). This requirement, unchanged for 50 years, was also the conventional method of labeling and advertising the alcohol content of distilled spirits products before Prohibition. Branding and marking requirements are expressed in proof on labels of distilled spirits because the tax is imposed on the basis of proof.

The current regulations, 27 CFR 5.37 (implementing 27 U.S.C. 205(e)), 27 CFR 5.63 (implementing 27 U.S.C. 205(f)), and 27 CFR 19.643 (implementing 26 U.S.C. 5301(a)), require proof statements on labels and in advertisements of distilled spirits except that the alcohol content may be stated in percent-alcohol-by-volume on labels for liqueurs, cordials, bitters, cocktails, highballs, or other such specialties.

Petition

Joseph E. Seagram & Son, Inc. has petitioned ATF to amend 27 CFR 5.37, relating to the alcohol content statement on labels of distilled spirits. Seagram is petitioning for a statement of percent-

alcohol-by-volume to replace the use of proof statements on labels of distilled spirits. ATF would not consider amending the labeling requirement under 27 U.S.C. 205(e), 27 CFR 5.37, without also amending the labeling requirements under 26 U.S.C. 5301(a), 27 CFR 19.643. In addition, 27 CFR 5.63 would be amended to change the mandatory advertising statement of alcohol content.

Discussion

In the November 1980 Report to the President and the Congress on *Health Hazards Associated with Alcohol and Methods to Inform the General Public of these Hazards*, submitted by the Treasury Department and the Department of Health and Human Services, the Treasury Department was in favor of labeling distilled spirits in percent-alcohol-by-volume.

In the ATF Quarterly Bulletin, A.T.F.Q.B. 1985-2, Page 71, ATF announced that statements of percent-alcohol-by-volume may now appear on labels of all distilled spirits products, as additional, truthful information. This announcement reverses a long-standing label approval policy, and partially implements the Seagram's petition and the November 1980 Report to the President and the Congress, mentioned above. If adopted, the proposals in this Notice would require that the alcohol content of distilled spirits be expressed in percent-alcohol-by-volume on labels and in advertisements, with a proof statement allowed as optional, additional information. In addition, the tolerances for losses in alcohol content occurring during bottling will become tolerances calculated in percent-alcohol-by-volume, rather than tolerances calculated in proof.

Other Requirements to Label Proof. In this notice of proposed rulemaking, ATF is not considering the amendment of regulations on marking requirements for cases, bulk containers (including barrels used for aging spirits), or bottles of industrial alcohol used by hospitals, universities, or manufacturers of food products or medicinal preparations. These regulations require that some containers of distilled spirits be marked to show the proof of the product. In general, these are the containers on which taxes are determined. Since taxes are imposed on the basis of proof, as previously discussed, these requirements are oriented toward protection of the revenue.

Moreover, these marking requirements have little or no impact on consumers. Although whole cases of distilled spirits are sometimes purchased by consumers, ATF does not generally consider a case

to be a consumer container. Therefore, ATF is not considering amendments of marking requirements for these containers.

Public Participation—Written Comments

Based on the above discussion, ATF is issuing this notice of proposed rulemaking concerning labeling of distilled spirits in percent-alcohol-by-volume. In addition to comments on the proposed amendments, ATF is requesting comments on the following question:

If percentage statements replace proof statements, how long should the transition period be?

ATF will not recognize any material or comments as confidential. Comments may be disclosed to the public. Any material which the respondent considers to be confidential or inappropriate for disclosure to the public should not be included in the comment. The name of the person submitting a comment is not exempt from disclosure. Comments received after the closing date and too late for consideration will be treated as possible suggestions for future ATF action.

Any interested person who desires an opportunity to comment orally at a public hearing on these proposed regulations should submit a request, in writing, to the Director within the 120-day comment period. The Director, however, reserves the right to determine, in light of all circumstances, whether a public hearing should be held.

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to an initial and final regulatory flexibility analysis (5 U.S.C. 603, 604) are not applicable to this proposal because the notice of proposed rulemaking, if promulgated as a final rule, will not have a significant economic impact on a substantial number of small entities. The proposal will not impose, or otherwise cause, a significant increase in reporting, recordkeeping, or other compliance burdens on a substantial number of small entities. The proposal is not expected to have significant secondary or incidental effects on a substantial number of small entities.

Accordingly, it is hereby certified under the provisions of section 3 of the Regulatory Flexibility Act (5 U.S.C. 605(b)) that this notice of proposed rulemaking, if promulgated as a final rule, will not have a significant economic impact on a substantial number of small entities.

Compliance With Executive Order 12291

In compliance with Executive Order 12291, ATF has determined that this proposal is not a major rule since it will not result in:

(a) An annual effect on the economy of \$100 million or more;

(b) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or

(c) Significant adverse effects on competition, employment, investment, productivity, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Paperwork Reduction Act

The requirements to display information on labels of distilled spirits, proposed in this notice, have been submitted to the Office of Management and Budget for review under section 3504(h) of the Paperwork Reduction Act of 1980, Pub. L. 96-511, 44 U.S.C. Chapter 35. Comments relating to ATF's compliance with 5 CFR Part 1320—Controlling Paperwork Burdens on the Public, should be submitted to: Office of Information and Regulatory Affairs, Attention: ATF Desk Officer, Office of Management and Budget, Washington, DC 20503.

List of Subjects**27 CFR Part 5**

Advertising, Consumer protection, Customs duties and inspection, Imports, Labeling, Liquors, and Packaging and containers.

27 CFR Part 19

Administrative practice and procedure, Alcohol and alcoholic beverages, Authority delegations, Claims, Chemicals, Customs duties and inspection, Electronic funds transfers, Excise taxes, Exports, Gasohol, Imports, Labeling, Liquors, Packaging and containers, Puerto Rico, Reporting and recordkeeping requirements, Research, Security measures, Spices and flavorings, Surety bonds, Transportation, Virgin Islands, Warehouse, Wine.

Drafting Information

The principal author of this document is John A. Linthicum, FAA, Wine, and Beer Branch, Bureau of Alcohol, Tobacco and Firearms.

Authority and Issuance**PART 5—[AMENDED]**

27 CFR Part 5—Labeling and Advertising of Distilled Spirits is amended as follows:

1. The statutory authority for 27 CFR Part 5 is revised to read as follows:

Authority: 27 U.S.C. 205.

2. Section 5.37 is amended by revising paragraphs (a) and (b).

§ 5.37 Alcohol content.

(a) *Statement.* The alcohol content for distilled spirits shall be stated in percent-alcohol-by-volume. In addition, the label may also state the alcohol content in degrees of proof.

(b) *Tolerances.* The following tolerances shall be allowed (without affecting the labeled statement of alcohol content) for losses of alcohol content occurring during bottling:

(1) Not to exceed 0.25 percent-alcohol-by-volume for spirits containing solids in excess of 600 mg per 100 ml; or

(2) Not to exceed 0.15 percent-alcohol-by-volume for all other spirits.

3. Section 5.63 is amended by revising paragraph (c) to read as follows:

§ 5.63 Mandatory statements.

(c) *Alcohol content.* The alcohol content for distilled spirits shall be stated in percent-alcohol-by-volume. In addition, the advertisement may also state the alcohol content in degrees of proof.

PART 19—[AMENDED]

27. CFR Part 19, *Distilled Spirits Plants*, is amended as follows:

4. The statutory authority for 27 CFR Part 19 continues to read as follows:

Authority: 19 U.S.C. 81c, 1311; 26 U.S.C. 5001, 5002, 5004-5006, 5008, 5041, 5061, 5062, 5066, 5101, 5111-5113, 5171-5173, 5175, 5176, 5178-5181, 5201-5207, 5211-5215, 5221-5223, 5231, 5232, 5235, 5236, 5241-5243, 5271, 5273, 5301, 5311-5313, 5362, 5370, 5373, 5501-5505, 5551-5555, 5559, 5561, 5562, 5601, 5612, 5682, 6001, 6065, 6109, 6302, 6311, 6676, 7510; 31 U.S.C. 9301, 9303, 9304, 9306.

5. Section 19.643 is amended by replacing the first sentence with the following two sentences which read as follows:

§ 19.643 Brand name, kind, alcohol content, and State of distillation.

The brand name, kind as set out in 27 CFR Part 5, and alcohol content expressed in percent-alcohol-by-volume, shall be stated on the label of distilled

spirits. In addition, the label may also state the alcohol content in degrees of proof. * * *

Signed: November 5, 1985.

Stephen E. Higgins,

Director.

Approved: December 16, 1985.

David W. Green,

Acting Assistant Secretary (Enforcement and Operations).

[FR Doc. 86-1522 Filed 1-23-86; 8:45 am]

BILLING CODE 4810-31-M

DEPARTMENT OF DEFENSE**Office of the Secretary****32 CFR Part 199**

[DoD 6010.8-R, Amdt.]

Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); Administrative Remedies for Fraud, Abuse, and Conflict of Interest

AGENCY: Office of the Secretary, DoD.

ACTION: Proposed amendment to rule.

SUMMARY: This proposed rule would amend Part 199 of title 32, the Regulation which implements CHAMPUS, by adding a new section that would provide administrative remedies, including exclusion, suspension, and termination of CHAMPUS providers for fraud, abuse, or conflict of interest. The new section will be designated as § 199.15, which was reserved after amendment number 34. This amendment would strengthen the Regulations's remedies when providers or beneficiaries violate laws pertaining to fraud or false claims. It also applies to situations that constitute program fraud or abuse. The proposed section is responsive to the Administration's and DoD's concern with controlling and reducing fraud and abuse. The end result will be to minimize poor quality care and health risks for CHAMPUS beneficiaries and to reduce unnecessary costs to the Government.

DATES: Written comments must be received on or before February 24, 1986.

ADDRESS: Office of Civilian Health and Medical Program of the Uniformed Services (CHAMPUS), Policy Branch, Aurora, CO 80045-6900.

FOR FURTHER INFORMATION CONTACT: Tariq S. Shahid, Policy Branch, CHAMPUS, telephone (303) 361-3587.

SUPPLEMENTARY INFORMATION: In FR Doc 77-7834, appearing in the Federal Register on April 4, 1977 (42 FR 17972), the Office of the Secretary of Defense

published its regulation, DoD 6010.8-R, "Implementation of the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS)," as Part 199 of this title.

Section 199.12(a)(4)(i) provides for denial of CHAMPUS payments for services of a provider who has been found to have engaged in fraudulent activities against the program and a provider's disqualification from participation in CHAMPUS. In regard to unnecessary and poor quality care, the Regulation provides for denial of CHAMPUS payments for services or supplies that are not medically necessary or that fail to meet professionally recognized standards for health care, but it is silent on the CHAMPUS' authority to exclude providers from the program for such abusive practices.

Section 199.12(a)(4)(ii) authorizes denial of CHAMPUS reimbursements for services of any provider that has been determined by the Secretary of the Department of Health and Human Services (DHHS) to have furnished supplies or services which were substantially in excess of the needs of individuals, or to be harmful to individuals, or to be of a grossly inferior quality, and the Secretary has on the basis of such a determination terminated the agreement of that provider for purposes of reimbursement under Medicare and Medicaid programs. CHAMPUS is dependent upon the DHHS for excluding those providers who engage in abusive practices. This weakness in the Regulation has a potential for CHAMPUS abuse since a provider can continue rendering unnecessary or poor quality services to CHAMPUS beneficiaries while avoiding the termination by DHHS by not doing so under the Medicare and Medicaid programs. Also, CHAMPUS could be abused by a provider who avoids the termination by DHHS simply by electing not to participate in Medicare and Medicaid programs.

We believe that once a provider has been found to have ordered or furnished services or supplies for a CHAMPUS beneficiary that are medically unnecessary, inferior, or harmful, CHAMPUS should be able to exclude such a provider from the program without having to rely on the DHHS. Such CHAMPUS authority is needed to eliminate poor quality providers from the program.

We believe the Regulation should define fraud and abuse under the CHAMPUS and strengthen its authority. The criminal statutes defining fraud and abuse are enforced in courts of law. The

proposed rule provides for provider exclusion when judgements involving fraud are entered in a court of law. In addition, it establishes what is fraud or abuse under the CHAMPUS by providing administrative definitions separate from any definitions found in criminal codes.

This proposed amendment would add a new Section to the Regulation and would prescribe necessary definitions, more clearly express the CHAMPUS' authority, and would provide a range of administrative responses and remedies, including exclusion, suspension, and termination from the program for health care providers for fraud, abuse, or conflict of interest. Also, it would authorize CHAMPUS to exclude those providers who are suspended by other health care programs.

The amendment would provide that any CHAMPUS determination to exclude, suspend, or terminate a provider must be supported by substantial evidence and the provider will be given an opportunity to submit evidence in his or her support. It would clarify administrative appeal rights, provide criteria for reinstatement of an excluded or suspended provider, and would provide other administrative guidelines.

Conforming changes to other Sections of the Regulation have been made to insure consistency with the provisions of the new Section.

This proposed amendment is intended to permit easier elimination of poor quality health care providers from CHAMPUS. The end result will be to minimize poor quality care and health risks for CHAMPUS beneficiaries and to reduce unnecessary costs to the Government. The strengthened Regulation would allow an increased, more aggressive and more timely pursuit of suspected instances of fraud and abuse, and has a potential for positive impact on the program costs. The direct value of CHAMPUS would include the fraud and abuse deterrent effect of the stepped-up actions against suspected and determined violators.

This amendment is being published for proposed rulemaking at the same time as it is being coordinated within the Department of Defense, with the Department of Health and Human Services, the Department of Transportation and with other interested agencies, in order that consideration of both internal and external comments and publication of the final rulemaking document can be expedited.

List of Subjects of 32 CFR Part 199

Health insurance, Military personnel, Handicapped.

PART 199—[AMENDED]

Accordingly, it is proposed to amend 32 CFR, Chapter I, Part 199, as follows:

1. The authority citation for Part 199 continues to read as follows:

Authority: 10 U.S.C. 1079, 1086; 5 U.S.C. 301.

2. Section 199.8, paragraph (b) is revised by adding, in alphabetical order, the definitions for "Abuse," "Adequate Medical Documentation, Medical Treatment Records," "Adequate Medical Documentation, Mental Health Records," "Conflict of Interest," "Dual Compensation," "Fraud," "Item, Service, or Supply," "Provider Exclusion," "Provider Suspension," "Provider Termination," and "Suspension of Claims Processing," to read as follows:

§ 199.8 Definitions.

* * * * *

(b) * * *

Abuse. For the purposes of this Regulation, abuse is defined as any practice that is inconsistent with a legally sound fiscal, business, or medical practice, and results in a CHAMPUS claim or an unnecessary cost or in CHAMPUS payments for services or supplies that are not medically necessary or that fail to meet professionally recognized standards for health care providers. The definition of abuse includes deception or misrepresentation by a provider, or any person or entity acting on behalf of a provider in relation to a CHAMPUS.

Note.—The definition of "abuse" is distinguished from the definition of "fraud" which includes the additional elements that the deception or misrepresentation be intentional and with the knowledge that the deception could result in an unauthorized benefit. Therefore, any practice or action that constitute fraud, as defined by this Regulation, would also be abuse.

* * * * *

Adequate Medical Documentation, Medical Treatment Records. Adequate medical documentation contains sufficient information to justify the diagnosis and warrant the treatment and end results. Under CHAMPUS, it is required that adequate and sufficient clinical records be kept by the health care providers to substantiate that the care was rendered, was medically necessary (as defined by this Regulation), and who provided the care. In general, in determining whether medical records are adequate, the comparison will be to the applicable Joint Commission on Accreditation of

Hospitals (JCAH) standards (and the provider's state or local licensing requirements) and other requirements specified by this Regulation and the other CHAMPUS issuances.

Adequate Medical Documentation, Mental Health Records. Adequate medical documentation provides the means for measuring the type and frequency of active treatment mechanisms employed. Under CHAMPUS, it is required that adequate and sufficient clinical records be kept by the providers to substantiate that the care was rendered, was medically or psychologically necessary (as defined by this Regulation), and who provided the care. In determining whether there is adequate documentation, the standard will be the applicable JCAH requirements (and the provider's state or local licensing and regulatory requirements) and other requirements specified in this Regulation and the other CHAMPUS issuances. It is further noted that the psychiatric evaluation, the treatment plan, progress notes (from the treating therapist) nursing and staff notes, and the discharge summary are the more critical elements of the mental health record. In general, the documentation expectations of a professional provider are not less in the outpatient setting than the inpatient setting.

Conflict of Interest. Includes any situation where an active duty member or civilian employee of the Government, through and official Federal position, has the opportunity to exert, directly or indirectly, any influence on the referral of CHAMPUS beneficiaries or himself of herself or others. For purposes of this Regulation, individuals under contract to a Uniformed Service may be involved in a conflict of interest situation through the contract position.

Dual Compensation. Federal Law (5 U.S.C. 5536) prohibits active duty members or civilian employees of the Government from receiving additional compensation from the Government above their normal pay and allowances. This prohibition applies to CHAMPUS cost-sharing of medical care provided by active duty members or civilian employees to CHAMPUS beneficiaries.

Fraud. For purposes of this Regulation, fraud is defined as an intentional deception or misrepresentation made by a provider, beneficiary, sponsor, or any person acting on behalf of a provider, sponsor, or beneficiary with the knowledge (or who had reason to know or should have

known) that the deception could result in some unauthorized CHAMPUS benefit to self or some other person or some unauthorized CHAMPUS payment. It is presumed, if an intentional deception or misrepresentation is established and a CHAMPUS claim is filed, that the person responsible for the claim had the requisite knowledge; this presumption is rebuttable. It is further presumed that the provider of the services is responsible for the actions of the individuals who file a claim on behalf of the provider (for example, billing clerks); this presumption may only be rebutted by clear and convincing evidence.

Item, Service, or Supply. Includes: (1) Any item, device, medical supply or service claimed to have been provided to a beneficiary (patient) and listed in an itemized claim for CHAMPUS payment or a request for payment, or (2) in the case of a claim based on costs, any entry or omission in a cost report, books of account, or other documents supporting the claims.

Provider Exclusion. The denial of CHAMPUS status as an authorized provider where the denial (exclusion) from CHAMPUS is based on a criminal conviction or civil judgment involving fraud. Conviction includes both findings of guilt by a court and pleas of guilty or *nolo contendere*.

Provider Suspension. The denial of CHAMPUS status as an authorized provider based on: (1) An administrative finding of fraud or abuse (as defined in this Regulation) by OCHAMPUS; or (2) an administrative finding that the provide was "suspended" by another agency of the Federal Government, a state, or a local entity with authority to license the provider.

Provider Termination. When a provider's status as an authorized CHAMPUS provider is terminated based on a finding that the provider does not meet the qualifications, as set forth in Section 199.12 of this Part, to be an authorized CHAMPUS provider.

Suspension of Claims Processing. The temporary suspension of claims processing (as necessary to protect the Government's interest) for care provided by a specific provider (whether the claims are submitted by the provider, beneficiary, or sponsor) or claims submitted by or on the behalf of a CHAMPUS beneficiary pending action by the Director, OCHAMPUS, or a designee, in a case of suspected fraud or abuse. The action may include the administrative remedies provided for in

Section 199.15, development or investigation by OCHAMPUS, a referral to the Department of Defense-Inspector General or the Department of Justice for action within their cognizant jurisdictions.

3. Section 199.12 is amended by removing paragraphs (a)(3), (a)(4)(i), and (a)(4)(ii), by redesignating paragraph (a)(4)(iii) as (a)(3), by redesignating paragraph (a)(5) as (a)(4), by redesignating paragraph (a)(6) as (a)(5), by redesignating paragraph (a)(7) as (a)(6); by revising introductory paragraph (b)(3)(iv) and removing its paragraphs (b)(3)(iv)(a) through (b)(3)(iv)(d) to read as follows:

§ 199.12 Authorized providers.

- (a) * * *
- (3) *For-profit institutions excluded under Program for the Handicapped.* * * *
- (4) *Utilization review/quality assurance.* * * *
- (5) *Provider required.* * * *
- (6) *Participating provider.* * * *
- (b) * * *
- (3) * * *
- (iv) *Institutions not in compliance with CHAMPUS standards.* If a determination is made that an institution is not in compliance with one or more of the standards applicable to its specific category of institution, OCHAMPUS shall take immediate steps to bring about compliance or terminate its approval as an authorized institution in accordance with § 199.15, paragraph (d)(3).
- (4) * * *

4. Section 199.13 is revised by removing paragraph (i) in its entirety, by redesignating paragraph (j) as (i), and by redesignating paragraph (k) as (j) to read as follows:

§ 199.13 Claims submission, review and payment.

- (h) * * *
- (i) *Erroneous payments and recoupment.* * * *
- (j) *General assignment of benefits not recognized.* * * *

5. Section 199.15 is added to read as follows:

§ 199.15 Administrative remedies for fraud, abuse and conflict of interest.

(a) *General.* (1) This Section sets forth the guidelines for invoking CHAMPUS administrative remedies in situations involving fraud, abuse, or conflict of interest. The remedies impact institutional providers, professional

providers, beneficiaries, and sponsors, and distinguish between situations involving criminal fraud, civil fraud, and fraud, abuse, and conflict of interest as defined in this Regulation. In addition, administrative actions, remedies, and procedures may differ based upon whether the initial findings were made by a court of law, another agency, or OCHAMPUS.

(2) This Section also sets forth guidelines for invoking administrative remedies in situations requiring administrative action to enforce provisions of law, regulation, and policy in the administration of CHAMPUS and to ensure quality of care for CHAMPUS beneficiaries. Examples of such situations may include the suspension or revocation of a provider's license for unethical or unprofessional conduct, or discovery that a provider fails to meet the requirements to be an authorized CHAMPUS provider.

(3) The administrative remedies set forth in this Section are in addition to, and not in lieu of, any other remedies or sanctions authorized by law or regulation.

(4) Section 199.12 of this Regulation specifies the minimum criteria for individuals and institutions to qualify as authorized CHAMPUS providers. This Section, among other matters, provides administrative remedies when providers who meet the minimum requirement set out in § 199.12, nevertheless, demonstrate through their actions they should not be CHAMPUS authorized providers and should not be permitted to continue as such.

(5) Providers under the CHAMPUS program have a duty to familiarize themselves with the CHAMPUS requirements. See *Heckler v. Community Health Services of Crawford County Inc., et al.*, — U.S. —, 104 S.Ct 2218, 2226 (1984).

(b) *Abuse*. For the definition of abuse, see Section 199.8 of this Regulation. Examples of abuse, which are not all inclusive, include:

(1) Waiver of beneficiary (patient) cost-share or deductibles.

(2) Improper billing practices. For example, charging CHAMPUS beneficiaries rates for services and supplies that are in excess of those charges routinely charged by the provider to the general public, commercial health insurance carriers, or other federal health benefit entitlement programs for the same or similar services. (This includes dual fee schedules—one for CHAMPUS beneficiaries and one for other patients or third-party payors.)

(3) Claims for services not medically necessary, or if medically necessary, not

to the extent rendered. For instance, a battery of diagnostic tests given whereas, based on the diagnosis, only a few are needed.

(4) Care of inferior quality. For example, consistently furnishing medical or mental health services that do not meet the accepted standards of care.

(5) Failure to maintain adequate medical or financial records.

(6) Refusal to furnish or allow the Government (for example, OCHAMPUS) or its contractors access to records related to CHAMPUS claims.

(c) *Fraud*. For the definition of fraud, see § 199.8 of this regulation. Situations which, for purposes of this Regulation are presumed to come within the definition of fraud but are not all inclusive, include:

(1) Submitting claims for CHAMPUS cost-sharing (this includes billings by providers when the claim is submitted by the beneficiary) for services, supplies, or equipment not rendered to, or used for, CHAMPUS beneficiaries. For example, billing for services when the provider was on call and did not provide any specific medical care to the beneficiary; providing services to an ineligible person and claiming CHAMPUS benefits on the account of an eligible CHAMPUS beneficiary; or billing for an office visit for a missed appointment.

(2) Claiming of costs for noncovered or nonchargeable services, supplies, or equipment disguised as covered items. A claim for noncovered services billed as services which could be covered. Some examples are: (i) Billing for services which would be covered except for the frequency of the services, (ii) spreading the billing over a time period that reduces the apparent frequency to a level that CHAMPUS will cost-share, or (iii) charging to the CHAMPUS, directly or indirectly, costs not incurred or which were attributable to nonprogram activities, other enterprises, or personal expense of principals.

(3) Breach of a provider participation agreement which results in the beneficiary or sponsor being billed for amounts disallowed by CHAMPUS on the basis that such charges exceeded the CHAMPUS-determined allowable charge.

(4) Billings for supplies or equipment which are clearly unsuitable for the patient's needs or are so lacking in quality or sufficiency for the purpose as to be virtually worthless.

(5) Flagrant and persistent overutilization of services with little or no regard for results, the patient's ailments, condition, medical needs, or the physician's orders.

(6) Material misrepresentations of dates or descriptions of services rendered or of the identity of the recipient or the individual who rendered the services.

(7) Submitting falsified or altered CHAMPUS claims or medical or mental health patient records with intent to deceive or misrepresent the type, frequency, and duration of services or supplies or who provided the services or supplies.

(8) Duplicate billings intended for the purpose of undue enrichment. This includes billing the CHAMPUS more than once for the same services, billing both CHAMPUS and the beneficiary for the same services, or billing both CHAMPUS and other third parties (such as other health insurance or government agencies) for the same services, without making immediate, voluntary repayment or notification to CHAMPUS upon receipt of payments which combined exceed the CHAMPUS-determined allowable charge of the services involved.

(9) Misrepresentation by a provider of his or her credentials. For example, representing one as having a doctorate in clinical psychology when the degree is not from a regionally accredited university.

(10) Reciprocal billing. For example, practices such as the following: (i) One provider performing services for another provider and then the latter bills as though he had performed the services himself (e.g., as a weekend fill-in); (ii) provides service as an institutional employee and bills as a professional provider for the services; or (iii) bills for professional services when the services were provided by another individual who was an institutional employee.

(11) Submitting CHAMPUS claims at a rate higher than a rate established between CHAMPUS and the provider, if such a rate has been established.

(12) Arrangements by providers with employees, independent contractors, suppliers, or others which are designed primarily to overcharge the CHAMPUS through various means (such as commissions, fee-splitting, and kickbacks) used to divert or conceal improper or unnecessary costs or profits.

(13) Claims involving collusion between the supplier and the recipient (recipient could be either a provider, beneficiary, sponsor, or guardian) resulting in unnecessary costs or charges to CHAMPUS.

(d) *Administrative Remedies*. The following administrative remedies are available to OCHAMPUS.

(1) *Provider exclusion.* An otherwise authorized CHAMPUS provider may be excluded from receiving payment, directly or indirectly, under CHAMPUS based on a criminal conviction or civil judgment involving fraud by the provider.

(i) *Criminal conviction involving CHAMPUS fraud.* (A) A provider convicted for a crime, whether the crime is a felony or misdemeanor, involving CHAMPUS fraud shall be excluded from CHAMPUS by the Director (or a designee) for the period of time to which the provider is sentenced but not less than 2 years.

(1) Conviction of a crime includes pleas of guilty or *nolo contendere*.

(2) The conviction can be in Federal Court, State Court, or a foreign court.

(3) The CHAMPUS exclusion applies whether or not the sentence is suspended and whether or not the conviction or sentencing is being appealed.

(4) If the provider is given probation, then the exclusion will be for 2 years.

(B) In addition, the Director, OCHAMPUS, (or a designee) may, based on the criteria set forth in paragraph (e)(4) below, exclude the provider for a period greater than the period described above, but not to exceed 10 years. Appeal rights shall be granted regarding the reasonableness of the additional period of exclusion beyond that described in subparagraph (d)(1)(i)(A) above.

(C) The exclusion will be effective on the date specified in the initial determination notice, but no later than 60 days from the date of the initial determination notice.

(ii) *Criminal fraud involving other Federal programs.* (A) Any provider convicted of a crime whether the crime is a felony or misdemeanor, involving other Federal health care or benefit programs such as plans administered under titles XVIII and XIX of the Social Security Act, Federal Workmen's Compensation, and the Federal Employees Program (FEP) for employee health insurance, shall be excluded from CHAMPUS for the period of sentence.

(1) Conviction of a crime includes pleas of guilty or *nolo contendere*.

(2) The conviction can be in Federal Court, State Court, or a foreign court.

(3) The CHAMPUS exclusion applies whether or not the sentence is suspended and whether or not the conviction or sentencing is being appealed.

(4) If the provider is given probation, then the exclusion will be for 2 years.

(B) In addition, the Director, OCHAMPUS (or a designee) may, based on the criteria set forth in paragraph

(e)(4) below, exclude the provider for a period greater than the period described above, but not to exceed 10 years. Appeal rights shall be granted regarding the period of exclusion to the extent it is greater than the period prescribed by subparagraph (d)(1)(ii)(A) above.

(C) The exclusion will be effective on the date specified in the initial determination notice, but no later than 60 days from the date of the initial determination notice.

(iii) *Criminal fraud involving non-Federal programs.* (A) Any provider convicted of a crime involving any non-Federal health benefit program or private insurance involving health benefits may be excluded from the CHAMPUS. The period of exclusion will be based on the criteria set forth in paragraph (e)(4) below and may not exceed 10 years.

(B) Since the exclusion is not automatic but is discretionary, the entire period of exclusion is appealable.

(C) The exclusion will be effective on the date specified in the initial determination notice, but no later than 60 days from the date of the initial determination notice.

(iv) *Civil fraud involving CHAMPUS.* (A) Any provider, if a judgment involving civil fraud has been rendered (whether or not it is appealed) against the provider in a Civil action involving CHAMPUS benefits (whether or not other Federal programs are involved), shall be excluded from the CHAMPUS for a period of not less than 2 years and no more than 5 years.

(B) Any period of exclusion in excess of 2 years will be based on the criteria set forth in paragraph (e)(4) below and is appealable.

(C) The exclusion will be effective on the date specified in the initial determination notice, but no later than 60 days from the date of the initial determination.

(v) *Civil fraud involving other programs.* (A) Any provider, if a judgment involving civil fraud has been rendered against the provider (whether or not it has been appealed) in a civil action and involves other medical health care programs (whether Federal or state) or private health insurance, may be excluded from the CHAMPUS for a period not to exceed 5 years. The period of exclusion will be based on the criteria set forth in paragraph (e)(4) below.

(B) Since the entire period of exclusion is discretionary, the period of suspension is appealable.

(C) The exclusion will be effective on the date specified in the initial determination notice, but no later than 60 days from the date of the initial determination.

(2) *Provider suspension—(i) OCHAMPUS administrative determinations of fraud.* (A) The Director, OCHAMPUS or a designee, may make a factual finding that the elements of fraud, as defined in this Regulation, are present and suspend the provider's status as a CHAMPUS authorized provider based on the finding of fraud.

(B) If a finding is made by OCHAMPUS that a provider's actions constituted fraud as defined in this Regulation, the Director, OCHAMPUS, or a designee will suspend the provider for a period of time to be determined by the Director, or a designee, but in no event will the suspension of the provider's status as an authorized provider exceed 5 years. All factual questions in dispute and the period of suspension are appealable.

(C) The suspension will be effective as of the date specified in the initial determination notice, but no later than 60 days from the date of initial determination notice.

(ii) *OCHAMPUS-administrative determination of abuse.* (A) Director, OCHAMPUS, or a designee, may make a factual finding that elements of abuse, as defined in this Regulation, are present.

(B) In situations involving provider abuse, the Director, OCHAMPUS, or a designee, may suspend the provider for such period of time as the Director or a designee deems reasonable, utilizing the criteria set forth in paragraph (e)(4) below, but not to exceed 5 years.

(C) All factual questions in dispute and the period of suspension are appealable.

(D) The suspension will be effective on the date specified in the initial determination notice but no later than 60 days from the date of the initial determination notice.

(E) Prior to invoking the remedy provided by this paragraph (d)(2)(ii), the Director, OCHAMPUS, or a designee, at the sole discretion of the Director or a designee, may suggest to the provider a method for correcting the situation and a time period for correction.

(iii) *Loss of provider status involving other Federal programs.* (A) Any provider who is suspended by any other Federal health care program, for example Medicare, shall be suspended by OCHAMPUS. A provider who has his or her credentials revoked through a Veterans Administration's or a Military Department's credentials review process and who is suspended, terminated, retired, or separated, and is reported to an appropriate professional regulating authority, shall also be suspended by

OCHAMPUS. The suspension by OCHAMPUS under this paragraph is not appealable under § 199.16. The period of suspension will be for the period the other program has suspended the provider, or the provider may be reinstated upon the reinstatement under the other program.

(B) The suspension will be effective on the date of suspension by the other program or as specified in the initial determination notice, but no later than 60 days from the date of the initial determination notice.

(iv) *Conflict of interest and dual compensation.* See § 199.8(b).

(A) *Conflict of interest.* For purposes of this Regulation, conflict of interest, potential or actual, includes any situation where the active duty member or civilian employee of the Government, through an official Federal position, has the opportunity to exert, directly or indirectly, any influence on the referral of CHAMPUS beneficiaries to himself or herself or others. For purposes of this Regulation, individuals under contract by the Uniformed Services to provide medical care may be involved in a conflict of interest situation through their contract position. Conflict of interest also includes situations where authorized CHAMPUS providers employ an active duty member or civilian employee who has the opportunity to exert influence on the referral of CHAMPUS beneficiaries to the employing CHAMPUS provider.

(1) All such instances shall be referred to the applicable Uniformed Service for investigation and appropriate action. A report of the findings and action taken by the Uniformed Service shall be made to the Director, OCHAMPUS, with a copy to the General Counsel, Department of Defense, within 90 days of receiving the referral.

(2) In situations where it appears that CHAMPUS beneficiaries are being channeled to selected civilian providers where other providers are available, the Director, OCHAMPUS, or a designee, may investigate. If any conflict of interest or impropriety is found to exist, the matter will be referred to the appropriate Uniformed Service for appropriate action. The Uniformed Service shall report the action taken to the Director, OCHAMPUS.

(3) The Director, OCHAMPUS, or a designee, may make a factual finding that a CHAMPUS provider was involved in a conflict of interest situation, either with an active duty member or civilian employee or with an individual under contract to a Uniformed Service.

(4) CHAMPUS cost-sharing shall be denied on a claim where a conflict of interest situation is found to exist. This

denial of cost-sharing applies whether the claim was filed by the individual who provided the care, the institutional provider in which the care was rendered, or by the beneficiary.

(5) Where a CHAMPUS provider, institutional or professional, has knowingly been involved in a conflict of interest situation, the Director, OCHAMPUS, or a designee, may suspend the provider, as an authorized CHAMPUS provider, for a period of time as the Director, or a designee, deems reasonable, but not to exceed 2 years.

(7) All factual questions and the period of suspension are appealable.

(ii) The suspension shall be effective on the date specified in the initial determination notice, but no later than 60 days from the date of the initial determination notice.

(B) *Dual compensation.* See § 199.8(b). Federal Law (5 U.S.C. 5536) prohibits active duty members or civilian employees of the Government from receiving compensation from the Government above their normal pay and allowances.

(1) The Director, OCHAMPUS, or a designee, may make a factual finding that services or supplies were performed by an active duty member or civilian employee of the Government and that CHAMPUS cost-sharing of the claim will constitute dual compensation.

(2) CHAMPUS cost-sharing of a claim shall be denied where the services or supplies were provided by an active duty member or civilian employee of the Government. This denial of cost-sharing applies whether the claim for reimbursement is filed by the individual who provided the care, the institutional provider in which the care was rendered, or by the beneficiary.

Note.—Physicians of the National Health Service Corps (NHSC) may be assigned to remote areas where there is a shortage of medical providers. Although these physicians would be prohibited from accepting CHAMPUS payments, the private organizations to which they may be assigned would remain eligible for payment in certain cases, as determined by the Director, OCHAMPUS, or a designee.

(3) No active duty member or civilian employee of the Government may be an authorized CHAMPUS provider except active duty members on terminal leave.

(4) The prohibition against dual compensation does not apply to individuals under contract to the Uniformed Services.

(5) If there is no factual dispute that the provider is an active duty member (not on terminal leave) or a civilian employee of the Government, findings by the Director, OCHAMPUS, or a designee, that payment of the claim is

prohibited as dual compensation and that the claim must be denied are not appealable under § 199.16 of this Regulation.

(6) Where the Director, OCHAMPUS, or a designee, has found that a CHAMPUS claim has been submitted for cost-sharing of services or supplies provided by an active duty member or civilian employee of the Government, the matter shall be referred to the Assistant Inspector General for Investigations, Department of Defense, under circumstances established by the Director, OCHAMPUS, or a designee, and the Assistant Inspector General.

(v) *Unethical or improper practices or unprofessional conduct.* (A) In most instances, unethical or improper practices or unprofessional conduct by a provider would be program abuse and subject the provider to suspension. In other instances, such practices and conduct are separate causes for suspending a provider.

(B) Such suspensions can be based on findings of state licensure boards, boards of quality assurance, other regulatory agencies, state medical societies, peer review organizations, or other professional associations.

(C) The length of the suspension is discretionary with the Director, OCHAMPUS, or a designee, but shall not exceed 5 years.

(D) The suspension will be effective on the date specified in the initial determination notice but no later than 60 days from the date of the initial determination.

(E) Nothing in this paragraph (d)(2)(v) shall limit the authority of the Director, OCHAMPUS, or a designee, to settle any issue or case or to compromise any suspension.

(vi) *Miscellaneous.* (A) In circumstances where a professional provider may for his or her entire practice or for most of his or her practice provide treatment that is not a CHAMPUS covered benefit which results in CHAMPUS frequently and repeatedly denying claims because the care provided is not a CHAMPUS benefit, the provider can be suspended as an authorized provider. For example, a professional provider may be providing sex therapy, which may be recognized as a treatment within his or her jurisdiction; however, it is not a covered CHAMPUS benefit. A decision to suspend will be based on the potential expense to the Government of routinely processing and denying claims and the expense if a claim is erroneously paid. In such circumstances, CHAMPUS may suspend the provider's authorized status with CHAMPUS.

Depending on the circumstances, specific claims filing requirements may be imposed by OCHAMPUS as a condition of maintaining or restoring a provider's status and before the provider's claims will be processed. Authorized provider status can be restored upon a showing by the provider that his or her practice has changed.

(B) The suspension will be effective on the date specified in the initial determination notice, but no later than 60 days from the date of the initial determination notice.

(3) *Provider termination.* The Director, OCHAMPUS, or a designee, shall terminate the provider status of any provider determined by CHAMPUS not to meet the qualifications under this Regulation to be an authorized provider. The termination shall be retroactive to the date it is determined the provider did not meet the regulatory requirements to be an authorized CHAMPUS provider.

(i) *Institutions not in compliance with CHAMPUS standards.* If a determination is made that an institution is not in compliance with one or more of the standards applicable to its specific category of institution (see Section 199.12, paragraph (b)), OCHAMPUS shall take immediate steps to bring about compliance or terminate its approval as an authorized institution.

(A) *Minor violations.* An institution determined to be in minor violation of one or more of the standards shall be advised by certified mail of the nature of the discrepancy or discrepancies and will be given a grace period of 30 days to effect appropriate corrections. The grace period may be extended at the discretion of the Director, OCHAMPUS, or a designee, but in no event shall be extension exceed 90 days.

(1) CHAMPUS will not cost-share a claim for any beneficiary admitted during the grace period.

(2) Any beneficiaries already in the institution (or their sponsors) shall be notified in writing of the minor violations and the grace period granted to the institution to correct them.

(3) If the institution notifies OCHAMPUS (in writing) before the end of the grace period that corrective action has been taken and if that is acceptable to OCHAMPUS, then those beneficiaries in the institution (or their sponsors) will be notified and benefits continued (assuming the case is otherwise covered). Also, for any beneficiary admitted during the grace period, benefits may begin to be extended (if the case is otherwise covered) as of 12:01 a.m. on the day notice of correction is received by OCHAMPUS.

(4) If the institution has not notified OCHAMPUS in writing before the end of the grace period that corrective action has been completed, the Director, OCHAMPUS, or a designee, may terminate CHAMPUS approval as an authorized institution.

(B) *Major violations.* A determination that an institution is in major violation of standards significantly detrimental to life, safety, and health, or substantially in violation of approved treatment programs, will result in immediate termination as an authorized institution upon receipt of notice. The institution shall be notified of the termination by telegram or certified mail and the notice shall include the nature of the violations.

(C) *Notice to beneficiary or sponsor upon termination of approval as an authorized institutional provider.* When approval as an authorized institutional provider is terminated, any beneficiary in the institution or the sponsor shall be notified by certified mail of such action at the same time the institution is notified. Notice to the beneficiary or sponsor also shall include the nature of the noncompliance violations that resulted in the termination. CHAMPUS benefits may be continued for those cases already approved for benefits for an interim period of up to the last day of the month following the month in which approval of the institution was terminated.

(ii) *Revocation of license.* A provider whose license to practice (or, in the case of an institutional provider, to operate) has been temporarily or permanently suspended or revoked by the jurisdiction issuing the license will be terminated from the CHAMPUS.

(A) The suspension will be continued against a professional provider, who having been suspended by a jurisdiction from which he or she has a license, obtains a license to practice in a second jurisdiction. A provider who has license to practice in two or more jurisdictions and has one suspended or revoked will also be suspended from the CHAMPUS.

(B) Professional providers will be suspended from the CHAMPUS until the jurisdiction suspending or revoking the provider's license to practice restores it.

(C) Institutional providers will remain suspended until their license is restored. In the event the facility is sold, transferred, or reorganized as a new legal entity, and a license issued under a new name or to a different legal entity, OCHAMPUS must be petitioned by the new entity to be an authorized provider.

(D) If the termination is due to the loss of the providers' license, the effective date shall be retroactive to the date the provider lost the license; however, in the

case of a professional provider who has licenses in two or more jurisdictions and submitted claims from a jurisdiction from which he or she had a valid license, the effective date of the termination will be on the date specified in the initial determination, but no later than 60 days from the date of the initial determination.

(4) *Claims and actions subject to review.* (i) Administrative actions pursuant to the provisions for provider exclusion or provider suspension are limited to actions, claims, or events that occurred within 6 years of the OCHAMPUS initial determination to exclude or suspend.

(ii) Administrative actions pursuant to the provisions for provider termination relate to qualification, therefore, there is no limitation on the time frame. However, in the circumstances where a provider has or had licenses from two or more jurisdictions, an initial determination to terminate must be within 3 years of the revocation of the provider's license in one jurisdiction.

(e) *Administrative Procedures for Issuing Determinations to Exclude, Suspend, or Terminate a Provider, and Reinstatement.*—(1) *Initial determination.* The initial determination to invoke an administrative remedy of exclusion, suspension, or termination of a provider will be issued by the Director, OCHAMPUS, or a designee.

(i) Except as provided in paragraph (d)(3)(1), in making the initial determination, the Director, OCHAMPUS, or a designee, will:

(A) Notify the provider that OCHAMPUS is considering taking administrative action under this Section. The notice to be sent by certified mail to the provider's last known business or office address (or home address if no business address).

(B) Notify the provider of the basis on which OCHAMPUS is considering imposing a sanction under this Regulation. The notice shall include reference to the provisions of this Section under which the administrative action is being taken and the situation, circumstances, or actions that gave rise to the considered administrative action.

(C) Provide the provider an opportunity to submit, in writing, evidence in support of the provider's position.

(D) The provider shall be given 60 days from the date of the notice to respond; however, this may be extended for good cause shown, but in no event shall the extension exceed 120 days.

(E) The initial determination will generally be issued within 60 days of the time for responding; it may be extended.

(F) Send by certified or registered mail the initial determination of any decision under this Section.

(ii) Any initial determination by the Director, OCHAMPUS, or a designee, to exclude, suspend, or terminate a provider must be supported by evidence (refer to paragraph (a)(4) in § 199.16).

(iii) OCHAMPUS may consider any material, relevant, or competent evidence.

(2) *Formal review.* Following an initial determination by the Director, OCHAMPUS, or a designee, a suspended provider may request a formal review determination by OCHAMPUS, subject to the requirements of § 199.16 of this Regulation and the provisions set forth below.

(i) A provider that has been excluded from the CHAMPUS because the provider has been convicted of a crime (see paragraph (d)(1) above) or had a civil judgment rendered against the provider, may request a formal review on the following issues:

(A) Whether the provider was, in fact, convicted (including pleas of guilty, or *nolo contendere*) or had a civil judgment rendered against the provider. (Note: Copies of court orders are *prima facie* evidence and can only be rebutted by clear and convincing evidence.)

(B) Whether the conviction of judgment involved fraud involving CHAMPUS or other federal health care programs.

Note.—Copies of the indictment (or similar documents) would provide *prima facie* evidence of this.

(C) Whether the length of the suspension is reasonable based on the criteria set forth in this Regulation; except that a suspension for the period the provider was sentenced (whether or not it was suspended) or 2 years, whichever is greater, is not appealable.

(ii) The provider shall bear the burden of producing and providing by a preponderance of the evidence any circumstances that would justify reducing the period of exclusion or suspension or reversing any determination to exclude, suspend, or terminate.

(3) *Hearings prior to an initial determination.* A provider is not entitled to a hearing prior to exclusion, suspension, or termination of the authorized provider status. However, a provider will be notified of the proposed action and given an opportunity to respond in writing. Requests for hearings before an independent hearing officer will be subject to the provisions of § 199.16 of this regulation.

(4) *Length of exclusion, suspension, termination.* (i) In determining the time period of an exclusion or suspension in excess of the period otherwise required by this Section, the Director, OCHAMPUS, or a designee, may consider:

(A) The nature of the claims and the circumstances under which they were presented;

(B) The degree of culpability;

(C) History of prior offenses (including whether claims were submitted while the provider was either excluded or suspended pursuant to prior administrative action);

(D) Number of claims involved;

(E) Dollar amount of claims involved;

(F) Whether, if a crime was involved, it was a felony or misdemeanor;

(G) If patients were injured, the number of patients and the seriousness of the injury(ies);

(H) The previous record of the provider under CHAMPUS;

(I) Whether restitution has been made; and

(J) Such other factors as may be deemed appropriate.

(ii) Maximum periods of exclusion and suspension are set forth in paragraph (d).

(iii) In some instances the period of the exclusion or the minimum period is mandatory under this Section.

(iv) Terminations relate to minimum requirements to be an authorized provider and will be for an indefinite period.

(5) *Reinstatement.* (i) Following the expiration of the period of any exclusion or suspension, a provider may request reinstatement. OCHAMPUS will not automatically restore a provider to the status of authorized provider. A written request from the excluded or suspended provider must be submitted.

(ii) In the case of false claims or erroneous payments, provider status *will not be restored* until the excluded or suspended provider has made restitution to the Government for the erroneous payments.

(iii) A terminated provider who subsequently achieves the minimum qualifications to be an authorized provider may also request reinstatement. Provider status will not be granted until restitution has been made to the Government. In case of an institution that has its approval as an authorized institution provider terminated because of noncompliance with CHAMPUS standards or approved treatment program, reapproval cannot be granted until an on-site facility review is conducted.

(iv) A provider who has submitted participating claims and who is

excluded or suspended for submitting claims involving fraud or abuse forfeits and waives any right or entitlement to bill the beneficiary or sponsor for the care that involved the fraud or abuse. If the provider has billed the beneficiary or sponsor, restitution to the beneficiary or sponsor may be imposed as a condition of reinstatement.

(v) There is no entitlement under the CHAMPUS for payment (cost-sharing) to either a provider or a beneficiary for any service or care that involves either criminal or civil fraud as defined by law, or fraud or abuse as defined by this Regulation.

(vi) Except as provided in paragraph (d)(3)(i), there is no entitlement under the CHAMPUS for payment (cost-sharing) to either a provider or a beneficiary for any care or services provided by a provider who does not meet the requirements to be an authorized provider.

(6) *Delay of exclusion or suspension.* Providers who have been excluded or suspended can request the Director, OCHAMPUS, or a designee, to stay the imposition of the exclusion or suspension pending an appeal.

(i) The criteria for allowing the stay include:

(A) Whether the reason for the exclusion or suspension has been removed;

(B) Whether there is reasonable assurance it will not recur;

(C) The availability to beneficiaries of care from other providers;

(D) To give beneficiaries an opportunity to secure another provider;

(E) Whether, in the case of potential overpayment, the Government's interest has been protected through restitution or the posting of adequate security, for example, irrevocable Letter of Credit or cash bond;

(F) In the case of a criminal conviction, whether a non-Federal program was involved; and

(G) Such other factors that are deemed appropriate.

(ii) Decisions made on requests to stay or delay the effective date of an exclusion or suspension are not appealable issues.

(7) *Compromise and settlement.* The Director, OCHAMPUS, or a designee, has the discretionary authority to enter into compromise settlements of administrative actions initiated under paragraph (d)(2), prior to a final decision.

(f) *Suspending Administrative Action.* (1) All or any administrative action may be suspended by the Director, OCHAMPUS, or a designee, pending action in the case by the Department of

Defense-Inspector General, Defense Criminal Investigative Service, or the Department of Justice (including the cognizant United States Attorney). However, action by the Department of Defense-Inspector General or the Department of Justice, including investigation, criminal prosecution, or civil litigation, does not preclude administrative action by OCHAMPUS.

(2) The normal OCHAMPUS procedure is to suspend action of the administrative process pending an investigation by the Department of Defense-Inspector General or final disposition by the Department of Justice or the cognizant United States Attorney.

(3) Though OCHAMPUS administrative action is taken independently of any action by the Department of Defense-Inspector General or by the Department of Justice or cognizant United States Attorney, once a case is forwarded to the Department of Defense-Inspector General or the Department of Justice or the cognizant United States Attorney for legal action (criminal or civil), that office has control over the case.

(4) In some instances there may be dual jurisdiction between agencies; for example, the joint regulations issued by the Department of Justice and the Government Accounting Office regarding debt collection.

(g) *Sponsors and Beneficiaries.* (1) Entitlement to CHAMPUS benefits is based on public law, consequently, an eligible beneficiary cannot be suspended from the program. However, the Director, OCHAMPUS, or a designee, may take appropriate and reasonable action to protect the CHAMPUS from those beneficiaries or sponsors who have previously submitted false claims and to recoup payments made as a result of false claims or erroneous payments not involving false claims.

(2) OCHAMPUS may offset against future CHAMPUS payments amounts owed by a beneficiary or sponsor.

(3) The Director, OCHAMPUS, or a designee, may implement whatever policies that he or she deems appropriate and reasonable to require individuals who have previously furnished false claims to establish that their medical care and CHAMPUS claims, and the medical care and CHAMPUS claims submitted by or for members of their family, are proper CHAMPUS claims.

(h) *Notice to Other Agencies.* (1) When OCHAMPUS excludes, suspends, or terminates a provider, the Director, OCHAMPUS, or a designee, will notify other appropriate agencies (for example, the state licensing agency that issued

the provider's license to practice medicine that the individual has been suspended as an authorized provider from the CHAMPUS. An exclusion, suspension, or termination action is considered a public record. Such notice can include the notices and determinations sent to the suspended provider and other public documents such as testimony given at a hearing or exhibits or depositions given in a lawsuit or hearing. Notice may also be given to Uniformed Services Military Treatment Facilities, Health Benefit Advisors, beneficiaries and sponsors, and institutional providers if inpatient care was involved.

(2) If OCHAMPUS has temporarily suspended claims processing, notice of such action will be given to Uniformed Services Medical Treatment Facilities, Health Benefits Advisors, beneficiaries, and sponsors. Notice may also be given to any other individual, professional provider, or institutional provider, as deemed appropriate. However, since a "temporary suspension of claims process" is by definition not a final or formal agency action, the basis for the action generally will not be disclosed. It is noted that the basis for the action can be a result of questions arising from routine audits to investigation of possible criminal violations.

(i) *Suspension of Claims Processing.* (1) The normal procedure of OCHAMPUS, when a provider or beneficiary is suspected of submitting criminally fraudulent or false claims, or, through practices that are within the Regulation's definition of fraud or abuse, and overpayments have been made to the provider, is to suspend CHAMPUS claims processing (in whole or in part) for claims of the beneficiary or care provided by the provider, whether or not the claims are participating claims or submitted by beneficiaries.

(2) If the matter has been referred to either the Department of Defense-Inspector General, Defense Criminal Investigative Service, or the Department of Justice (including the cognizant United States Attorney), CHAMPUS claims processing may be suspended (or continued to be suspended) by OCHAMPUS until the completion of the review or any litigation instituted. Generally, suspected false claims are first referred to the Defense Criminal Investigative Service for criminal investigation and referrals for civil fraud are not made until the criminal investigation or prosecution completed.

(3) A provider is not entitled to a hearing of a temporary suspension of claims processing pending final agency action.

(4) CHAMPUS will normally make efforts to give notice within the community by advising military facilities and Health Benefit Advisors within 100-mile radius of the provider that the claims are being reviewed and claims processing is suspended. Notice may also be given directly to beneficiaries and sponsors who have been or are receiving care from the provider.

(5) The decision to suspend claims processing is made by OCHAMPUS; it normally will not be done if it would interfere with the Defense Criminal Investigative Service investigation. Disclosure of the basis of the investigation is the responsibility of Defense Criminal Investigative Service or the cognizant Department of Justice attorney or United States Attorney.

6. Section 199.16 is amended by redesignating current paragraphs (a)(2)(i)(b), (a)(2)(i)(C) and (a)(2)(i)(D) as paragraphs (a)(2)(i)(C), (a)(2)(i)(D) and (a)(2)(i)(E) respectively, by adding a new paragraph (a)(2)(i)(B), by redesignating current paragraph (a)(4) as (a)(5), by redesignating paragraph (a)(5) as (a)(6) and adding paragraph (a)(6)(iv), and by redesignating current paragraphs (a)(6) and (a)(7) as paragraphs (a)(7) and (a)(8) respectively, and adding a new (a)(4) to read as follows:

§ 199.16 Appeal and hearing procedures.

(a) * * *

(2) * * *

(i) * * *

(B) CHAMPUS beneficiaries or sponsors that show an interest in receiving care from a particular provider or in a particular facility cannot be an appealing party regarding the exclusion, suspension, or termination of the provider by OCHAMPUS under § 199.15.

(C) * * *

(D) * * *

(E) * * *

(4) *Evidence.* (i) Evidence, used by OCHAMPUS in determining whether an action constituted fraud (civil or criminal), abuse, or unethical conduct under § 199.15 of this regulation, can include the results of an audit based on a 100% review of the claims or records or a statistically valid sample of the claims or records. Such a statistical sampling shall constitute *prima facie* evidence of the number and amount of claims and the instances of fraud or abuse.

(ii) Once OCHAMPUS has made a *prima facie* case, as described in paragraph (a)(2)(i) above, the burden of proof shall shift to the provider to produce evidence reasonably calculated to rebut the findings of the statistical

sampling study. OCHAMPUS will have the opportunity to rebut this evidence.

(iii) Medical texts, medical journals and articles, studies and literature from national medical organizations, and opinions by medical reviewers may be used as evidence. Medical evidence is not limited to the foregoing.

(iv) Audits conducted by the Government or on behalf of the Government may be used as evidence.

(v) The technical rules of evidence applicable in civil jury trials are neither required nor generally employed in reaching decisions and conducting hearings under this section; the technical rules of evidence will not apply.

(vi) Failure to produce medical records (whether or not the provider kept adequate medical records) constitutes a rebuttable presumption that the care was not provided and is evidence in support of an adverse determination against a provider. It is the obligation of any provider (professional or institutional), who furnishes or orders health care, to the extent of his influence or control to assure the care, service, or supply is supported by evidence of the medical necessity and quality in the form of adequate medical documentation and records. See definitions of "Adequate Medical Documentation, Medical Treatment Records" and "Adequate Medical Documentation, Mental Health Records" in § 199.8(b) of this regulation.

(5) *Late filing.* * * *

(6) *Appealable issue.* * * *

(iv) Decisions made on requests to stay or delay the effective date of an exclusion or suspension under § 199.15 of this regulation.

(7) *Amount in dispute.* * * *

(8) *Levels of appeal.* * * *

Note.—We have determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It is not, therefore, a "major rule" under Executive Order 12291. We certify that this amendment will not have a significant impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Dated: January 17, 1986.

Linda M. Lawson,
Alternate OSD Federal Register Liaison
Officer, Department of Defense.

[FR Doc. 86-1443 Filed 1-23-86; 8:45 am]

BILLING CODE 3810-01-M

POSTAL SERVICE

39 CFR Part 111

Location of Information About Mailing Under Company Permit Imprints; Withdrawal of Proposed Rule

AGENCY: Postal Service.

ACTION: Withdrawal of proposed rule.

SUMMARY: On June 3, 1985 the Postal Service published in the *Federal Register* (50 FR 23317) a proposal to require mailers to print on matter bearing a company permit imprint a complete return address where information about a mailing could be obtained for inspection and audit by postal officials. We received 14 written comments on the proposal, which was also an agenda item at a Mailer's Technical Advisory Committee (MTAC) meeting. Ten of the commenters opposed the proposal, as did MTAC. Upon further consideration in light of the views expressed, the Postal Service is hereby withdrawing the proposal.

DATE: This withdrawal is effective January 24, 1986.

FOR FURTHER INFORMATION CONTACT: John C. English, (202) 245-4353.

List of Subjects in 39 CFR Part 111

Postal service.

Fred Eggleston,

Assistant General Counsel, Legislative
Division.

[FR Doc. 86-1586 Filed 1-23-86; 8:45 am]

BILLING CODE 7710-12-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[A-10-FRL-2959-3]

Approval and Promulgation of State Implementation Plan and Designation of Areas for Air Quality Planning Purposes: State of Oregon

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: By this Notice, EPA proposes to approve the redesignation of the Medford-Ashland, Oregon "nonattainment" area to "attainment" for the primary ozone (O₃) standard and to approve an air quality maintenance strategy as a revision to the Oregon State Implementation Plan (SIP). The redesignation request is based on supporting documentation prepared and submitted by the Oregon Department of Environmental Quality (ODEQ)

pursuant to Section 107(d) of the Clean Air Act. Air quality data and emission reductions achieved through implementation of control strategy measures support this redesignation.

DATE: Comments must be postmarked on or before February 24, 1986.

ADDRESSES: Copies of the materials submitted to EPA may be examined during normal business hours at:

Air Programs Branch (10A-85-8),
Environmental Protection Agency,
1200 Sixth Avenue, Seattle,
Washington 98101

State of Oregon, Department of
Environmental Quality, Yeon Building,
522 S.W. Fifth, Portland, OR 97204

Comments should be addressed to:
Laurie M. Kral, Air Programs Branch, M/
S 532, Environmental Protection Agency,
1200 Sixth Avenue, Seattle, Washington
98101.

FOR FURTHER INFORMATION CONTACT:
Richard F. White, Air Programs Branch,
M/S 532, Environmental Protection
Agency, 1200 Sixth Avenue, Seattle,
Washington 98101, Telephone No. (206)
442-4232, (FTS) 399-4232.

SUPPLEMENTARY INFORMATION:

I. Background

On March 3, 1978 (43 FR 8962), EPA designated, pursuant to the requirements of Section 107(d) of the Clean Air Act, all areas of the country as "attainment," "nonattainment," or "unclassifiable" in terms of meeting National Ambient Air Quality Standards (NAAQS). At that time, the Medford-Ashland, AQMA, encompassing a portion of Jackson County, Oregon, was designated "nonattainment" for primary O₃ standards in 40 CFR, Part 81, Section 81.338.

EPA approved, with conditions, the Medford-Ashland, O₃ SIP on June 24, 1980 (45 FR 42265). These conditions were satisfied by ODEQ and removed by EPA on November 5, 1981 (46 FR 54939). On March 11, 1982 (47 FR 10534), EPA approved additional revisions to the O₃ SIP.

ODEQ held a public hearing in Medford, Oregon, on December 4, 1984, to obtain public comment on the redesignation proposal. The proposal was then adopted by the Oregon Environmental Quality Commission on January 25, 1985. ODEQ submitted the redesignation request to EPA on February 28, 1985. The submittal included documentation of attainment for the O₃ standard based on both emission reductions, air quality improvement, and O₃ and precursor modeling.

II. Technical Evaluation

A. Attainment Demonstration

1. *Air Quality:* The redesignation request included data from the primary O₃ monitoring station located eight kilometers south of the Medford central business district. No violations were recorded from 1978 through 1984. This satisfies the redesignation requirement of at least eight quarters with no violations.

The air monitoring data are considered generally representative of the maximum ambient O₃ levels in the impacted air mass within the Medford-Ashland O₃ nonattainment area. The ODEQ quality assurance program has been approved by EPA as satisfying the requirements of 40 CFR Part 58.

2. *VOC Emission Reduction:* The approved O₃ SIP called for a 9 percent reduction of 1977 emissions in order to demonstrate attainment in 1982. The reductions would result from the implementation of VOC controls the Federal Motor Vehicle Emission Control Program (FMVECP). However, because of reduced commercial and industrial activity and a decrease in traffic volume, the required reduction was achieved in 1979. This relates to 1977 emissions of 13,363 tons/year which were reduced to 11,584 tons per year in 1979.

B. Maintenance Demonstration

1. *Rule and Regulations:* Rules and regulations for maintaining VOC controls and limiting new VOC emissions include New Source Review (OAR 340-20-220 to 275), Plant Site Emission Limits (OAR 340-20-300 to 320), and General VOC Emission Standards (OAR 340-22-100 to 220), all of which are part of the approved SIP.

2. *VOC Emission Reduction Projections:* Emission reduction projections are consistent with the growth projections of the Jackson County Comprehensive Plan, the Medford Area Transportation Study, and the 208 Water Quality Planning Program. These projections consider the economic factors affecting commercial and industrial activity. Continued reductions from VOC controls and the FMVECP will ensure maintenance of the O₃ standard.

3. *Growth Cushion:* The Medford-Ashland O₃ control strategy has reduced VOC emissions below the level required for attainment for the O₃ standard. The EPA O₃ isopleth plotting package (OZIP) and city-specific version of the

empirical kinetic modeling approach (EKMA) were used to estimate the available growth cushion for the Medford-Ashland area. The OZIP and EKMA analysis and the 1987 VOC projections indicate that VOC emissions in 1987 will be 2000 tons per year (about 5000 kilograms per day) lower than the VOC emission levels required to just meet the O₃ standard. Continued maintenance of the O₃ standard will be assured by judiciously allocating source growth within the limits of the growth cushion. As a result, case-by-case air quality analysis for new or modified major stationary sources subject to the ODEQ PSD rules will not be required.

III Proposed Action

EPA proposes to redesignate the Medford-Ashland, Oregon, O₃ nonattainment area to attainment for the primary O₃ standard and to approve the maintenance plan.

Interested parties are invited to comment on all aspects of this proposed approval of the redesignation and SIP revision. Comments should be submitted in triplicate, to the address listed in the front of this Notice. Public comments postmarked February 24, 1986, will be considered in any final action EPA takes on this proposal.

Under 5 U.S.C. section 605(b), the Administrator has certified that SIP revisions do not have significant impact on a substantial number of small entities (46 FR 8709).

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

Authority: 42 U.S.C. 7401-7642.

List of Subjects in 40 CFR

Part 52

Air pollution control, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide, Hydrocarbons.

Part 81

Air Pollution Control Agency, National parks, and Wilderness areas.

Dated: June 28, 1985.

Ernesta Barnes,
Regional Administrator.

[FR Doc. 86-1556 Filed 1-23-86; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Parts 260, 261, 266, 270, 271, and 302

[SWH-FRL-2958-1]

Hazardous Waste Management System; General; Identification and Listing of Hazardous Waste; Used Oil; Recycled Oil Standards; Extension of Comment Period

AGENCY: Environmental Protection Agency.

ACTION: Proposed rules; extension of comment period.

SUMMARY: The purpose of this notice is to extend the public comment period on the proposal to list used oil as a hazardous waste and the proposed management standards for recycled used oil, both of which appeared in the Federal Register on November 29, 1985 (50 FR 49212, 49258, Nov. 29, 1985).

The comment period is extended from January 28 to February 11, 1986, to ensure that commenters have adequate time to prepare comments and to ensure that affected parties are also able to comply with certain closely related requirements that were imposed as final rules in the November 29 Federal Register notice.

DATES: The deadline for submitting written comments on both the proposal to list used oil as a hazardous waste and the proposed management standards for recycled oil is extended from January 28, 1986, to February 11, 1986.

ADDRESSES: Comments should be sent to the Docket Clerk, Office of Solid Waste (WH565-A), U.S. Environmental Protection Agency, 401 "M" Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: RCRA/Superfund Hotline at (800) 424-9348 or (202) 382-3000, or for technical information Michael Petruska at (202) 382-7917.

Dated: January 9, 1986.

J.D. Denit,
Acting Director, Office of Solid Waste.

[FR Doc. 86-1223 Filed 1-23-86; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety
Administration

49 CFR Part 533

[Docket No. FE-86-01, Notice 1]

Light Truck Average Fuel Economy
Standards Model Years 1988-89

AGENCY: National Highway Safety Administration (NHTSA), Department of Transportation.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes the establishment of average fuel economy standards for light trucks manufactured in model years (MY) 1988 and 1989. The issuance of the standards is required by Title V of the Motor Vehicle Information and Cost Savings Act. The agency is proposing ranges of standards instead of specific standards due to a number of uncertainties regarding key factors. For MY 1988, the proposed range for the combined standard for all light trucks is 20.5 mpg to 22.0 mpg, and for MY 1989, it is 20.5 mpg to 22.5 mpg. As a compliance alternative to the combined standard, the agency also proposes separate standards for two- and four-wheel drive vehicles. In view of the factual uncertainties that exist, the setting of standards outside the proposed range is possible depending on the comments that may be submitted.

DATE: Comments must be received on or before February 24, 1986. The proposed standards would be effective for the 1988-89 model years.

ADDRESSES: Comments must refer to the docket and notice numbers set forth above and be submitted (preferably in 10 copies) to the Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street, SW., Washington, DC 20590. The Docket is open 8 a.m. to 4 p.m., Monday through Friday. Submissions containing information for which confidential treatment is requested should be submitted (in 3 copies) to Chief Counsel, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street, SW., Washington, DC 20590, and 7 additional copies from which the purportedly confidential information has been deleted should be sent to the Docket Section.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Shelton, Office of Market Incentives, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590 (202-755-9384).

SUPPLEMENTARY INFORMATION:

Background

In December 1975, during the aftermath of the energy crisis created by the oil embargo of 1973-74, the Congress enacted the Energy Policy and Conservation Act. Congress included a provision in that Act establishing the automotive fuel economy regulatory program. That provision added a new title, Title V, "Improving Automotive Efficiency," to the Motor Vehicle Information and Cost Savings Act. Title V provides for the establishment of average fuel economy standards for cars and light trucks.

Section 502(b) of the Act requires the Secretary of Transportation to issue light truck fuel economy standards for each model year. The Act provides that the fuel economy standards are to be set at the maximum feasible level. In determining maximum feasible average fuel economy, the Secretary is required under section 502(e) of the Act to consider four factors: Technological feasibility, economic practicability, the effect of other Federal motor vehicle standards on fuel economy, and the need of the nation to conserve energy.¹ Light truck fuel economy standards have previously been established for model years through MY 1987. Recent rulemaking proceedings regarding light truck standards have reflected the fact that while manufacturers have implemented a number of technological improvements during recent model years to improve their light truck fuel economy, there has also been a continuing shift in consumer demand toward larger light trucks and larger displacement engines. These demand shifts, which have been largely due to stable and sometimes even diminishing gasoline prices and also have reflected general improvements in the U.S. economy, have resulted in corporate average fuel economy (CAFE) levels which have been lower than were once anticipated by the manufacturers and the agency.

In light of these changed conditions, NHTSA found it necessary to reduce the MY 1985 light truck fuel economy standard from 21.0 mpg to 19.5 mpg (with corresponding changes in the alternative two- and four-wheel drive standards). 49 FR 41250, October 22, 1984. In that same notice, the agency established a MY 1986 standard of 20.0 mpg. NHTSA later set the MY 1987 standard at 20.5 mpg. 50 FR 40398, October 3, 1985. In that notice, the agency concluded that market trends

¹ Responsibility for the automotive fuel economy program was delegated by the Secretary of Transportation to the Administrator of NHTSA (41 FR 25015, June 22, 1976).

toward large vehicles and engines are likely to continue through 1987.

With rulemaking action complete with respect to the 1987 model year, the agency now turns to proposing light truck standards for MY 1988-89.

Proposals

A. General

As part of setting forth proposals, this notice discussed a variety of issues which are being considered by the agency, all of which are relevant to the statutory criteria noted above. In discussing these issues, the agency asks a number of questions or makes a number of requests for data to help it obtain information to facilitate its analysis. For easy reference, the questions or requests are numbered consecutively throughout the document.

In providing a comment on a particular matter or in responding to a particular question, please provide any relevant factual information to support conclusions or opinions, including but not limited to statistical and cost data, and the source of such information.

B. Ranges of Proposals

This notice proposes to establish the MY 1988 combined standard for light truck average fuel economy within a range of 20.5 mpg to 22.0 mpg and the MY 1989 standard within a range of 20.5 mpg to 22.5 mpg. The lower end of the ranges, 20.5 mpg, is the value determined by NHTSA to be the maximum feasible level for MY 1987. The upper ends of the ranges are largely based on the agency's evaluation of manufacturer projections and underlying product plans, which are discussed below. Corresponding ranges for two-wheel drive (2WD) and four-wheel drive (4WD) alternative standards are also being proposed. For MY 1988, the ranges are 21.0 mpg to 22.5 mpg for 2WD and 19.5 mpg to 21.0 mpg for 4WD. For MY 1989, the ranges are 21.0 mpg to 23.0 mpg and 19.5 mpg to 21.5 mpg, respectively. The combined standard permits manufacturers greater flexibility in allocating their improvement efforts among various portions of their fleets. Moreover, the separate standards accommodate differences among the manufacturers in market share of the generally less fuel-efficient 4WD vehicles.

In view of uncertainties, the setting of standards outside the proposed ranges is possible. Factual uncertainties which could result in lower standards include the possibility of further mix shifts toward larger light trucks and engines and the possibility that planned

technological improvements may not achieve anticipated fuel economy benefits or may prove to be infeasible, beyond these uncertainties which are already being considered in the low end of the range. Factual uncertainties which could result in higher standards include the possibility that manufacturers may be able to improve their CAFE by further technological changes, beyond those they are already planning.

Manufacturer Capabilities for MY 1988-89

In evaluating manufacturers' fuel economy capabilities for MY 1988-89, the agency has analyzed manufacturers' current projections and underlying product plans and is considering what, if any, additional actions the manufacturers could take to improve their fuel economy.

A. Manufacturer Projections

General Motors: General Motors (GM) projected in March 1985 that it could achieve CAFE levels of 22.6 mpg in MY 1988 and 23.1 mpg in MY 1989. NHTSA adjusted the MY 1989 figure downward to 23.0 mpg to correct errors in the March 1985 submission. Since GM's latest MY 1987 projection was for CAFE of up to 22.4 mpg, these MY 1988-89 projections would represent additional CAFE improvements of at least 0.2 mpg and 0.4 mpg, per year, respectively. The expected improvements are due to engine improvements and the introduction of new models.

(The details of the changes are subject to a claim of confidentiality. This is also true for the Ford and Chrysler projections discussed below.)

As noted in the MY 1987 final rule, GM's March 1985 submission indicated that a program risk (the details of which are subject to a claim of confidentiality) could result in a decline in its projected MY 1987 CAFE of up to 1.3 mpg. NHTSA believes that this particular risk does not affect GM's projection for MY 1988-89.

GM emphasized the following, however, in its March 1985 submission:

All estimates and future product plans contained in this submission are but a 'snapshot in time.' As we have stated on a number of occasions, most recently in our 1985 pre-model year report, changes in the economic outlook, in fuel availability, in fuel prices or in consumer preference significantly affect GM's CAFE. The unpredictability of the market, the unknown effect of future light duty truck emission regulations and the unproven results of future combinations of technology cause CAFE projections to be . . . tentative . . .

The agency notes that although GM's actual fuel price forecasts are subject to

a claim of confidentiality, they are significantly higher than those currently projected by the Department of Energy's Energy Information Administration (EIA). Should the prices forecast by EIA occur, GM's CAFE estimates might prove to be overly optimistic.

Ford: Ford projected in February 1985 that it could achieve CAFE levels of up to 22.5 mpg for MY 1988 and up to 22.6 mpg for MY 1989. NHTSA adjusted these figures downward to 22.2 mpg for MY 1988 and 22.3 mpg for MY 1989, however, in light of later technical information provided by Ford. The primary reason for the reduction is that actual test data regarding some programs have indicated smaller fuel economy improvements than projected. Since Ford's latest MY 1987 projection was for a CAFE value of up to 21.0 mpg, the corresponding MY 1988-89 projections would represent additional improvements of 1.2 mpg and 0.1 mpg, per year, respectively. These improvements would be attributable to transmission improvements, engine improvements, and mix shifts toward more fuel-efficient vehicles.

Given current trends in the price of gasoline, the agency questions whether the mix shifts whose existence is suggested in the Ford data are likely to occur in MY 1988-89. Part of the explanation for the apparent existence of mix shifts is that the agency is comparing a June 1985 projection by Ford for MY 1987 and February 1985 projections by Ford for MY 1988-89. While Ford reduced its February 1985 projection for MY 1987 in June 1985, it did not change its projected sales mixes for MY 1988-89. Given the recent and expected continued declines in gasoline prices, the agency believes it is unlikely these mix shifts will occur. Deleting the mix shifts from the Ford projections would lower the upper end projections to 21.8 and 21.9 mpg, respectively.

Ford identified several risks to its MY 1988-89 CAFE projections. These include both technological risks and mix shift risks. That company identified additional technological risks totalling 0.9 mpg for MY 1988-89 and mix shift risks totalling 0.6 mpg, for a total risk of 1.5 mpg. However, the agency incorporated 0.7 mpg in technological and sales mix risks in its above estimates, reducing the remaining risk to 0.8 mpg. If these risks occurred simultaneously, Ford's CAFE projections would decline to 21.0 mpg for MY 1988 and 21.1 mpg for MY 1989.

Chrysler: Chrysler projected in August 1985 that it could achieve CAFE levels of 22.3 mpg in MY 1988 and 23.3 in MY 1989. Since Chrysler's latest MY 1987 projection is for a CARE level of 21.2

mpg, that company's MY 1988-89 projections would represent additional CAFE improvements of 1.1 mpg and 1.0 mpg, per year, respectively. The bulk of the improvement would be attributable to technological improvements, especially transmission improvements. Chrysler also expects slight mix shifts toward smaller, more-efficient trucks.

The agency notes that Chrysler's August 1985 projections for MY 1987-89 are different from that company's projections provided in February 1985. On the earlier date, Chrysler provided CAFE projections of 21.6 mpg for MY 1987, 22.3 mpg for MY 1988, and 24.3 mpg for MY 1989. The .4 mpg reduction for MY 1987 is attributable to mix shifts and performance increases. While Chrysler's projection for MY 1988 remains the same, the underlying product plans are different. A mix shift is compensated for by additional technological changes. The 1.0 mpg reduction for MY 1989 is attributable to changes in model offerings.

American Motors: In February 1985, American Motors provided separate CAFE projections for its MY 1988-89 2WD and 4WD fleets, but did not provide combined projections or the information necessary to calculate combined projections. The company recently advising the agency that it is revising its projections. They were not available at the time this notice was issued but will be considered during the development of the final rule.

Other Manufacturers: Volkswagen (VW) currently offers only one light truck model, the Vanagon compact bus, with an average fuel economy of 21.3 mpg. That company projects a CAFE of 21 mpg through MY 1990. It is thus possible that VW will have CAFE levels below those achievable by GM, Ford and Chrysler for those model years.

The other foreign light truck manufacturers only compete in the small vehicle portion of the light truck market and are therefore expected to achieve CAFE levels well above GM, Ford and Chrysler, which offer full ranges of light truck models.

Uncertainties: In analyzing the manufacturers' CAFE projections and underlying product plans for the MY 1988-89 time period, it is clear that they are subject to significant uncertainties. While there are always some uncertainties related to market mix and the benefits that will be achieved by use of technology, the agency believes that the period at issue for this rulemaking is unusually fraught with uncertainties, beyond manufacturers' control, which could have substantial adverse impacts on their CAFE.

This is particularly true with respect to future gasoline prices. EIA now projects that the price of unleaded gasoline will drop by 10 cents a gallon between 1985 and 1986 (in real terms) and rise only very slowly in the several years after 1986. As discussed during the recent rulemaking for MY 1986 passenger automobiles, several forecasts made during the last several years that prices would soon turn upward have proven to be incorrect. Moreover, there have been reports in the press that gasoline prices may even drop precipitously due to a possible price war among the oil-producing nations. Since the price of gasoline is one of the most significant determinants of consumer demand for fuel-efficient vehicles and a major factor in the ability of manufacturers to market their most fuel-efficient vehicles, such a drop could significantly erode manufacturers' projected CAFE levels.

Foreign competition is another uncertainty. If the Japanese manufacturers increase their market share of smaller, more fuel-efficient light trucks at the expense of the domestic manufacturers, the domestic manufacturers' CAFE would be adversely affected.

In order to assist NHTSA is analyzing the fuel economy capabilities of manufacturers during MY 1988-89, the agency requests information or comments on the following question:

1. How substantial are the uncertainties affecting manufacturers' fuel economy capabilities during the MY 1988-89 time period, and how should these uncertainties be considered in setting fuel economy standards at the maximum feasible level?

B. Possible Additional Actions To Improve MY 1988-89 CAFE

The possible additional actions which manufacturers may be able to take to improve their MY 1988-89 CAFE above the levels which are currently projected may be divided into three categories: further technological changes to their product plans (beyond what they are already planning), increased marketing efforts, and product restrictions.

The ability to improve CAFE by further technological changes to product plans is dependent on the availability of fuel-efficiency enhancing technologies which manufacturers are able to apply within available time.

The agency's Preliminary Regulatory Impact Analysis (PRIA) discusses the fuel efficiency enhancing technologies which are expected to be available during the MY 1988-89 time period. In analyzing the issue of improving MY 1988-89 CAFE by additional

technological means, the agency requests information or comments on the following questions:

2. What is the feasibility (bearing in mind both technological feasibility and economic practicability) of the various fuel-efficiency enhancing technologies, including but not limited to those identified in the agency's PRIA, for improving manufacturers' CAFE for MY 1988-89? In answering this question, please address the potential penetrations of those technologies during this time period, i.e., the extent to which they could be incorporated across manufacturers' fleets. If feasible, for which model years? If not, why not? What are the leadtimes involved in making such technological changes?

The agency believes that the ability to improve light truck CAFE by marketing efforts is relatively small. Light trucks are generally purchased for their work-performing capabilities. This is particularly true for the larger, less fuel-efficient light trucks. Since the smaller light trucks cannot meet the needs of many users, the manufacturers' ability to use marketing efforts to encourage consumers to purchase smaller light trucks instead of larger light trucks is limited.

As a practical matter, marketing efforts to improve CAFE are largely limited to techniques which either make fuel-efficient vehicles less expensive or less fuel-efficient vehicles more expensive. Moreover, the ability of a manufacturer to increase sales of fuel-efficient light trucks depends in part on increasing its market share at the expense of competitors or pulling ahead its own sales from the future. A factor which makes it difficult for domestic manufacturers to increase sales of fuel-efficient light trucks is the strong competition in that market from Japanese manufacturers. While Japanese manufacturers currently have an overall combined market share of about 20 percent of light trucks, their share for the smaller, more fuel-efficient pick-up trucks is about 50 percent.

The agency also notes that the improved fuel efficiency of all sizes of modern light trucks makes it more difficult to sell the small light trucks. The reason for this is that there are diminishing returns in terms of fuel economy from purchasing smaller light trucks as the fuel efficiency of larger light trucks increases. The average fuel economy of large pickup trucks rose from 13.1 mpg in 1975 to 18.4 mpg in 1985, and the average fuel economy of large vans rose from 13.1 mpg to 17.5 mpg during this time period. The average fuel economy of small pickup trucks rose from 22.1 mpg to 26.2, and

the average fuel economy of small vans rose from 20.7 mpg to 23.9 mpg. SAE Paper No. 850550, "Light Duty Automotive Fuel Economy . . . Trends thru 1985." The fuel economy of large pickup trucks and vans has thus improved more than the fuel economy of small pickup trucks and vans, both in absolute and percentage terms. Also, as gasoline prices have declined, there are diminishing returns from purchasing more fuel-efficient vehicles.

A problem with pulling ahead sales is that the manufacturer's CAFE for subsequent years is reduced. For example, if a manufacturer increases its MY 1988 CAFE by pulling ahead sales of fuel-efficient light trucks from MY 1989, its MY 1989 CAFE will decrease, compared with the level it would have been in the absence of any pull-ahead sales attributable to marketing efforts. For this reason, a manufacturer cannot continually improve its CAFE simply by pulling ahead sales.

Given these factors and the manufacturers' past and current marketing efforts, NHTSA does not believe that the domestic manufacturers can significantly improve their CAFE's by increased marketing efforts.

Manufacturers could improve their CAFE by restricting their product offerings, e.g., limiting or deleting particular larger light truck models and larger displacement engines. However, such product restrictions could have significant adverse economic impacts on the industry and the economy as a whole. In the final rule reducing the light truck fuel economy standard for MY 1985, the agency concluded that sales reductions to a manufacturer of 100,000 to 180,000 units, with resulting employment losses of 12,000 to 23,000, "go beyond the realm of 'economic practicability' as contemplated in the Act. . . ." (49 FR 41252, October 22, 1984).

In addition to the adverse impacts on the automotive industry, a wide range of businesses could be seriously impacted to the extent that they could not obtain the light trucks they need for business use. Also, such product restrictions could run counter to the congressional intent that the CAFE program not unduly limit consumer choice.²

In analyzing the possible economic impacts of alternative standards, the agency requests information or comments on the following questions:

3. What would be the likely effects on employment and sales of alternative MY 1988-89 light truck fuel economy

² See H.R. Rep. No. 93-340, 94th Cong., 1st Sess. 87 (1975).

standards, within and outside the proposed ranges? At what absolute levels for each model year would serious economic harm likely begin to occur? Please provide data to support arguments on this point.

4. What would be the likely effects on consumer choice of alternative light truck fuel economy standards? Given that light trucks are frequently used for commercial purposes, should the agency treat this issue differently in setting light truck standards than in setting passenger automobile standards? The agency requests data on the uses to which light trucks are put and on whether there are clear divisions of categories of light trucks as to commercial versus personal use.

Other Federal Standards

As discussed by the PRIA, several recent and proposed changes in Federal safety requirements may affect CAFE. These include several amendments to NHTSA's lighting standard, which permit greater aerodynamic drag and slight weight savings; an amendment to the agency's occupant crash protection standard to promote the comfort and convenience of safety belts, and a proposal to extend the applicability of the agency's standard concerning steering control rearward displacement to additional light trucks.

While the agency has estimated that passenger car fuel economy could be increased by 0.4 to 0.9 percent by using aerodynamic headlamps, it is likely that the potential fuel economy improvement for light trucks by adoption of this feature is less. The reason for this is that the basic shape of light trucks is often dictated by load carrying capability or other functional attributes, thereby making it more difficult to reduce aerodynamic drag. The PRIA concludes that the effect of the comfort and convenience requirements on light truck CAFE will be negligible, since both the number of affected vehicles and weight impact are small. The PRIA similarly concludes that the effect of the proposed requirements for steering control rearward displacement on light truck CAFE would not be significant, since the number of affected vehicles is believed to be small and the required modifications minimal.

The Environmental Protection Agency (EPA) published a proposal on July 1, 1985 (50 FR 27188) to provide test adjustment credits to light truck manufacturers for changes made in test procedures. The rulemaking is not likely to have any significant effect on the manufacturers' projections discussed above.

EPA has a requirement for control of particulate matter, which will be tightened in MY 1987. In the preamble to the final rule establishing MY 1987 light truck fuel economy standards, NHTSA concluded that any impact on fuel economy would be very small, i.e., much less than 0.1 mpg. This requirement is discussed further in the PRIA.

EPA has a requirement for control of oxides of nitrogen, which will be tightened in MY 1988. As discussed by the PRIA, EPA estimates that with the use of three-way catalyst technology, there will be no net loss in fuel efficiency and possibly even small gains. Moreover, since the EPA regulation provides for averaging compliance with the more stringent particulate standard and the oxides of nitrogen standard, manufacturers have greater flexibility to help ensure that there are little or no attendant fuel economy penalties.

NHTSA is not aware of any plans on the part of EPA to promulgate noise regulations during the MY 1988-89 time period and therefore does not anticipate any attendant fuel economy penalties.

In analyzing the effects of other Federal standards on fuel economy, the agency requests information or comments on the following question:

5. Is the agency's analysis of the effects of other Federal standards correct? Are there any other Federal standards that might impact light truck fuel economy during MY 1988-89? The agency seeks comment on GM's observation, cited earlier in this notice, that the unknown effect of future light duty truck emission regulations causes its CAFE projections to be uncertain.

The Need to Conserve Energy

Since 1975, when the Energy Policy and Conservation Act was passed, this nation's energy situation has changed significantly. In particular, oil markets have been deregulated and the Strategic Petroleum Reserve (SPR) has been established.

In 1977, the United States imported 46.4 percent of its oil needs and the value of imported crude oil and refined petroleum products was \$67 billion (stated in 1984 dollars). While the import share of total petroleum demand declined after that year, the cost continued to rise to a 1980 peak level of \$93.2 billion (1984 dollars). By 1984, the import share had declined to 30.9 percent at a cost of \$54.2 billion. For the first eight months of 1985, the import share has continued to decline to 27.7 percent. Thus, the cause for concern over dependence on imported petroleum, as measured by these indicators, has lessened in the past several years.

Moreover, imports from OPEC sources have been declining, from a high of 6.2 million barrels per day and 70.3 percent of all imports in 1977 to 2.0 million barrels per day and 37.7 percent of imports in 1984. For the first eight months of 1985, the OPEC share of imports has declined further to 34.3 percent of total imports. Conversely, imports from non-OPEC sources have risen from a low of 2.2 million barrels per day or 30.7 percent in 1976, to 3.4 million barrels per day or 62.4 percent in 1984. In 1984, Mexico supplied the U.S. with the largest amount of crude oil and petroleum products, followed by Canada. As imports have shifted to non-OPEC sources, the United States' supply of petroleum has become less vulnerable to the political instabilities of some OPEC countries, as compared to the situation in the mid-1970's.

Overall, the nation is much more energy independent than it was a decade ago. From 1975 to 1984, energy efficiency in the economy improved by 21 percent (1984 Annual Energy Review, Energy Information Administration, U.S. Department of Energy, p. 47). Domestic oil production is higher than it was in 1975, total imports have dropped 20 percent since then, the value of the nation's imported oil bill has declined nearly 40 percent in the last five years (on a net import basis, the value of the nation's imported oil bill fell nearly 45 percent from 1980 to 1984), and the amount of imported oil from OPEC has dropped by 67 percent since the peak of 1977. As a percentage share of GNP, the net oil import bill fell from 2.8 percent in 1980 to 1.5 percent in 1984. In addition, the price of oil is now fully decontrolled, permitting the market to adjust quickly to changing conditions, and the Strategic Petroleum Reserve is well on its way to being filled. The 451 million barrels in the SPR at year-end 1984 were equal to 141 days or 38.6 percent of non-SPR crude oil imports that year. Thus, by any measure, the nation is in a stronger energy position than it was a decade ago.

Projections by the Energy Information Administration (EIA) and Data Resources, Inc. (DRI), are that domestic production will decline from a stable level of 10 MMB/D to about 8.5 MMB/D by 1995, and net imports will rise from 4.5 to 5 MMB/D to about 7.5 (EIA) to 9.0 (DRI) MMB/D by 1995. If this occurred, imports could approach 50 percent of U.S. petroleum use by 1995. However, experience has shown that future projections about petroleum imports are subject to great uncertainty. It is especially true that oil imports are very difficult to project beyond a year or two.

for example, the EIA's 1977 *Annual Report to Congress* projected that net oil imports by the U.S. would, in the "reference case," reach 11 million barrels per day by 1985. Net imports for this year are now forecast to be less than 4.5 million barrels per day, less than half the level predicted in 1977.

In the recent MY 1986 passenger automobile rulemaking, the Energy Conservation Coalition cited the uncertainty of future oil supplies in arguing for steadily increasing standards. In amending the passenger automobile standard for that model year from 27.5 mpg to 26.0 mpg, NHTSA stated that it believes that energy conservation is important, but also emphasized that it must consider all of the statutory criteria in establishing fuel economy standards. The agency concluded that, in its judgment, the need to conserve energy did not justify the severe economic consequences associated with the product restrictions necessary for the major manufacturers to achieve 27.5 mpg for that model year.

In analyzing the issue of how the need of the nation to conserve energy should be considered in determining CAFE standards for MY 1988-89, the agency requests information or comments on the following questions, which is also asked in the agency's rulemaking concerning post-1986 passenger automobile fuel economy standards:

6. How should changes in the nation's energy situation since 1975, including but not limited to those discussed above, affect the agency's consideration of the statutory criterion of "the need of the nation to conserve energy"?

Determining the Maximum Feasible Average Fuel Economy Level

As discussed above, section 502(b) requires that light truck fuel economy standards be set at the maximum feasible average fuel economy level. In making this determination, the agency must consider the four factors of section 502(e): Technological feasibility, economic practicability, the effect of other federal motor vehicle standards on fuel economy, and the need of the nation to conserve energy.

A. Interpretation of "Feasible"

Based on dictionary definitions and judicial interpretations of similar language in other statutes, the agency has traditionally interpreted the term "feasible" to refer to whether something is capable of being done. The agency has thus concluded in the past that a standard set at the maximum feasible average fuel economy level must: (1) be capable of being done and (2) be at the highest level that is capable of being

done, taking account of what manufacturers are able to do in light of available technology, economic practicability, how other Federal motor vehicle standards affect average fuel economy level, and the need of the nation to conserve energy. In this proposal, as in earlier rulemakings, NHTSA has considered and weighed all four statutory factors of section 502(e), and has not merely proposed a level based on what was technologically capable of being done.

B. Industrywide Considerations

The Conference Report to the 1975 Act (S. Rep. No. 94-516, 94th Cong., 1st Sess. 154-5 (1975)) states:

Such determination [of maximum feasible average fuel economy level] should therefore take industrywide considerations into account. For example, a determination of maximum feasible average fuel economy should not be keyed to the single manufacturer which might have the most difficulty achieving a given level of average fuel economy. Rather, the Secretary must weigh the benefits to the nation of a higher average fuel economy standard against the difficulties of individual automobile manufacturers. Such difficulties, however, should be given appropriate weight in setting the standard in light of the small number of domestic automobile manufacturers that currently exist, and the possible implications for the national economy and for reduced competition association (sic) with a severe strain on any manufacturer. . . .

This language of the Conference Report indicates that standards may at times be set at a level above that of the least capable manufacturer. The issue arises of how (and whether) this language should be reconciled with the statutory text indicating that standards must be set at a level that is capable of being done. As a matter of construction, statutory language is controlling over legislative history. Legislative history, however, should be used as an indication of congressional intent in resolving ambiguities in statutory language. The agency believes that the above quoted language of the Conference Report provides guidance on the meaning of "maximum feasible average fuel economy level."

It is clear from the Conference Report that Congress did not intend that standards simply be set at the level of the least capable manufacturer. Rather, NHTSA must take industrywide considerations into account in determining the maximum feasible average fuel economy level. The focus, thus, must be on the manufacturers' collective ability to meet a standard, rather than any particular manufacturer's ability to meet it.

NHTSA has consistently taken the position that it has a responsibility to set light truck standards at a level than can be achieved by manufacturers whose vehicles constitute a substantial share of the market. See 49 FR 41251, October 22, 1984. However, the agency did set the MY 1982 light truck fuel economy standards at a level which it recognized might be above the maximum feasible fuel economy capability of Chrysler, based on the conclusion that the energy savings benefits associated with the higher standard would outweigh the harm to Chrysler (45 FR 20871, 20876; March 31, 1980). The House Committee on Interstate and Foreign Commerce later stated that it "generally agreed with DOT." House Report No. 96-1026, May 16, 1980, p. 17. However, the Congress also enacted special provisions for adjusting the light truck fuel economy standards to provide greater flexibility in dealing with the kinds of potential problems then faced by Chrysler, in part responding to Chrysler's arguments that it should not be forced to choose between paying millions of dollars in fines for violating the law and closing plants in order to meet the law.³

Based on the projections discussed above, it is likely that Ford will be the least capable manufacturer for MY 1988-89, for manufacturers with a substantial share of sales. While it is possible that VW could have a lower capability than Ford, VW's market share is only about 0.6 percent. The agency would not consider it appropriate under the Act to set a standard based on the capability of a single manufacturer having less than a one percent market share.

C. Petroleum Consumption

The precise magnitude of possible energy savings associated with alternative light truck fuel economy standards is uncertain. The PRIA provides calculations for the hypothetical lifetime fuel consumption of the MY 1988-89 domestic light truck fleets assuming those same fleets could and would achieve CAFE at each of the proposed ranges for CAFE standards. For example, assuming that manufacturers could achieve average CAFE of 22.0 mpg for the MY 1988 domestic light truck fleet but instead achieved 20.5 mpg with the same number of sales, there could be a maximum difference in fuel

³House Report No. 96-1026, May 16, 1980, p. 17; Hearings before the Subcommittee on Energy and Power, March 28 and April 15, 1980, Serial No. 96-162, pp. 165-167.

consumption of 1.56 billion gallons over the life of the model year's fleet.

As discussed earlier in this notice, however, it is possible that manufacturers may be able to achieve higher CAFE levels only by restricting the sales of their large light trucks. If this occurred, consumers might tend to keep their older, less-fuel efficient light trucks in service longer. Also, to the extent that a particular manufacturer might find it necessary to restrict sales of its large light trucks, consumers may be able to transfer their purchases of those same types of vehicles to another manufacturer which may have less difficulty meeting the CAFE standard.

Moreover, NHTSA believes that each manufacturer will attempt to achieve its highest CAFE possible during MY 1988-89. The record is clear that the domestic manufacturers have been continuing to make significant efforts to improve their light truck fuel economy for model years before a standard is required to be set for that year. Thus, should post-rulemaking events enable the manufacturers to achieve higher CAFE levels than was considered likely by the agency during the rulemaking process, the agency believes that the domestic manufacturers, would, in fact, strive to achieve that higher CAFE. Therefore, with respect to the theoretical figure noted above for MY 1988 and similar calculations for MY 1989, the agency does not believe it likely that an individual manufacturer would only attempt to meet the level of the standard, regardless of where it is set, but so long as it was capable of achieving a higher CAFE without sales losses, would attempt to achieve that higher level.

For these reasons, the agency believes that the *actual* impacts on energy consumption of alternative fuel economy standards, if any, would be much less than the theoretical calculations comparing different levels of industry-wide CAFE.

Impact Analyses

A. Economic Impacts

The agency considered the economic implications of the proposed standards and determined that the proposal is major within the meaning of Executive Order 12291 and significant within the meaning of the Department's regulatory procedures. The agency's detailed analysis of the economic effects is set forth in a preliminary regulatory impact analysis (PRIA), copies of which are available from the Docket Section. The contents of that analysis are generally described above.

B. Environmental Impacts

The agency has analyzed the environmental impacts of the proposed 1988-89 model year light truck average fuel economy standards in accordance with the national Environmental Policy Act, 42 U.S.C. 4321 *et seq.* Copies of the Environmental Assessment (EA) are available from the Docket Section. The agency expects to conclude that no significant environmental impact would result from this rulemaking action.

C. Impacts on Small Entities

Pursuant to the Regulatory Flexibility Act, the agency has considered the impact this rulemaking would have on small entities. I certify that this action would not have a significant economic impact on a substantial number of small entities. Therefore, a regulatory flexibility analysis is not required for this action. No light truck manufacturer subject to the proposed rule would be classified as a "small business" under the Regulatory Flexibility Act. In the case of small businesses, small organizations, and small governmental units which purchase light trucks, adoption of the proposed rule would not affect the availability of fuel efficient light trucks or have a significant effect on the overall cost of purchasing and operating light trucks.

Comments

NHTSA is providing a 30-day comment period for interested parties to present data, views, and arguments on the proposed standards. A longer comment period is not being provided in light of the statutory deadline for issuance of the MY 1988 standards. It is requested but not required that 10 copies be submitted.

All comments must be limited not to exceed 15 pages in length. (49 CFR 5533.21) Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the

agency's confidential business information regulation (49 CFR Part 512).

All comments received before the close of business on the comment closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. However, the rulemaking action may proceed at any time after that date, and comments received after the closing date and too late for consideration in regard to the action will be treated as suggestions for future rulemaking. The NHTSA will continue to file relevant material as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose, in the envelope with their comments, a self-addressed stamped postcard. Upon receiving the comments, the docket supervisor will return the postcard by mail.

In accordance with section 502(i) of the Cost Savings Act, the agency submitted this proposal to the Department of Energy for review. There were no unaccommodated comments.

List of Subjects in 49 CFR Part 533

Energy conservation, Fuel economy, Gasoline, Imports, Motor vehicles.

PART 533—[AMENDED]

In consideration of the foregoing, 49 CFR Part 533 would be amended as follows:

1. The authority citation for Part 533 would be revised to read as follows:

Authority: 15 U.S.C. 2002, delegation of authority at 49 CFR 1.50.

§ 533.5 [Amended]

2. Table II in § 533.5(a) would be amended by adding MY 1988-89 average fuel economy standards at the levels determined by the agency to be the maximum feasible average fuel economy level, based on the considerations discussed above.

Issued on January 21, 1986.

Barry Felice,

Associate Administrator for Rulemaking.

[FR Doc. 86-1504 Filed 1-23-86; 10:59 am]

BILLING CODE 4910-59-M

49 CFR Part 571

[Docket No. 86-01; Notice 1]

Federal Motor Vehicle Safety Standards; Lamps, Reflective Devices, and Associated Equipment**AGENCY:** National Highway Traffic Safety Administration (NHTSA), DOT.**ACTION:** Notice of proposed rulemaking.

SUMMARY: This notice proposes that replacement lighting equipment be marked and identified as to function, in a manner similar to that of SAE Recommended Practice J759, May 1983. It is also proposed that this equipment bear a DOT mark as certification of compliance; this method of certification is presently at the manufacturer's option. The code would identify the manufacturer (and importer, where applicable) and hence assist in enforcement efforts. It would also remove ambiguities about the intended function of dual purpose devices. The proposal implements the grant of a petition for rulemaking submitted by Peterson Manufacturing Co.

DATE: Comment closing date for the proposal is March 10, 1986. Any request for an extension of time in which to comment must be received not later than 10 days before the closing date for comments. Proposed effective date: Three years after publication of the final rule in the *Federal Register*.

ADDRESS: Comments should refer to the docket number and notice number of the notice of proposed rulemaking and be submitted to: Docket Section, Room 5109, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590 (Docket hours are from 8 a.m. to 4 p.m.).

FOR FURTHER INFORMATION CONTACT: Kevin Cavey, Office of Rulemaking, National Highway Traffic Safety Administration, Washington, DC 20590 (202-426-2153).

SUPPLEMENTARY INFORMATION: On November 15, 1982, Peterson Manufacturing Co. of Grandview, Mo., a manufacturer of motor vehicle lighting equipment, petitioned for rulemaking to amend Motor Vehicle Safety Standard No. 108, *Lamps, Reflective Devices, and Associated Equipment*, to adopt SAE Recommended Practice J759 *Lighting Identification Code*. The company amended its petition on September 13, 1983, to include the addition of the letters DOT, a request it subsequently withdrew on October 4, 1984.

Petitioner argued that adoption of the code would identify those manufacturers, mainly located outside the United States, "who have been sending non-complying illegal products

to the U.S. in ever-increasing numbers. It will provide the enforcement agencies with a simple tool which will enable them to identify the manufacturer of any lighting product or reflector." In petitioner's opinion, manufacturers who ignore Standard No. 108 "would be very hesitant to continue to offer these products if they had to put their name and identification on the product." Petitioner believes that domestic manufacturers have, for the most part, followed this code for the past 15 years, and thus, that a rule requiring it would add no burden to them. The original request to require the letters DOT as mandatory marking was based upon a similar premise that such certification might reduce instances of certification that were false or misleading; however, after discovering that "a number of companies, including Ford and Chrysler, do not routinely mark their products with the DOT certification symbol," it withdrew its request.

The agency reviewed the petitioner's arguments and its own enforcement experience. Under section 102(5) of the National Traffic and Motor Vehicle Safety Act those who import motor vehicle equipment for resale are defined as "manufacturers". If an item of motor vehicle equipment covered by Standard No. 108 is not certified by its overseas manufacturer, it must be certified by its importer as meeting all applicable Federal motor vehicle safety standards, before it is delivered to a distributor or dealer. Further, such statutory manufacturer stands in the shoes of the original manufacturer with respect to obligations to notify and remedy in the event the product fails to meet Standard No. 108 or is determined to incorporate a safety-related defect. Thus, an enforcement mechanism is already in place that can impose responsibility under the Act for safety matters. In practice, however, a foreign manufacturer may sell its product to more than one importer. Therefore, if the foreign manufacturer applies the code, it would facilitate identification of noncomplying or defective equipment items that came from a single manufacturer into the United States through more than one importer.

The identification code of SAE J759 appears to be an appropriate departure point for a Federal identification code, since it is one with which industry is already familiar. There are four elements to the SAE identification code, set out in sequential paragraphs of section 2.5 of J759. The first in the series of numbers and letters of the SAE Code is the abbreviation "SAE". NHTSA proposes that "DOT" be substituted, as the manufacturer's certification of

compliance with all applicable safety standards. Mandatory certification of all other equipment items covered by a safety standard is required in such standard (such as brake hoses and glazing) and Standard No. 108 is anomalous by not requiring this method of certification. The requirements would apply only to replacement equipment, since original equipment is certified as a part of the overall vehicle certification of compliance with all applicable Federal motor vehicle safety standards.

The second item specified by the SAE Code applies to multicompartments or multi-lamp arrangements; it requires a number to be stated indicating the number of lamps or compartments needed to satisfy the requirements of the applicable SAE specification. NHTSA has concluded that this item of the SAE Code need not be required in a Federal lighting code.

The third item of the SAE Code is one or more letters identifying the function or functions for which the device is designed. Multipurpose devices would carry multiple markings. Table 1 of SAE J759 contains letters indicating the function of the devices. NHTSA has tentatively concluded that much of this lettering is appropriate to retain. The SAE Table contains identification for a number of devices that are not covered by Standard No. 108 (e.g., front fog lamps, rear cornering lamps), but there would be no Federal requirement that they be marked as they are outside the ambit of Standard No. 108. NHTSA's proposed "Figure —" includes TS as the identifier for turn signal flasher (rather than J759's "J590"), and HW for hazard warning signal flasher (instead of J759's "J945"), and "U" for the center high-mounted stop lamp. However, NHTSA invites comments on whether the functional aspect of the device need be indicated at all under a Federal standard. For example, a back-up lamp is readily identifiable as such and not likely to be confused with a turn signal lamp or a stop lamp. Lighting manufacturers would not be prohibited from applying the SAE Code as a supplement to the required Federal code.

The final element of the SAE Code is "the last two numbers of a year" which refers to "SAE Specifications current in the year indicated, or the applicable requirements of Federal Motor Vehicle Safety Standard No. 108 specified for the device function in the year indicated." (SAE J759, para. 2.5.4) Under J759, to denote that a function meets the requirement of Standard No. 108 but not the current SAE specifications, a dash line is to be placed under the function

letter. Because of the extent to which SAE requirements have been incorporated into Standard No. 108, NHTSN originally considered retaining the two digit aspect of the code as an identifier of the version of the SAE standard incorporated into Standard No. 108. However, NHTSA has decided that verification of the validity of certification by an identifiable manufacturer can be accomplished without this element.

The final element of NHTSA's code will be the name and/or registered trademark of the manufacturer and the importer of the item. NHTSA has decided that use of an abbreviation, as is allowed by SAE J759, is not practicable. The main reason for this conclusion is that it would be impossible to identify the manufacturer from an abbreviation without an additional mechanism for monitoring usage of abbreviations. The agency believes that the disadvantages of such an additional procedure can be avoided by simply using the manufacturer's name. However, if the manufacturer has a trade mark which is registered with the U.S. Patent Office, this trade mark can be used instead of the manufacturer's name.

NHTSA realizes that the requirement to mark all replacement equipment as proposed here may have a significant economic impact on some manufacturers. Therefore, in order to allow equipment manufacturers to phase in the certification and identification codes as they replace their molds, it is tentatively found that an effective date three years after issuance of the final rule would be in the public interest. A manufacturer may use one or more elements of the code before that time.

NHTSA has considered the potential impacts of this proposal and has determined that the proposal is neither major within the meaning of Executive Order 12291 nor significant within the meaning of the Department of Transportation regulatory policies and procedures. The final rule should have an impact only on those manufacturers who do not currently mark their products with adequate information to indicate compliance with Federal motor vehicle safety standards or to identify themselves. Preliminary information from several manufacturers indicates that most, if not all domestic and foreign manufacturers, either already are using identification codes that essentially comply with the proposed code or that extended leadtimes will eliminate any significant potential costs or other impacts. Therefore, a preliminary regulatory evaluation is not considered

necessary. However, to further assess any potential economic impacts that are associated with this rulemaking action, NHTSA requests answers to the following questions:

1. The types of identification codes that are presently in use on various lamps reflective devices, and associated equipment ("products") that must comply with Standard No. 108.

2. The number and type of such products that are now planned to remain marked with each type of code and that will remain in production for more than two years.

3. The number and type of such products that are not marked with any type of code.

4. The average cost to change or add a coding label to comply with the proposed new code.

5. Other currently-used identification codes thought essentially to comply with the code that is proposed in this notice, and whether their use would be preferable to the proposal.

6. The adequacy of the proposed leadtime and coding requirements to provide for the timely marking of all unmarked products while minimizing any impact on manufacturers who already mark their products with some type of identification code.

7. Other recommended approaches to accomplish NHTSA's marking objectives.

8. The average lifetime of current molds and marking tools before replacement is necessary due to wear/breakage/obsolescence.

The agency has also considered the impacts of this proposed amendment under the Regulatory Flexibility Act. I certify that this amendment, if adopted, would not have a significant economic impact on a substantial number of small entities. Accordingly, no regulatory flexibility analysis has been prepared. Manufacturers of motor vehicle equipment, those businesses affected by this proposed amendment, are generally not small businesses within the meaning of the Regulatory Flexibility Act, although some manufacturers of trailers may be so considered. The effect on new vehicle equipment prices would be negligible so that small organizations and governmental units purchasing new vehicle equipment would not be significantly affected.

The proposed marking and identification requirements in this proposal are considered to be information collection requirements, as that term is defined by the Office of Management and Budget (OMB) in 5 CFR Part 1320. Accordingly, these proposed requirements will be

submitted to the OMB for its approval, pursuant to the requirements of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). Comments on the proposed information collection requirements should be submitted to: Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20503, Attention: Desk Officer for NHTSA. It is requested that comments sent to the OMB also be sent to the NHTSA rulemaking docket for this proposed action.

Interested persons are invited to submit comments on the proposal. It is requested but not required that 10 copies be submitted.

All comments must be limited not to exceed 15 pages in length. (49 CFR 553.21) Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation (49 CFR Part 512).

All comments received before the close of business on the comment closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. However, the rulemaking action may proceed at any time after that date, and comments received after the closing date and too late for consideration in regard to the action will be treated as suggestions for future rulemaking. The NHTSA will continue to file relevant material as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose, in the envelope with their comments, a self-addressed stamped postcard. Upon receiving the comments, the docket

supervisor will return the postcard by mail.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles, Rubber and rubber products, Tires.

PART 571—[AMENDED]

In consideration of the foregoing, it is proposed that paragraph S4.7.2 of 49 CFR 571.108, Motor Vehicle Safety Standard No. 108, *Lamps, Reflective Devices, and Associated Equipment*, be revised as follows:

1. The authority citation for Part 571 would continue to read as follows:

Authority. 15 U.S.C. 1392, 1401, 1403, 1407; delegation of authority at 49 CFR 1.50

§ 571.108 [Amended]

2. In § 571.108, paragraph S4.7.2 would be revised to read:

S4.7.2 Each lamp, reflective device, or item of associated equipment to which section S4.7.1 applies and which is manufactured on or after _____ 1, 1989, shall be marked visibly and permanently with: the symbol D.O.T., which shall constitute a certification that it conforms to Federal Motor Vehicle Safety Standard No. 108; a functional identification code as specified in Figure _____ (a multifunction lamp shall be marked to indicate each function for which the device is designed); and the name or trade mark registered with the U.S. Patent Office of the manufacturer and importer (if applicable). Each lamp, reflective device, or item of associated equipment manufactured before _____ 1, 1989, may be marked with any of these elements.

3. A new Figure—would be added to § 571.108 as follows:

Figure _____

LETTERS INDICATING DEVICE FUNCTIONS *

A	Reflex reflectors.
HW	Hazard warning signal flasher.
I	Turn signal lamps.
I2	Turn signal lamps—spaced less than 100 mm from headlamp.
L	License plate lamps.
M	Motorcycle headlamps.
N	Motor driven cycle headlamps.
P	Parking lamps.
P2	Clearance or side marker or identification lamps.
PC	Combination clearance and side marker lamps.
Q	Turn signal operating units—Class A.
QB	Turn signal operating units—Class B.
QC	Vehicular hazard warning signal operating unit.
R	Backup lamps.
S	Stoplamps.

LETTERS INDICATING DEVICE FUNCTIONS *—Continued

T	Tail lamps.
TS	Turn signal flasher.
U	Center high-mounted stop lamp.
W2	Lamps for school buses.

* For headlamps and standardized replaceable light sources refer to S4.1.1.14, S4.1.1.21, S4.1.1.36(e), S4.1.1.40, S4.1.1.44.

The engineer and attorney primarily responsible for this proposal are Kevin Cavey and Taylor Vinson, respectively.

Issued on January 17, 1986.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 86-1471 Filed 1-23-86; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Proposal To List the Nashville Crayfish (*Orconectes shoupi*) as an Endangered Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Service proposes to list the Nashville crayfish (*Orconectes shoupi*) as an endangered species under the Endangered Species Act of 1973, as amended. This species is currently known to exist only in the Mill Creek basin in Davidson and Williamson Counties, Tennessee. The species is threatened by flood control projects, siltation, stream alterations, and general water quality deterioration resulting from developmental pressures in the urbanized areas surrounding Nashville, Tennessee. The species' limited distribution also makes it vulnerable to a single catastrophic event, such as a toxic chemical spill or other contamination. Comments and information pertaining to this proposal are sought from the public.

DATES: Comments from all interested parties must be received by March 25, 1986. Public hearing requests must be received by March 10, 1986.

ADDRESSES: Comments and materials concerning this proposal should be sent to Field Supervisor, Asheville Endangered Species Field Station, U.S. Fish and Wildlife Service, 100 Otis Street, Room 224, Asheville, North Carolina 28801. Comments and materials received will be available for public inspection, by appointment,

during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Richard G. Biggins, at the above address (704/259-0321 or FTS 672-0321).

SUPPLEMENTARY INFORMATION:

Background

The Nashville crayfish (*Orconectes shoupi*), described by Hobbs (1948), is currently known only from Mill Creek and five of its tributaries in Davidson and Williamson Counties, Tennessee (O'Bara 1985, Bouchard 1984). Historic collection records indicate that the Nashville crayfish has been taken from three other Tennessee localities: (1) Big Creek (Elk River system), Giles County; (2) South Harpeth River (Harpeth River system), Davidson County; and (3) Richland Creek (a Cumberland River tributary), Davidson County.

The three historic localities outside the Mill Creek drainage were surveyed as part of a recently completed Service funded status survey (O'Bara 1985), but the Nashville crayfish was not found. O'Bara (1985) also surveyed crayfish populations at 96 other sites outside the Mill Creek watershed and found no additional Nashville crayfish populations. Bouchard (1976, 1984) collected extensively in the Nashville basin and elsewhere in Tennessee, but was unable to find the species outside of the Mill Creek watershed.

The Nashville crayfish, which attains a length of over 6 inches (15 centimeters), has been observed to inhabit riffle areas with moderate current. Very little is known concerning the species' biology, but, like related crayfish, it probably feeds on vegetation fragments and animal matters. Reproduction occurs in the winter months, and females have been observed carrying eggs in the spring.

The species' restricted range makes it vulnerable to toxic chemical spills. The species is also subjected to water quality and other habitat deterioration associated with urban runoff, land disturbance, and development within the Mill Creek watershed. A flood control project being planned for the Mill Creek basin by the U.S. Army Corps of Engineers (COE) could also impact the species.

The Nashville crayfish was proposed for listing as an endangered species on January 12, 1977 (42 FR 2507). That proposal was withdrawn on December 10, 1979 (44 FR 70796), under provisions of the 1978 amendments to the Endangered Species Act of 1973 that required withdrawal of all pending proposals that were not made final

within two years of being proposed or within one year after passage of the amendments, whichever date came later. A notice of review was published on May 22, 1984 (49 FR 21664), announcing that the Service considered the Nashville crayfish a potential candidate for Endangered Species Act protection. On January 3, 1985, the Service notified Federal, State, and local governmental agencies and interested parties that the Service was reviewing the species' status. That notification requested information on the species' status and threats to its continued existence.

Three agencies, (1) U.S. Department of the Army, Corps of Engineers, Nashville District (COE), (2) Tennessee Valley Authority (TVA), and (3) Federal Energy Regulatory Commission (FERC), provided comments. COE informed the Service that it was conducting a flood protection study of Mill Creek. TVA and FERC stated that they were unaware of any of their projects that would be affected by listing the species.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations promulgated to implement the listing provisions of the Act (codified at 50 CFR Part 424; 49 FR 38900, October 1, 1984) set forth the procedures for adding species to the Federal lists. A species may be determined to be an endangered or threatened species owing to one or more of the five factors described in section 4(a)(1). These factors and their application to the Nashville crayfish (*Orconectes shoupi*) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* Results of recent studies indicate that the Nashville crayfish is restricted to Mill Creek and five of its tributaries in Davidson and Williamson Counties, Tennessee. The species has previously been reported from three other watersheds but has not been collected from these areas in recent years (O'Bara 1985, Bouchard 1976, 1984), as discussed in the Background section.

The species is endangered by water quality deterioration from development within the watershed. According to a COE report (COE 1984), about 40 percent of the Mill Creek watershed has been developed. The lower watershed lies within the highly urbanized Nashville, Tennessee, metropolitan area. The Tennessee Department of Public Health (TDPH 1978) characterized this area of Mill Creek as follows: "The stream's main problem stems from

urban commercialization that is gradually overtaking the whole watershed." The TDPH also reported that the diversity of organisms in Mill Creek, "does not look good. The number of taxa found was severely limited and decreased as one moved downstream." The upper portion of the Mill Creek watershed has less residential and industrial development, but agricultural activity is extensive. COE (1981) concluded that the uppermost segment of Mill Creek was degraded by organic enrichment and had very poor water quality. In that same report, COE stated, concerning the entire Mill Creek system, that, "biological communities inhabiting Mill Creek during the 1981 survey indicated water of fair to very poor quality and the influence of moderate to extensive enrichment and disturbance."

The Nashville crayfish is also potentially endangered by a flood protection project being planned by COE. This project could involve the construction of two dry flood control dams within the watershed. These dams could, depending on project design, impact the crayfish by modifying stream flows, water temperatures, and silt loads during the construction and operational phases. Threats to the species could also come from other activities in the watershed such as road and bridge construction, stream channel modifications, impoundments, land use changes, and other projects, if such activities are not planned and implemented with the survival of this geographically restricted species in mind.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* Crayfish are frequently taken in the southeast for food and bait. There is concern that overutilization could be a problem if the species' specific habitat were identified to the extent required for designation of critical habitat.

C. *Disease or predation.* Not applicable to this species.

D. *The inadequacy of existing regulatory mechanisms.* Tennessee State law provides limited protection for this species by requiring a State permit to collect crayfish for scientific purposes. However, there is currently no State law that provides specific protection for the species' habitat. Federal listing would provide additional protection for the species by requiring Federal agencies to consult with the Service when projects they fund, authorize, or carry out may affect a listed species.

E. *Other natural or manmade factors affecting its continued existence.* The Nashville crayfish's restricted range makes it very vulnerable to a single

catastrophic event, such as a chemical spill. Although the Service has no records of catastrophic spills occurring in Mill Creek, COE (1984) reported that occasional spills and discharges have occurred along Mill Creek in the past.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to propose this rule. Based on this evaluation, the preferred action is to list the Nashville crayfish as an endangered species. The crayfish's restricted range, along with pressure on the species and its remaining habitat from the rapid development of the Mill Creek basin, makes the species in danger of extinction at the present time; therefore, threatened status is inappropriate. Critical habitat designation (see Critical Habitat section below) would not be prudent for the Nashville crayfish, as defining its exact range and specific habitat could further endanger the species by increasing the incidence of illegal take or vandalism. A decision to take no action would exclude the Nashville crayfish from needed protection available under the Endangered Species Act.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that to the maximum extent prudent and determinable, the Secretary designate any habitat of a species that is considered to be critical at the time the species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for this species at this time. Crayfish are frequently taken in the southeast for food and bait. Much of the Nashville crayfish's habitat is adjacent to a large human population. Considerable human interest in the species is expected to result from this proposed rule and subsequent Federal actions. The Service believes a detailed description of the species' habitat, including maps and text detailing the crayfish's specific habitat and constituent elements of that habitat, as required for any critical habitat designation, would increase the species' vulnerability to illegal taking and/or vandalism, increase the law enforcement problem, and further endanger the species. Therefore, it would not be prudent to designate critical habitat for this species at this time. Doing so would draw attention to the Nashville crayfish and risk further depletion of its populations.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with States and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. Protection required of Federal agencies and prohibitions against taking and harm are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402, and are now under revision (see proposal at 48 FR 29990; June 29, 1983). Section 7(a)(4) requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service. Federal activities that could impact the species and its habitat include, but are not limited to, the carrying out of, or the issuance of permits for, hydroelectric facility, and reservoir construction, stream alteration, wastewater facility development, and road and bridge construction on Mill Creek or its tributaries. The construction and operation of flood control facilities on Mill Creek and its tributaries could likewise impact the species, as discussed above. It has been the experience of the Service, however, that nearly all section 7 consultations are resolved so that the species is protected and the project objectives can be met.

The Act and implementing regulations found at 50 CFR 17.21 set forth a series of general prohibitions and exceptions that apply to all endangered wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take, import or export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce listed species. It is also illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving endangered wildlife species under certain circumstances. Regulations governing permits are at 50 CFR 17.22 and 17.23. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and/or for incidental take in connection with otherwise lawful activities. In some instances, permits may be issued during a specified period of time to relieve undue economic hardship that would be suffered if such relief were not available.

Public Comments Solicited

The Service intends that any final rule adopted will be accurate and as effective as possible in the conservation of endangered or threatened species. Therefore, any comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning any aspect of this proposed rule are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to the Nashville crayfish;

(2) The location of any additional populations of the Nashville crayfish and the reason why any habitat should or should not be determined to be critical habitat as provided for by Section 4 of the Act;

(3) Additional information concerning the range and distribution of this species; and

(4) Current or planned activities in the subject area and their possible impact on the Nashville crayfish.

Final promulgation of the regulation on the Nashville crayfish will take into consideration the comments and any additional information received by the Service, and such communications may lead to adoption of a final regulation that differs from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be filed within 45 days of the date of the proposal. Such requests must be made in writing and addressed to Mr. Warren T. Parker, Field Supervisor, Endangered Species Field Station, 100 Otis Street, Room 224, Asheville, North Carolina 28801.

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined by the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the Federal Register on October 25, 1983 (48 FR 49244).

Literature Cited

- Bouchard, R.W. 1976. Investigations on the status of fourteen species of freshwater decapod crustaceans in the United States Part I. Troglotic shrimp and western North American crayfishes. Report to Office of Endangered Species, Department of the Interior, 26 pp.
- Bouchard, R.W. 1984. Distribution and status of the endangered crayfish *Orconectes shoupi* (Decapoda: Cambaridae). U.S. Fish and Wildlife Service, Tennessee Cooperative Fishery Research Unit, Tennessee Tech University, Cookeville, Tennessee, 27 pp.
- Hobbs, H.H., Jr. 1948. On the crayfishes of the *Limosus* section of the genus *Orconectes* (Decapoda, Astacidae). Journal of the Washington Academy of Science 38(1):14-21.
- O'Bara, C.J. 1985. Final report, status survey of the Nashville crayfish (*Orconectes shoupi*). Report to U.S. Fish and Wildlife Service, Asheville, North Carolina. 17 pp.
- Tennessee Department of Public Health. 1978. Mill Creek survey, Davidson County, Tennessee. Tennessee Department of Public Health, Division of Water Quality Control, Nashville Basin. Unpublished report. 7 pp.
- U.S. Army Corps of Engineers, Nashville District. 1981. Water quality along Mill Creek, Nashville, Tennessee. 35 pp.
- U.S. Army Corps of Engineers, Nashville District. 1984. Mill Creek, Wimpole Drive area, Nashville, Davidson County, Tennessee. Final detail project report and environmental assessment. 331 pp.

Author

The primary author of this proposed rule is Richard G. Biggins, Asheville Endangered Species Field Station, 100 Otis Street, Room 224, Asheville, North Carolina 28801 (704 259-0321 or FTS 672-0321).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Fish, Marine mammals, Plants (agriculture).

Proposed Regulation Promulgation

PART 17—[AMENDED]

Accordingly, it is hereby proposed to amend Part 17, Subchapter B of Chapter

I, Title 50 of the Code of Federal Regulations, as set forth below:

1. The authority citation for Part 17 continues to read as follows:

Authority: Pub. L. 93-205, 87 Stat. 884; Pub. L. 94-359, 90 Stat. 911; Pub. L. 95-632, 92 Stat. 3751; Pub. L. 96-159, 93 Stat. 1225; Pub. L. 97-304, 96 Stat. 1411 (16 U.S.C. 1531 *et seq.*).

2. It is proposed to amend § 17.11(h) by adding the following, in alphabetical

order under "CRUSTACEANS," to the List of Endangered and Threatened Wildlife:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
CRUSTACEANS							
Crayfish, Nashville.....	<i>Orconectes shoupi</i>	U.S.A. (TN).....	NA.....	E		NA	NA

Dated: December 26, 1985.

P. Daniel Smith,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 86-1473 Filed 1-23-86; 8:45 am]

BILLING CODE 4310-55-M

Notices

Federal Register

Vol. 51, No. 16

Friday, January 24, 1986

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Cooperative Agreements: Puerto Rico University

AGENCY: Office of International Cooperation and Development, USDA.

ACTION: Notice of intent to award a cooperative agreement.

ACTIVITY: The Office of International Cooperation and Development intends to award a cooperative agreement to the University of Puerto Rico to collaborate in carrying out the VIII Soil Classification Workshop in conjunction with the Soil Management Support Services Project implemented by USDA on behalf of the U.S. Agency for International Development.

Authority: Section 1458 of The National Agriculture Research Extension and Teaching Policy Act of 1977, as amended (7 U.S.C. 3291) and The Food Security Act of 1985 (Pub. L. 99-198).

The Office of International Cooperation and Development (OICD) announces the availability of funds for fiscal year 1986 to enter into a cooperative agreement with the University of Puerto Rico for implementing the VIII Soil Classification Workshop. The workshop, to be held in Brazil and co-sponsored by the National Soil Survey and Conservation Service of the Brazilian Enterprise for Agricultural Research (EMBRAPA), draws together an international panel of soil scientists to study hitherto unclassified soil pedons and recommend a nomenclature for their entry into Soil Taxonomy, the international system of soil classification.

Assistance will be provided only to the University of Puerto Rico, which has the requisite resources, as well as experience in organizing past workshops, and has developed close working relationships with participating scientists and host institutions. Therefore, this is not a formal request

for applications. It is estimated that approximately \$95,000 will be available in Fiscal Year 1986 to support this work. It is anticipated that the cooperative agreement will be funded over a budget period of 12 months. Information may be obtained from: Mr. Pat Miles, Technical Assistance Division, Office of International Cooperation and Development, U.S. Department of Agriculture (#58-319R-6-018).

Dated: January 17, 1986.
Allen Wilder, Chief,
Management Services.
[FR Doc. 86-1561 Filed 1-23-86; 8:45 am]
BILLING CODE 3410-DP-M

Cooperative Agreements: Virgin Islands College

AGENCY: Office of International Cooperation and Development, USDA.

ACTION: Notice of intent to award a cooperative agreement.

Activity: The Office of International Cooperation and Development intends to award a cooperative agreement to the College of the Virgin Islands to provide support funding for the Caribbean Agricultural Research Management Implementation and Evaluation Workshop.

Authority: Section 1458 of The National Agriculture Research, Extension and Teaching Policy Act of 1977, as amended (7 U.S.C. 3291), and the Food Security Act of 1985 (Pub. L. 99-198).

The Office of International Cooperation and Development (OICD) announces the availability of funds for fiscal year 1986 to enter a cooperative agreement with the College of the Virgin Islands, in the amount of \$25,000. The agreement is required to enable the College to cooperate with OICD, as well as the ISEC Research Committee and the Caribbean Agricultural Research and Development Institute (CARDI), in conducting the Caribbean Agriculture Research Management Implementation and Evaluation Workshop, scheduled for April 1986. The overall objective of the workshop is to strengthen capacity of senior agricultural research managers to implement, monitor and evaluate research and development projects/programs.

Assistance will be provided only to the College of the Virgin Islands, which will host the workshop. The funds will

be used to provide airfare, per diem and associated expenses for 25 participants in the workshop from the Eastern Caribbean.

Based on the above, this is not a formal request for applications. It is estimated that approximately \$25,000 will be available in Fiscal Year 1986 to support this work. It is anticipated that the cooperative agreement will be funded over a six-month period.

Information may be obtained from: Mr. Whetten Reed, International Research Division, Office of International Cooperation and Development, U.S. Department of Agriculture (#58-319R-6-017).

Dated: January 21, 1986.
Nancy J. Croft,
Contract Specialist, Management Services
Branch, OICD.
[FR Doc. 86-1560 Filed 1-23-86; 8:45 am]
BILLING CODE 3410-DP-M

Office of the Secretary

Privacy Act of 1974; System of Records

AGENCY: Office of Personnel, Office of the Secretary, USDA.

ACTION: Notice of a proposed new routine use of an existing system of records.

SUMMARY: The purpose of this document is to propose a new routine use for the Office of Personnel's Personnel and Payroll System (USDA/OP-1). The routine use, once in effect, will permit the disclosure of information from this system of records to a contractor assisting in a matching program involving workers' compensation.

DATES: Any interested party may submit written comments concerning this proposal. To be considered, however, comments must be received by February 24, 1986. Unless a notice to the contrary is published, this routine use will become effective 30 days after the end of the comment period.

ADDRESS: Comments should be addressed to: Chief, Security, Employee Management and Training Staff, Office of Personnel, Department of Agriculture, Washington, D.C. 20250.

SUPPLEMENTARY INFORMATION: The Department has been participating with the Department of Labor in a

matching program aimed at the rehabilitation and rehiring of employees currently receiving workers' compensation. This program was announced on December 10, 1984 (49 FR 48071).

The Department has found, however, that it cannot verify USDA employment through its initial computer matching program for a number of OWCP claimants. These claims must then be verified by the employing office that processed the claim. It is these claims, totalling approximately 100 a quarter, which will be verified by a contractor.

The Department will provide the contractor with the claimant's name, Social Security number and the claimant's employing office code number. The contractor will then contract the employing office to verify: (1) Whether the claimant was employed by the office; (2) whether the claimant was assigned to a special employment office program (Job Corps, Older American Youth Conservation Corps, Young Adult Conservation Corps or Volunteers); and (3) the Social Security number or obtain the correct Social Security number for each claimant. The contractor will also obtain from the employing office: (1) The USDA organization code, down to the 5th level if possible, for each employed claimant, and (2) the employer's name and Form CA-1 from the employing office if the claimant was not employed by USDA. The contractor will conduct this portion of the matching program in accordance with Office of Management and Budget revised guidelines which were published in the *Federal Register* on May 19, 1982 (47 FR 21658).

The Department believes that its proposed use of USDA/OP-1, Personnel and Payroll System, is covered by the routine uses published by the Office of Personnel Management for OPM/GOVT-1, General Personnel Records, specifically item (d), last published on September 20, 1984 (49 FR 36949-73).

The following routine use will be added to USDA's system of records (USDA/OP-1). The current notice of this system is published at 49 48071 et seq. (December 10, 1984).

USDA/OP-1

SYSTEM NAME:

Personnel and Payroll System for
USDA Employees, USDA/OP

* * * * *

ROUTINE USE OF RECORDS MAINTAINED IN THE
SYSTEM, INCLUDING CATEGORIES OF USERS
AND THE PURPOSES OF SUCH USES:

* * * * *

(23) The contractor selected to verify employment for specific claims relating to workers compensation.

* * * * *

Dated: January 17, 1986.

John R. Block,

Secretary of Agriculture.

[FR Doc. 80-1565 Filed 1-23-86; 8:45 am]

BILLING CODE 3410-01-M

Forest Service

Environmental Impact Statement; Hells Canyon National Recreation Area

The Department of Agriculture, Forest Service, has determined that it would not be appropriate at this time to prepare a Supplement to the Final Environmental Impact Statement for the Comprehensive Management Plan for the Hells Canyon National Recreation Area. There has not been the anticipated public support for a trail to provide improved fishing access to the east side of the Snake River, immediately downstream from Hells Canyon Dam.

The Notice of Intent, published in the *Federal Register* of April 17, 1985, is hereby rescinded (FR Doc. 85-10036).

For further information contact Forest Supervisor, Wallowa-Whitman National Forest, P.O. Box 907, Baker, OR 97814, telephone (503) 523-6391.

Dated: January 14, 1986.

David B. Trask,

Acting Regional Forester.

[FR Doc. 86-1482 Filed 1-23-86; 8:45 am]

BILLING CODE 3410-11-M

Land and Resource Management Plan; Stanislaus National Forest, Alpine, Calaveras, Mariposa and Tuolumne Counties, CA; Environmental Impact Statement; Extension of Comment Period

The public comment period for the Stanislaus National Forest Proposed Land and Resource Management Plan and Draft Environmental Impact Statement is being extended. Comments must now be received by April 7, 1986.

This amends the Notice of Availability published in the *Federal Register* of November 29, 1985 (50 FR 49126).

The former due date was March 10, 1986.

For further information contact: Ed Tonnesen, Land Management Planning Officer, Stanislaus National Forest, 19777 Greenley Rd., Sonora, CA 95370; telephone 209-532-3671.

Dated: January 13, 1986.

Blaine L. Cornell,

Forest Supervisor.

[FR Doc. 86-1478 Filed 1-23-86; 8:45 am]

BILLING CODE 3410-11-M

Environmental Impact Statement; Western Spruce Budworm Insect Control

The Department of Agriculture, Forest Service, has withdrawn its proposal to prepare an Environmental Impact Statement for the control of Western Spruce Budworm insect infestations on National Forest lands; lands administered by the Bureau of Indian Affairs and the Bureau of Land Management, US Department of Interior; certain other lands administered by the State of Oregon and State of Washington; and certain lands of cooperating private landowners.

The Notice of Intent, published in the *Federal Register* on February 12, 1985, is hereby cancelled (50 FR 5803).

For further information, contact Robert Dolph, USDA Forest Service, P.O. Box 3623, Portland, Oregon 97208, Attention: Forest Pest Management, telephone (503) 221-3605.

Dated: January 14, 1986.

David B. Trask,

Acting Regional Forester.

[FR Doc. 86-1481 Filed 1-23-86; 8:45 am]

BILLING CODE 3410-11-M

Delegation of Authority for Issuance of Easements and Reservations; Director of Lands, Watershed and Minerals, Eastern Region

Pursuant to 36 CFR 251.52 and the delegation to the Regional Forester Eastern Region, by the Chief, Forest Service (FSM 2733.04b) the Regional Forester, Eastern Region of the Forest Service hereby delegates to the Director of Lands, Watershed and Minerals, Eastern Region, authority to issue all easements and reservations for construction and use of roads under authority of the Federal Land Policy and Management Act of October 21, 1976 (90 Stat. 2743; 43 U.S.C. 1761).

Effective date: January 24, 1986.

Date: January 15, 1986.

Larry Henson,

Regional Forester.

[FR Doc. 86-1569 Filed 1-23-86; 8:45 am]

BILLING CODE 3410-11-M

Soil Conservation Service**East Branch of Sugar Creek Watershed, Ohio; Finding of No Significant Impact**

AGENCY: Soil Conservation Service, U.S.A.

ACTION: Notice of a Finding of No Significant Impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the East Branch of Sugar Creek Watershed, Tuscarawas and Holmes Counties, Ohio.

FOR FURTHER INFORMATION CONTACT: Harry W. Oneth, State Conservationist, Soil Conservation Service, 200 North High Street, Columbus, Ohio, 43215, telephone 614-469-6962.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Harry W. Oneth, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The project concerns watershed protection. The planned works of improvement include accelerated technical assistance and cost sharing for land treatment.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Harry W. Oneth.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the *Federal Register*.

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.904—Watershed Protection and Flood Prevention—and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials)

Dated: January 15, 1986.
Harry W. Oneth,
State Conservationist.
[FR Doc. 86-1567 Filed 1-23-86; 8:45 am]
BILLING CODE 3410-16-M

Floyd County Road Bank Critical Area Treatment RC&D Measure, VA; Environmental Impact Statement

AGENCY: Soil Conservation Service.

ACTION: Notice of a Finding of No Significant Impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Floyd County Road Bank Critical Area Treatment RC&D Measure, Floyd County, Virginia.

FOR FURTHER INFORMATION CONTACT: Mr. Manly S. Wilder, State Conservationist, Soil Conservation Service, 400 North Eighth Street, Richmond, Virginia 23240, telephone 804-771-2455.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Mr. Manly S. Wilder, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The measure concerns a plan for seeding eroding road banks in Floyd County, Virginia. The planned work will include the establishment of 69 acres of permanent vegetative cover by hydro-seeding and mulching.

The Notice of Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Mr. Manly S. Wilder.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the *Federal Register*.

Dated: January 15, 1986.

(Catalog of Federal Domestic Assistance Program No. 10.901, Resource Conservation and Development Program, Office of Management and Budget Circular A-95 regarding State and local clearinghouse review of Federal and federally assisted programs and projects is applicable)

Manly S. Wilder,
State Conservationist.
[FR Doc. 86-1479 Filed 1-23-86; 8:45 am]
BILLING CODE 3410-16-M

DEPARTMENT OF COMMERCE**Agency Forms Under Review by the Office of Management and Budget (OMB)**

DOC has submitted to OMB for clearance the following proposals for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: International Trade Administration.

Title: Attachment to Certification for General License GTE (Temporary Exports).

Form Number: Agency—EAR 371.22(d); OMB—N/A.

Type of Request: Existing collection in use without an OMB control number.

Burden: 130 respondents; 65 reporting hours.

Needs and Uses: The information collected from exporters will be used to authorize the temporary export of goods from the United States.

Affected Public: Individuals, state or local governments, businesses or other for-profit institutions, federal agencies, non-profit institutions, and small businesses or organizations.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Sheri Fox 395-3785.

Agency: International Trade Administration.

Title: Disclosure of Shipments.

Form Number: Agency—EAR 372.7; OMB—N/A.

Type of Request: Existing collection in use without an OMB control number.

Burden: 20 respondents; 20 reporting hours.

Needs and Uses: The information is used for enforcement purposes with respect to exporters who have made shipments without the required validated export license.

Affected Public: Individuals, state or local governments, businesses or other for-profit institutions, federal agencies, non-profit institutions, and small businesses or organizations.

Frequency: On occasion.
 Respondent's Obligation: Required to obtain or retain a benefit.
 OMB Desk Officer: Sheri Fox 395-3785.

Agency: International Trade Administration.
 Title: Application for Duplicative License.
 Form Number: Agency—EAR 372.10; OMB-N/A.
 Type of Request: Existing collection in use without an OMB control number.
 Burden: 120 respondents; 60 reporting hours.

Needs and Uses: If a validated export license is lost or destroyed, the Department needs certain information from the exporter to issue a duplicative license.

Affected Public: Businesses or other for-profit institutions, small businesses or organizations, non-profit individuals, and state or local governments.

Frequency: On occasion.
 Respondent's Obligation: Required to obtain or retain a benefit.
 OMB Desk Officer: Sheri Fox 395-3785.

Agency: International Trade Administration.
 Title: Report of Commodities Returned After Temporary Export to Communist Countries.

Form Number: Agency—EAR 372.8; OMB-N/A.
 Type of Request: Existing collection in use without an OMB control number.
 Burden: 100 respondents; 50 reporting hours.

Needs and Uses: Individual validated licenses are granted for goods temporarily exported to communist bloc countries for display, exhibition, or testing purposes. Exporters are required to notify the Department of the return of the U.S. commodities. The purpose of this requirement is to avoid diversion.

Affected Public: Individuals, state or local governments, businesses or other for-profit institutions, federal agencies, non-profit institutions, and small businesses or organizations.

Frequency: On occasion.
 Respondent's Obligation: Required to obtain or retain a benefit.
 OMB Desk Officer: Sheri Fox 395-3785.

Agency: International Trade Administration.
 Title: Information on Articles for Physically or Mentally Handicapped Persons Imported Free of Duty.

Form Number: Agency—ITA-362P; OMB-0625-0118.
 Type of Request: Extension of the expiration date.

Burden: 370 respondents; 185 reporting hours.

Needs and Uses: Information will be used to assess possible injury to domestic manufacturing industries of articles for handicapped persons.

Affected Public: Individuals, state or local governments, businesses or other for-profit institutions, federal agencies, non-profit institutions, and small businesses or organizations.

Frequency: On occasion.
 Respondent's Obligation: Required to obtain or retain a benefit.
 OMB Desk Officer: Sheri Fox 395-3785.

Copies of the above information collection proposals can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377-4217, Department of Commerce, Room 6622, 14th and Constitution Avenue, NW., Washington, D.C. 20230.

Written comments and recommendations for the proposed information collections should be sent to Sheri Fox, OMB Desk Officer, Room 3235, New Executive Office Building, Washington, D.C. 20503.

Dated: January 21, 1986.
 Edward Michals,
 Departmental Clearance Officer, Information Management Division, Office of Information Resources Management.

[FR Doc. 86-1572 Filed 1-23-86; 8:45 am]

BILLING CODE 3510-CW-M

	TIM	CON	CAR	STO	ACO	CPL	DOS	SEA	Totals
Initial accreditations.....	1			1		2	4	1	9
Terminations.....	3	1	3						7
Suspensions.....		1							1
Balance.....	37	28	21	11	8	4	35	1	145

TIM—Insulation LAP.
 CON—Concrete LAP.
 CAR—Carpet LAP.
 ACO—Acoustical Testing Services LAP.
 STO—Stove LAP.
 CPL—Commercial Products LAP (Paint, Paper, Mattresses).
 DOS—Dosimetry LAP.
 SEA—Seals and Sealants LAP.

The laboratories awarded initial accreditations are:

- Insulation: Radco, Gardena, CA.
- Stove: Shelton Research Inc., Santa Fe, NM.
- Commercial Products: United States Testing, Hoboken, NJ; Whittaker Analytical Services, Colton, CA.
- Dosimetry: Louisiana Power and Light Co., New Orleans, LA; Duquesne Light, Shippingport, PA; Siemens Gammasonics, Des Plaines, IL; U.S. Army Ionizing Radiation Dosimetry Ctr, Lexington, KY.
- Seals and Sealants: D/L Laboratories, New York, NY.

the laboratories whose accreditation expired and were not renewed are:

- Insulation: Olin Chemicals Operation, Physical Test. Lab, New Haven, CT; Terralab

National Bureau of Standards

National Voluntary Laboratory Accreditation Program

AGENCY: National Bureau of Standards, Commerce.

ACTION: Publication of NVLAP Directory Supplement.

SUMMARY: The National Bureau of Standards (NBS) announces laboratory accreditation actions taken during the fourth quarter of 1985.

FOR FURTHER INFORMATION CONTACT: Dr. Stanley I. Warshaw, Manager, Laboratory Accreditation, ADMIN A603, National Bureau of Standards, Gaithersburg, MD 20899 (301) 921-3751.

SUPPLEMENTARY INFORMATION: This supplement to the 1984 NVLAP Directory of Accredited Laboratories (NBS Special Publication 687) is published pursuant to § 7.6(b) of the National Voluntary Laboratory Accreditation Program (NVLAP) Procedures (15 CFR 7.6(b)).

The following table summarizes NVLAP accreditation actions for the period October 1, 1985, through December 31, 1985.

- Engineers: Salt Lake City, UT, Technical Micronics Control Inc., Huntsville, AL.
- Concrete: Engineering Testing Lab, City of Akron, Akron, OH.
- Carpet: Underwriters Laboratories, Northbrook, IL; United States Testing, Hoboken, NJ; C. H. Masland & Sons, Carlisle, PA.

The laboratory suspended due to relocation of its laboratory site is:

- Concrete: Gifford-Hill, Technical Services Division, Dallas, TX.

Dated: January 17, 1986.

Ernest Ambler,
 Director, National Bureau of Standards.
 [FR Doc. 86-1519 Filed 1-23-86; 8:45 am]

BILLING CODE 3510-13-M

Committee for the Implementation of Textile Agreements

Import Restraint Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in the Philippines Effective on January 1, 1986; Correction

January 17, 1986.

On December 26, 1985, a notice was published in the *Federal Register* (50 FR 52830), which established import restraint limits for certain specified categories of cotton, wool and man-made fiber textiles and textile products, produced or manufactured in the Philippines and exported during the twelve-month period which began on January 1, 1986 and extends through December 31, 1986.

In the letter to the Commissioner of Customs which followed that notice, the following limits should be included:

Category	12-month limit
348T	245,199 dozen.
348NT	263,739 dozen.

Reference to a limit of "42,236" for category "634T" should be corrected to read as follows:

635T	42,236 dozen.
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The units shown for Categories 635NT and 659T should be "dozens." The units for Category 669 should be "pounds."

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textiles Agreements.

[FR Doc. 86-1571 Filed 1-23-86; 8:45 am]

BILLING CODE 3510-DR-M

BLIND AND OTHER SEVERELY HANDICAPPED, COMMITTEE FOR PURCHASE FROM

Procurement List, 1986; Proposed Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Proposed additions to procurement list.

SUMMARY: The Committee has received proposals to add to Procurement List 1986 commodities to be produced by workshops for the blind and other severely handicapped.

Comments must be received on or before: February 26, 1986.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

FOR FURTHER INFORMATION CONTACT: C.W. Fletcher, (703) 557-1145.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2), 85 Stat. 77 and 41 CFR 51-2.6. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

Additions

If the Committee approves the proposed additions, all entities of the Federal Government will be required to procure the commodities listed below from workshops for the blind or other severely handicapped.

It is proposed to add the following commodities to Procurement List 1986, October 15, 1985 (50 FR 41809):

Paper Sheeting, Examination, 6530-00-786-4790, 6530-00-269-3598.

Dining Packet, Unitized Tray Pack Ration, 7360-01-J19-2026.

C.W. Fletcher,

Executive Director.

[FR Doc. 86-1562 Filed 1-23-86; 8:45 am]

BILLING CODE 6820-33-M

Procurement List, 1986; Additions and Deletions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Additions to and deletions from procurement list.

SUMMARY: This action adds to and deletes from Procurement List 1986 commodities and services to be provided by workshops for the blind and other severely handicapped.

EFFECTIVE DATE: January 24, 1986.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

FOR FURTHER INFORMATION CONTACT: C.W. Fletcher, (703) 557-1145.

SUPPLEMENTARY INFORMATION: On August 16, November 15 and November 29, 1985, the Committee for Purchase from the Blind and Other Severely Handicapped published notices (50 FR 33094, 50 FR 47245 and 50 FR 49090) of proposed additions to and deletions from Procurement List 1986, October 15, 1985 (50 FR 41809).

Addition

After consideration of the relevant matter presented, the Committee has determined that the commodity listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46-48c, 85 Stat. 77 and 41 CFR 51-2.5.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered were:

a. The action will not result in any additional reporting, recordkeeping or other compliance requirements.

b. The action will not have a serious economic impact on any contractors for the commodity listed.

c. The action will result in authorizing small entities to provide the commodity procured by the Government.

Accordingly, the following commodity is hereby added to Procurement List 1986:

Pillow Bed, 7210-01-015-5190 (Portion of Government requirement not on Procurement List except for the requirements of the Richmond, Virginia DLA depot)

Deletions

After consideration of the relevant matter presented, the Committee has determined that the commodities and services listed below are no longer suitable for procurement by the Federal Government under 41 U.S.C. 46-48c, 85 Stat. 77 and 41 CFR 51-2.6.

Accordingly, the following commodities and services are hereby deleted from Procurement List 1986:

Commodities

Dividers, Steel, P.S. Item No. 124-C-114, P.S. Item No. 124-C-234, P.S. Item No. 124-R-54, P.S. Item No. 124-R-114 (Requirements of USPS Western and Southern Regions only)

Pallet, Material Handling, 3990-00-555-0458 (For Sharpe Army Depot, Lathrop, California only)

Strap, Chin, 8405-00-152-3952

Services

Commissary Shelf Stocking and Custodial, Oakland Army Base, Oakland, California

Janitorial/Custodial, Army Materials and Mechanics Research Center, Buildings 36, 37, 39, 43, 97, 131, 292, 311, 312, 313 only Watertown, Massachusetts.

C.W. Fletcher,

Executive Director.

[FR Doc. 86-1563 Filed 1-23-86; 8:45 am]

BILLING CODE 6820-33-M

DEPARTMENT OF DEFENSE

Department of the Army

Army Science Board; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).

Dates of Meeting: Monday, 10 February 1986.

Times of Meeting: 0900-1600 hours.

Places: The Pentagon, Washington, D.C.

Agenda: The Army Science Board 1986

Summer Study Panel on Technology Forecast for the Key Operational Capabilities will meet for initial orientation and planning for the conduct of the Summer Study. Summer Study Terms of Reference will be reviewed and fact finding sessions discussed. This meeting will be closed to the public in accordance with section 552b(c) of Title 5, USC, specifically subparagraph (1) thereof, and Title 5, USC, Appendix 1, subsection 10(d). The classified and nonclassified matters to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (202) 695-3039 or 695-7046.

Sally A Warner,

Administrative Officer, Science Board, Army Science Board.

[FR Doc. 86-1489 Filed 1-23-86; 8:45 am]

BILLING CODE 3710-08-M

Corps of Engineers, Department of the Army

Intent To Prepare a Draft Environmental Impact Statement (DEIS) for a Local Flood Protection Project Along the Blanchard River at the Village of Ottawa, Putnam County, OH

AGENCY: U.S. Army Corps of Engineers, Buffalo District, DOD.

ACTION: Notice of Intent to prepare a Draft Environmental Impact Statement (DEIS).

SUMMARY: 1. *Proposed Action:* The proposed action would alleviate flood damages along the Blanchard River in the village of Ottawa, Ohio. Flood protection measures under consideration include, but are not limited to, selective clearing and snagging of various obstructions to flow in the river, stream-bank slope excavation for a portion of the river, earthen levee construction, and the provision of gated valves on approximately 190 residences.

2. *Scoping Process:* Scoping for the DEIS will include continued

coordination with affected Federal, State, and local agencies, as well as other interested parties. Formal scoping meetings are not planned at this time, however, all interested parties are urged to actively participate in the study by submitting in writing any concerns or recommendations to the Buffalo District.

Significant issues to be addressed in the DEIS include, but are not limited to fish and wildlife habitat, threatened and endangered species, water quality, recreation, aesthetic values, cultural resources, health and safety, and other social impacts.

3. *Availability:* The DEIS is expected to be available for public and agency review in December 1986.

ADDRESS: Questions about the proposed action and DEIS can be answered by: Mr. William E. Butler, Environmental Analysis Branch, U.S. Army Corps of Engineers, Buffalo District, 1776 Niagara Street, Buffalo, NY 14207-3199.

Dated: January 13, 1986.

Daniel R. Clark,

Colonel, Corps of Engineers District Commander.

[FR Doc. 86-1480 Filed 1-23-86; 8:45 am]

BILLING CODE 3710-GP-M

Intent to Prepare a Draft Environmental Impact Statement (DEIS) for the Crabtree Creek Project, Wake County, NC

AGENCY: Army Corps of Engineers, Department of Defense.

ACTION: Notice of Intent to Prepare a Draft Environmental Impact Statement.

SUMMARY: 1. The Wilmington District completed a water resources reconnaissance study and report on the Neuse River Basin, N.C., in May of 1984. This study identified Crabtree Creek, a tributary to the Neuse River, as a flood problem area and recommended feasibility studies for developing the best overall plans for flood damage reduction and related purposes at and in the vicinity of Crabtree Creek in Raleigh, N.C.

Under the authority contained in section 205 of the 1948 Flood Control Act, as amended, I am initiating studies for the preparation of a Detailed Project Report (DPR) and Environmental Impact Statement (EIS) to investigate flood problems at Crabtree Creek and analyze effectiveness and potential environment impacts of alternatives to reduce flood damages.

The study area will include the lower 16 miles of the Crabtree Creek Basin above its confluence with the Neuse River. Significant flood problems which have been identified along Crabtree

Creek and Pigeon House Branch will be specifically addressed.

2. Alternatives which will be investigated in detail include stream channel excavation, clearing and snagging, dike construction, flood proofing, relocation of structures, and no action.

3a. All private interests and Federal, State, and local agencies known to have an interest in the study have been notified of the study start and have been provided an opportunity for input into the study process. All additional agencies, organizations, and interested parties which have not been previously notified are invited to comment at this time.

3b. Significant issues to be analyzed in the DEIS include the impact of alternatives of fish and wildlife resources, upland and wetland vegetation, endangered species, prime farmland, esthetics, recreation, and cultural resources. The impact of alternatives on ongoing or proposed programs of individuals or institutions including the city of Raleigh's Greenway, which follows Crabtree Creek, will also be addressed.

3c. The U.S. Fish and Wildlife Service is furnishing input into the planning process in accordance with the provisions of the Fish and Wildlife Coordination Act (48 Stat. 401, as amended; 16 U.S.C. 661 et seq.). A section 404 (Pub. L. 95-217) public notice will be circulated to the public.

4. A scoping letter requesting input to the study has been sent to all known interested parties. A public meeting is scheduled for March of 1986. The identification of any significant issues relating to the project by others will result in coordination with appropriate interests as needed.

5. The Draft Detailed Project Report and Draft Environmental Impact Statement for the project are currently scheduled for distribution to the public in May of 1987.

ADDRESS: Questions about the proposed action and reports can be answered by Mr. Gene Gill, Plan Formulation Branch, U.S. Army Engineer District, Wilmington, Post Office Box 1890, Wilmington, North Carolina 28402, telephone: (919) 343-4596 or FTS 671-4596.

Dated: January 17, 1986.

Wayne A. Hanson,

Colonel, Corps of Engineers District Engineer.

[FR Doc. 86-1483 Filed 1-23-86; 8:45 am]

BILLING CODE 3710-GN-M

DEPARTMENT OF EDUCATION**Office of Bilingual Education and
Minority Languages Affairs****Grants Availability; Bilingual Education
Fellowship Program****AGENCY:** Department of Education.**ACTION:** Application Notice for Continued Participation under the Bilingual Education Fellowship Program for Fiscal Year 1986.**Programmatic and Fiscal Information**

Applications are invited from Institutions of Higher Education for continued participation under the Bilingual Education Fellowship Program.

The purpose of this program is to provide financial assistance to full-time students who are in pursuit of a degree above the bachelor's level in areas related to programs for limited English proficient persons, such as teacher training, program administration, research and evaluation, and curriculum development.

An estimated \$3,240,000 will be authorized for continued participation under the Fellowship Program for Fiscal Year 1986. The estimated average fellowship continuation award is \$10,000. The estimated number of fellowship continuations is 324.

These estimates do not bind the U.S. Department of Education to a specific number of fellowships or to the amount of any fellowship, unless that amount is otherwise specified by statute or regulations.

**Closing Date for Transmittal of
Applications**

To be assured of consideration for funding, applicants should mail or hand deliver their applications on or before March 24, 1986.

If an application is late, the Department of Education may lack sufficient time to review it with other applications for continued participation and may decline to accept it.

Applications Delivered by Mail

Applications sent by mail must be addressed to the U.S. Department of Education, Application Control Center, Attention: (CFDA No. 84.003U), 400 Maryland Avenue, SW., Washington, DC 20202.

An applicant must show proof of mailing consisting of one of the following:

- (1) A legibly dated U.S. Postal Service postmark.
- (2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the U.S. Secretary of Education.

If an application is sent through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing: (1) A private metered postmark, or (2) a mail receipt that is not dated by the U.S. Postal Service.

An applicant should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

An applicant is encouraged to use registered or at least first class mail.

Applications Delivered by Hand

Applications that are hand delivered must be taken to the U.S. Department of Education, Application Control Center, Room 3633, Regional Office Building #3, 7th and D Streets, SW., Washington, DC.

The Application Control Center will accept hand-delivered applications between 8:00 a.m. and 4:30 p.m. (Washington, DC, time) daily, except Saturdays, Sundays, and Federal holidays.

Applicable Regulations

Regulations applicable to this program include the following:

- (a) The regulations governing the Fellowship Program in 34 CFR Part 562.
- (b) The Education Department General Administrative Regulations (EDGAR) in 34 CFR 75.51 (relating to proof of nonprofit status).

Application Forms

Application forms and program information packages are expected to be available by January 31, 1986. These may be obtained by writing to the U.S. Department of Education, 400 Maryland Avenue, SW. (Room 421, Reporters Building), Washington, DC 20202.

FURTHER INFORMATION: For further information contact Joyce Brown, Office of Bilingual Education and Minority Languages Affairs, U.S. Department of Education, 400 Maryland Avenue, SW., (Room 421, Reporters Building), Washington, DC 20202. Telephone: (202) 245-2595.

Program authority: 20 U.S.C. 3221-3262.

(Catalog of Federal Domestic Assistance Number 84.003, Bilingual Education)

Dated: January 17, 1986.

Carol Pendas Whitten,

Director, Office of Bilingual Education and Minority Languages Affairs.

[FR Doc. 86-1588 Filed 1-23-86; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY**Federal Energy Regulatory Commission**

[Docket No. TA86-6-20-000 & 001]

**Algonquin Gas Transmission Co.;
Proposed Changes in FERC Gas Tariff**

January 15, 1986.

Take notice that Algonquin Gas Transmission Company ("Algonquin Gas") on January 10, 1986, tendered for filing the following tariff sheets to its FERC Gas Tariff, Second Revised Volume No. 1.

Tenth Revised Sheet No. 203

Nineteenth Revised Sheet No. 213

Algonquin Gas states that such tariff sheets are being filed to reflect in Algonquin Gas' Rate Schedule F-2 and Rate Schedule S-IS, changes in the underlying rates of Consolidated Gas Transmission Corporation ("Consolidated"), that were placed into effect by a motion filed December 31, 1985, effective January 1, 1986 under its general rate increase in Docket No. RP85-169-000.

Algonquin Gas requests that the Commission accept Tenth Revised Sheet No. 203 and Nineteenth Revised Sheet No. 213, to be effective January 1, 1986 to coincide with the proposed effective date of Consolidated's rate change.

Algonquin Gas requests that the Commission grant such special permission as may be necessary to adjust the next month's billing subsequent to Commission approval to effectuate the result of the proposed rate change as of January 1, 1986.

Algonquin Gas notes that a copy of this filing is being served upon each affected party and interested state commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before January 22, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,
Secretary.

[FR Doc. 86-1525 Filed 1-23-86; 8:45 am]

BILLING CODE 6717-01-M

Regulation of National Gas Pipelines After Partial Wellhead Decontrol; Conoco, Inc.; Order Granting Petition for Clarification

Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol (Conoco Inc.), Docket No. RM85-1-000.

Conoco Inc., Dockets Nos. CI80-365-002, CI82-237-002, and CI85-598-000.

Issued: January 16, 1986.

Before Commissioners: A.G. Sousa, Acting Chairman; Charles G. Stalon, Charles A. Trabandt, and C.M. Naeve.

On December 6, 1985, Conoco Inc. filed a petition for clarification of the order issued on October 16, 1985, in Docket No. CI80-365-002, et al., 33 FERC ¶ 61,034, permitting and approving limited-term abandonments and granting a limited-term certificate for which applications had been filed on July 29, 1985. Although not so characterized by Conoco, the petition in essence requests waiver of the restrictions in the transitional provisions of Order No. 436,¹ and has been treated as such. We conclude that waiver should be granted.

The October 16, 1985 order granted Conoco's request for a partial, limited-term abandonment of certain sales to ANR Pipeline Company and issued a certificate authorizing the sale of the released gas to Longhorn Pipeline Company, a Texas intrastate pipeline and a wholly-owned subsidiary of Conoco. Longhorn in turn, entered into an agreement to sell a portion of the released gas to Brandywine Industrial Gas Inc., an affiliate of Conoco, for conversion into methanol at E.I. Du Pont de Nemours & Company's plant in Beaumont, Texas. In order to transport the gas to the Beaumont plant, Longhorn entered into agreements with ANR and Florida Gas Transmission Company on

September 24, 1985, and October 1, 1985, respectively, whereby ANR and Florida Gas agreed to transport the gas under section 311 of the Natural Gas Policy Act of 1978.

In reliance on these agreements, between October 1 and October 24, Du Pont spent \$2,700,000 to repair the Beaumont plant and return it to serviceable condition.

Sales by Conoco to Longhorn and transportation by ANR and Florida Gas to the Du Pont plant commenced on October 21, 1985. Transportation was discontinued on October 24 for maintenance on ANR's line. Since that time ANR and Florida Gas have been unwilling to resume deliveries because of their reluctance to become non-discriminatory access transporters under Order No. 436.

In *Judel Glassware Co., Inc.*, 33 FERC ¶ 61,386 (December 17, 1985), we established an economic substance test for grant of a waiver from the restrictions in the transitional provisions of Order No. 436. We stated that "a purchaser, seller, or end user must show that, in reliance on a transportation contract, it constructed significant facilities for delivery of gas prior to October 9, or expended substantial funds prior to October 9." This test is meant to grant relief from the transitional provisions of Order No. 436 without defeating its objectives.

The transportation contracts between Longhorn and ANR and Longhorn and Florida Gas were executed prior to October 9, 1985. In addition, prior to that date Du Pont had made sizeable investments to refurbish its Beaumont plant. Under these circumstances, we conclude that the transportation transactions identified herein have shown the requisite expenditure of

substantial funds by an end user prior to October 9 in reliance on transportation contracts. Accordingly, we hereby waive the restrictions in § 284.105 to the extent necessary to permit the transportation transactions identified in Conoco's petition to continue.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-1525 Filed 1-23-86; 8:45 am]

BILLING CODE 6717-01-M

Office of Hearings and Appeals

Cases Filed, Week of December 27, 1985, Through January 3, 1986

During the Week of December 27, 1985 through January 3, 1986, the appeals and applications for exception or other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR Part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, D.C. 20585.

George B. Breznay,

Director, Office of Hearings and Appeals.

January 14, 1986.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of Dec. 27, 1985, through Jan. 3, 1986]

Date	Name and location of applicant	Case No.	Type of submission
Dec. 30, 1985	ESSRO, Scottsdale, AZ	KFA-0009	Appeal of an Information Request Denial. If granted: The Freedom of Information Request Denial issued by the Western Area Power Administration would be rescinded and ESSRO would receive a waiver of fees for information relating to the Liberty-Coolidge transmission line and the Parker-Phoenix No. 1 transmission line.
Do	Meier Oil Service, Inc., Ashkum, IL	KEE-0014	Exception to the reporting requirements. If granted: Meier Oil Service, Inc., would not be required to file Form EIA-782B, the "Resellers/Retailers' Monthly Petroleum Products Sales Report."
Dec. 31, 1985	Lewtex Oil & Gas Co., Washington, DC	KQF-0017	Implementation of second stage refund procedures. If granted: The Office of Hearings and Appeals would implement a second-stage refund proceeding to distribute the balance of the funds remitted to the DOE pursuant to the Consent Order entered into with Lewtex Oil & Gas Company (BEF-0039).
Do	Southwestern States Marketing Corp., Dallas, TX	KRD-0013, KRH-0013	Motions for discovery and evidentiary hearing. If granted: Discovery would be granted and an evidentiary hearing would be convened in connection with the Statement of Objections submitted by Southwestern States Marketing Corporation in response to the Proposed Remedial Order (Case No. HRO-0258) issued to the firm.

¹ 33 FERC ¶ 61,007 (1985), 50 F.R. 42,408 (October 18, 1985).

REFUND APPLICATIONS RECEIVED

[Week of Dec. 27, 1985 to Jan. 3, 1986]

Date received	Name of refund proceeding and name of refund applicant	Case No.
12/30/85	City Service/Main Street Exxon	RF219-3
12/30/85	Quaker State/V.J. Oil Co.	RF213-11
12/30/85	Boswell/Harris Thomas Drop Forge	RF179-14
12/30/85	Blaylock/Defense Logistics Agency	RF221-1
12/30/85	Pasco/Brennan Petroleum Co.	RF222-1
12/31/85	Aminoil/Sleighter Brothers	RF139-142
12/31/85	Gulf/Watson Oil Co., Inc.	RF40-3089
12/31/85	Zia/Circle K Corp.	RF216-3
1/2/86	Harris/Stein Oil Co., Inc.	RF193-17
1/3/86	Quaker State/Highway Services, Inc.	RF213-12
1/3/86	Quaker State/Sanantex Oil Co.	RF213-13
1/2/86	Consumers/Powerline Oil Co.	RF223-1

[FR Doc. 86-1551 Filed 1-23-86; 8:45 am]

BILLING CODE 6450-01-M

Issuance of Decisions and Orders, Week of November 18 through November 22, 1985

During the week of November 18 through November 22, 1985, the decisions and orders summarized below were issued with respect to appeals and applications for exception or other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Appeal

Y. Shanmugadhasan, 11/22/85; HFA-0196

Y. Shanmugadhasan filed an Appeal from a denial by the Acting Deputy Assistant Secretary for Defense Programs of a Request for Information which the Appellant had submitted under the Freedom of Information Act (FOIA). The document, entitled "The Los Alamos Primer," was initially withheld under Exemption 3 of the FOIA. In considering the Appeal, the DOE found that the document had been widely disseminated in the public domain and accordingly, could not be withheld pursuant to the regulations governing Unclassified Controlled Nuclear Information. Accordingly, the DOE concluded that the document was not exempt from the FOIA and should be released.

Requests for Exception

Haiston Oil Co., Inc., 11/18/85; HEE-0161

Haiston Oil Company, Inc. filed an Application for Exception in which the firm sought to be relieved of the requirement to file Form EIA-782B, entitled "Reseller/Retailers' Monthly Petroleum Product Sales Report," and Form EIA-821, entitled "Annual Fuel Oil and Kerosene Sales Report." In considering the request, the DOE found that the firm would not experience and inordinate burden by fulfilling its reporting obligations. Accordingly, exception relief was denied.

St. Joe Petroleum Co., 11/18/85; HEE-0160

St. Joe Petroleum Company filed an Application for Exception seeking relief from the requirement that the firm file Form EIA-782B, the Reseller/Retailers' Monthly Petroleum Product Sales Report. The DOE found that St. Joe had not shown that the burden which completing the form placed upon the firm outweighed the benefit to the nation provided by the EIA-782B survey results. Accordingly, exception relief was denied.

Motion for Discovery

United Independent Oil Co., Peter L. Hirschburg, 11/21/85; HRD-0260, HRH-0280

United Independent Oil Company and Peter L. Hirschburg jointly filed a Motion for Discovery and a Motion for Evidentiary Hearing in connection with their Statements of Objections to the Proposed Remedial Order (PRO) which the Economic Regulatory Administration (ERA) issued to United on July 27, 1984 and to Hirschburg by amendment to the PRO on April 3, 1985. In the PRO, the ERA alleged that United improperly received small refiner bias entitlements as a result of a May 1977 processing agreement with Lion Oil Company and the subsequent sale of refined product to Pacific Gas and Electric (PG&E).

In their Motion for Evidentiary Hearing, Respondents sought to present oral testimony regarding the factual bases for the ERA's finding that United inserted itself into an existing "arrangement" between Lion and PG&E for the refining and distribution of crude oil and the resulting products. The DOE granted this request, finding that testimony on these issues would aid it in resolving relevant factual disputes. On the other hand, the DOE found that Respondents had not demonstrated the relevance of their requests to call personnel of the DOE to testify regarding the contemporaneous construction of the regulations at issue.

In their Motion for Discovery, Respondents sought (1) the complete audit record underlying the PRO; (2) contemporaneous construction discovery of the disputed regulations; and (3) the depositions of eleven individuals who are present or former officials of Lion or PG&E. The DOE found that Respondents had now shown a need for obtaining access to most of the audit record. However, it did find a basis for granting discovery of all factual, non-deliberative materials in the audit file that concerned United, Lion and PG&E and the relationships that existed between them. The DOE also found that Respondents had not demonstrated that their requested contemporaneous construction discovery would provide relevant and material information. Accordingly, the Motion for Evidentiary Hearing and the Motion for Discovery both were granted in part.

Implementation of Special Refund Procedures

Zia Fuels (GCC, Inc.), Goodman Oil Co., 11/20/85; HEF-0076, HEF-0082

Procedures to be used for filing Applications for Refund from the \$25,420.99 and \$9,566 escrow funds obtained through separate consent orders entered into by the DOE respectively with GCC, Inc. of Hobbs,

New Mexico and Goodman Oil Co. of Boise, Idaho, have been issued by OHA. The funds were provided to settle alleged pricing violations in the sales of motor gasoline for the periods of September 1, 1979 through July 31, 1980 for GCC and July 25, 1979 through December 31, 1979 for Goodman.

In order to be eligible for a refund, an applicant will be required to show that it maintained prices at the same level as if the overcharges had not occurred. Generally, applicants will be required to show that market conditions did not permit price increases, and that the applicant maintained banks of unrecovered costs which were not passed through to its customers. Also, applicants who submit claims below the threshold level of \$5000 will not be required to submit any additional evidence of injury beyond the purchase volume information. If money remains after all first stage claims have been paid, second stage procedures will be determined by OHA at a later date.

Refund Applications

Boswell Oil Co./Universal Supply et al., 11/20/85; RF179-1 et al.

Applications for Refund were filed by five firms that purchased refined petroleum products from the Boswell Oil Company. The applications were evaluated in accordance with the procedures set forth in *Boswell Oil Co.*, 13 DOE ¶85,088 (1985). The Department of Energy issued a Decision and Order approving the applications and granting refunds totalling \$9,354.

Eugene Endicott/Ronald L. Halsey, et al., 11/20/85; RF188-1 et al.

The DOE issued a Decision and Order concerning Applications for Refund filed by four resellers of motor gasoline or aviation gasoline purchased from Eugene Endicott. Each applicant documented its purchases of Endicott motor gasoline or aviation gasoline during the consent order period and requested a refund below the \$5,000 threshold level. In accordance with the procedures established in the Endicott Special Refund Proceeding, the DOE determined that each applicant should receive a refund based on its prorated portion of the alleged overcharges. The total amount of refunds approved in this Decision is \$17,766 (\$9,810 principal plus \$7,956 interest).

F.O. Fletcher, Inc./Forsberg Heating Oils, et al., 11/20/85; RF172-1 et al.

The DOE issued a Decision and Order concerning Applications for Refund filed by 22 resellers of motor gasoline purchased from F.O. Fletcher, Inc. Each applicant provided evidence that it purchased motor gasoline from Fletcher and requested a refund at or below the \$5,000 threshold level. In accordance with the procedures established in the Fletcher Special Refund Proceeding, see *Eugene Endicott*, 13 DOE ¶85,086 (1985), the DOE determined that each applicant should receive a refund based on its prorated portion of the alleged overcharges. The total amount of refunds approved in this Decision is \$59,925 (\$32,103 principal plus \$27,822 interest).

Gulf Oil Corp./Allied Oil, 11/18/85; RF40-856

The DOE issued a Decision and Order concerning an Application for Refund filed by

the Allied Oil Company, a reseller of Gulf covered petroleum products. Allied requested the refund based upon the procedures outlined in *Gulf Oil Corp.*, 12 DOE ¶ 85,048 (1984). In accordance with these procedures, Allied demonstrated that it would not have been required to pass through to customers a cost reduction equal to the refund claimed. Allied also demonstrated that it had purchased the products directly from Gulf. After examining the evidence and supporting documentation, the DOE concluded that Allied should receive a refund of \$27,523, the full volumetric amount.

Gulf Oil Corp./Crawford's Gulf Service, et al., 11/20/85; RF40-1874 et al.

The DOE issued a Decision and Order concerning 44 Applications for Refund filed by resellers and retailers of Gulf refined products, in accordance with the refund procedures established in *Gulf Oil Corp.*, 12 DOE ¶ 85,048. In considering the Applications, the DOE found that each of the applicants had demonstrated that they would not have been required to pass through to their customers a cost reduction equal to the refund claimed. Accordingly, the firms were granted refunds totalling \$53,546 (\$46,334 principal plus \$7,212 interest).

Navajo Refining Co./Conoco, Inc., Plateau, Inc./Conoco, Inc., 11/21/85; RF203-0001, RF204-0001

Conoco, Inc. (Conoco) filed Applications for Refund in which the firm sought portions of the funds obtained by the DOE through Consent Orders entered into by the agency and Navajo Refining Company (Navajo) and Plateau, Inc. (Plateau). Since the Applicant's allocable shares of both consent order funds were less than the \$5,000 small claims threshold Conoco was presumed to have been injured by Navajo's and Plateau's pricing practices. Accordingly, the firm was awarded refunds equal to its allocable shares of the consent order funds. Conoco received a total of \$3,215 principal and \$1,550 interest from the Navajo and Plateau funds.

Dismissals

The following submissions were dismissed.

Company Name and Case No.

Saunders Oil Co. RF112-49
Yellow Freight Systems; RF112-20

Copies of the full text of these decisions and orders are available in the Public Docket Room of the Office of Hearings and Appeals, Room 1E-234, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C. 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

George B. Breznay,

Director, Office of Hearings and Appeals.

January 13, 1986

[FR Doc. 86-1552 Filed 1-23-86; 8:45 am]

BILLING CODE 6450-01-M

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, Department of Energy.

ACTION: Notice of Implementation of Special Refund Procedures.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy solicits comments concerning the appropriate procedures to be followed in refunding to adversely affected parties \$27,848.88 obtained as a result of a consent order which the DOE entered into with Pacific Northern Oil Company, a reseller-retailer of petroleum products located in Seattle, Washington. The money is being held in escrow following the settlement of enforcement proceedings brought by the DOE's Economic Regulatory Administration.

DATE AND ADDRESS: Comments must be filed within 30 days of publication of this notice in the *Federal Register* and should be addressed to the Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, D.C. 20585. All comments should conspicuously display a reference to case number HEF-0144.

FOR FURTHER INFORMATION CONTACT: Sharon Dennis, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 252-6602.

SUPPLEMENTARY INFORMATION: In accordance with § 205.282(b) of the procedural regulations of the Department of Energy, 10 CFR 205.282(b), notice is hereby given of the issuance of the Proposed Decision and Order set out below. The Proposed Decision sets forth procedures and standards that the DOE has tentatively formulated to distribute to adversely affected parties \$27,848.88 plus accrued interest obtained by the DOE under the terms of a consent order entered into with Pacific Northern Oil Company (Panoco). The funds were provided to the DOE by Panoco to settle all claims and disputes between the firm and the DOE regarding the manner in which the firm applied the federal price regulations with respect to its sales of motor gasoline during the period November 1, 1973, through April 30, 1974.

OHA proposes that a two-stage refund process be followed. In the first stage, OHA has tentatively determined that a portion of the consent order funds should be distributed to 3 first purchasers who may have been overcharged. In order to obtain a refund, each claimant will be required either to submit a schedule of its monthly purchases from Panoco or to submit a

statement verifying that it purchased motor gasoline from Panoco and is willing to rely on the data in the audit files. In addition, applications for refund will be accepted from purchasers not identified by the DOE audit. Unidentified customers who purchased directly from Panoco will only be required to provide schedules of their monthly purchase volumes. However, an indirect purchaser will also be required to provide the name of the firm from which the purchase was made as well as the reason why it believes the product was initially sold by Panoco. Applications for refund should not be filed at this time. Appropriate public notice will be given when the submission of claims is authorized.

Some residual funds may remain after all meritorious first-stage claims have been satisfied. OHA invites interested parties to submit their views concerning alternative methods of distributing any remaining funds in a subsequent proceeding.

Any member of the public may submit written comments regarding the proposed refund procedures. Commenting parties are requested to submit two copies of their comments. Comments should be submitted within 30 days of publication of this notice. All comments received in these proceedings will be available for public inspection between 1:00 and 5:00 p.m., Monday through Friday, except federal holidays, in the Public Docket Room of the Office of Hearings and Appeals, located in Room 1E-234, 1000 Independence Avenue, SW., Washington, D.C. 20585.

Dated: January 14, 1986.

George B. Breznay,

Director, Office of Hearings and Appeals.

Proposed Decision and Order of the Department of Energy

Implementation of Special Refund Procedures

Name of Firm: Pacific Northern Oil Company

Date of Filing: October 13, 1983

Case Number: HEF-0144

Under the procedural regulations of the Department of Energy (DOE), the Economic Regulatory Administration (ERA) may request that the Office of Hearing and Appeals (OHA) formulate and implement special procedures to distribute funds received as a result of an enforcement proceeding in order to remedy the effects of actual or alleged violations of the DOE regulations. See 10 CFR Part 205, Subpart V. In accordance with the provisions of Subpart V, on October 13, 1983, ERA filed a Petition for the Implementation of Special Refund

Procedures in connection with a consent order entered into with Pacific Northern Oil Company (Panoco).

I. Background

Panoco is a "reseller-retailer" of refined petroleum products as that term was defined in 10 CFR 212.31 and is located in Seattle, Washington. A DOE audit of Panoco's records revealed possible violations of the Mandatory Petroleum Price Regulations, 10 CFR Part 212, Subpart F. Based on the audit, the DOE alleged that between November 1, 1973 and April 30, 1974, Panoco committed certain pricing violations with respect to its sales of motor gasoline.

In order to settle all claims and disputes between Panoco and the DOE regarding the firm's sales of motor gasoline during the period covered by the audit, Panoco and the DOE entered into a consent order on September 1, 1981. The consent order refers to ERA's allegations of overcharges, but notes that there was no finding that violations occurred. In addition, the consent order states that Panoco does not admit that it violated the regulations.

Under the terms of the consent order, Panoco agreed to deposit \$22,428 plus installment interest, into an interest-bearing escrow account for ultimate distribution by the DOE. Panoco was required to make its payments in 24 equal monthly installments. The consent order fund was paid in full on October 15, 1983. Including installment interest, Panoco's actual deposits total \$27,848.88.¹ That sum will be considered to be the principal amount in this proceeding. This decision concerns the distribution of the funds in the Panoco escrow account.²

II. Proposed Refund Procedures

The procedural regulations of the DOE set forth general guidelines which may be used by OHA in formulating and implementing a plan of distribution for funds received as a result of an enforcement proceeding, 10 CFR Part 205, Subpart V. The Subpart V process may be used in situations where the DOE is unable to identify readily those persons who likely were injured by alleged overcharges or to ascertain readily the amount of such persons'

injuries. For a more detailed discussion of Subpart V and the authority of OHA to fashion procedures to distribute refunds, see *Office of Enforcement*, 9 DOE ¶ 82,508 (1981), and *Office of Enforcement*, 8 DOE ¶ 82,597 (1981) (*Vickers*).

As in other Subpart V cases, we believe that the distribution of refunds in this proceeding should take place in two stages. In the first stage, we will attempt to provide refunds to identifiable purchasers of refined petroleum products that were injured by Panoco's alleged pricing practices between November 1, 1973 and April 30, 1974 (the consent order period). Any funds that remain after all meritorious first-stage claims have been paid may be distributed in a second-stage proceeding. See, e.g., *Office of Special Counsel*, 10 DOE ¶ 85,048 (1982) (*Amoco*).

A. Refunds to Identified Purchasers

A special refund proceeding is designed to provide restitution to parties that were injured as a result of alleged or actual regulatory violations. In this proceeding, we have the benefit of access to material developed by the DOE during its audit of Panoco and we intend to rely in part on that information. This information contained in ERA's audit files may reasonably be used to determine the identities of allegedly overcharged purchasers and the amounts of the overcharges. See, e.g., *Marion Corp.*, 12 DOE ¶ 85,014 (1984) (information contained in the audit file utilized to fashion a more accurate refund plan than that devised by using a general volumetric approach). See also *Armstrong and Associates/City of San Antonio*, 10 DOE ¶ 85,050 at 88,259 (1983).

The DOE audit identified three of Panoco's reseller purchasers which were alleged to have been overcharged in their purchases of motor gasoline from the firm. The results of this audit also indicated that additional overcharges had occurred in Panoco's sales to end-users (other than Boeing). In previous cases of this type, we have proposed that the funds in the escrow account be apportioned among the purchasers identified by the audit, and other as yet unidentified customers that may have been injured by purchases from the consent order firm. See, e.g., *Bob's Oil Co.*, 12 DOE ¶ 85,024 (1984); *Richards Oil Company*, 12 DOE ¶ 85,150 (1984). The first purchasers identified by the audit and the share of the settlement earmarked for each are listed in the Appendix.

Identification of first purchasers is only the first step in the distribution

process. We must also determine whether the first purchasers were injured or were able to pass through the alleged overcharges. To aid us in our assessment of a purchaser's injury, we propose the adoption of certain presumptions.

We intend to use both the information in the audit files along with these presumptions to distribute the funds in the escrow account. Presumptions in refund cases are specifically authorized by applicable DOE procedural regulations. Section 205.282(e) of those regulations states that:

[i]n establishing standards and procedures for implementing refund distributions, the Office of Hearings and Appeals shall take into account the desirability of distributing the refunds in an efficient, effective and equitable manner and resolving to the maximum extent practicable all outstanding claims. In order to do so, the standards for evaluation of individual claims may be based upon appropriate presumptions.

10 CFR 205.282(e). The presumptions we plan to adopt in this case are used to permit claimants to participate in the refund process without incurring inordinate expenses and to enable OHA to consider the refund applications in the most efficient way possible in view of the limited resources available. Therefore, as in previous special refund proceedings, we intend to adopt a presumption that claimants seeking small refunds were injured by the pricing practices of the company from which they purchased products. In addition, we plan to use a volumetric presumption for applicants who were not identified during the audit. As a separate matter, we are making a proposed finding that end-users experienced injury. The volumetric presumption and the end-user finding will be discussed in Section B.

There are a number of bases for the presumption that claimants seeking small refunds were injured. See, e.g., *Uban Oil Co.*, 9 DOE ¶ 82,541 (1982). The firms that will be eligible for refunds are purchasers that were in the chain of distribution of the products to which the alleged overcharges attached. These purchasers therefore experienced some impact of the alleged overcharges. Without some presumptions as to injury, in order to support a specific claim of injury, a claimant would have to compile and submit very detailed factual information regarding the impact of alleged overcharges which occurred many years ago. This procedure is generally time-consuming and expensive. In the case of relatively small claims, the cost to the claimant of gathering the necessary information and

¹ The original settlement amount totalled \$28,514. Of that sum, \$6,086 has previously been refunded to Boeing Company of Seattle, Washington, thus leaving \$22,428 to be deposited into escrow. Boeing is precluded, therefore, from applying for a refund in this proceeding.

² As of December 31, 1985, the Panoco escrow account contained a total of \$35,168.95, representing \$27,848.88 in principal (including installment interest) and \$7,318.07 in accrued interest.

the cost to OHA of analyzing it could certainly exceed the expected refund and whatever benefits are derived from any additional precision. Consequently, without simplified procedures, some potential claimants would be effectively denied an opportunity to seek a refund since it would be uneconomic to do so. As a result, we intend to adopt a small claims presumption which will eliminate the need for a claimant to submit and OHA to analyze extensive, detailed proof of the result of the initial impact of the alleged overcharges.

Under the small-claims presumption, a claimant who is a reseller or retailer will not be required to submit any additional evidence of injury beyond purchase volumes if its refund claim is based on purchases below a certain level. Several factors determine the value of this threshold. Principal among these factors is the concern that the cost to the applicant and the government of compiling and analyzing information sufficient to show injury not exceed the amount of the refund to be gained. In this case, where the refund amount is fairly low and the consent order period is many years past, \$5,000 is a reasonable value for the threshold. See *Texas Oil & Gas Corp.*, 12 DOE ¶85,069 at 88,210 (1984); *Office of Special Counsel*, 11 DOE ¶85,226 (1984) (*Conoco*), and cases cited therein. The record in this proceeding indicates that one of the three identified customers may be eligible for a refund of \$5,000 or less.

However, a reseller or retailer which seeks a refund of more than \$5,000 will be required to document its claim. While there are a variety of methods by which a claimant could show that it did not pass the alleged overcharges on to its customers, the claimant would generally have to show that at the time of the alleged overcharges, it maintained a "bank" of unrecovered costs, and that market conditions would not permit it to pass through those increased costs.³

As in previous cases, only claims for at least \$15 plus interest will be processed. In prior refund cases we have found that the cost of processing claims for smaller amounts outweighs the benefits of restitution. See, e.g., *Uban Oil Co.*, 9 DOE at 85,225. See also

³ Resellers or retailers who claim a refund in excess of \$5,000 but who cannot establish that they did not pass through the price increases will be eligible for a refund of up to the \$5,000 threshold, without being required to submit evidence of injury beyond documentation of volumes purchased. Firms potentially eligible for greater refunds may choose to limit their claims to \$5,000. See *Vickers*, 8 DOE at 85,396. See also *Office of Enforcement*, 10 DOE ¶85,029 at 88,125 (1982) (*Ada*).

10 CFR 205.286(b). The same principle applies here.

On the basis of the information in the record at this time, we propose to distribute a portion of the escrow funds to the firms listed in the Appendix, provided they can successfully document their injury with regard to their purchases from Panoco. The refund amounts attributable to each firm have been adjusted from those listed in the consent order to reflect the larger principal amount in escrow resulting from Panoco's payments of installment interest.⁴ Refunds will be authorized to successful applicants in the amounts indicated, plus accrued interest.

B. Refunds to Unidentified Purchasers

The refunds tentatively allotted to identified purchasers total \$19,084.94. As a result, the remaining portion of the Panoco consent order funds may be distributed among first purchasers other than those identified by the ERA audit, specifically but not limited to Panoco's retail customers, and to downstream customers of Panoco, provided they can make the necessary demonstration of injury.

To assist potential claimants in deciding whether to apply for a refund, we propose using the small-claims presumption discussed above. In addition, we will adopt a presumption that the alleged overcharges were dispersed evenly among all sales of motor gasoline made by Panoco during the consent order period. In the past, OHA has used a volumetric refund amount as an equitable means of distributing funds based on this presumption. In the absence of better information, the volumetric presumption is sound because the DOE price regulations generally required a regulated firm to account for increased costs on a firm-wide basis in determining its prices.

Using a volumetric approach means that a portion of the Panoco consent order amount would be allocated to each gallon of product which a successful claimant purchased from the consent order firm. The average per gallon refund, or volumetric refund amount, in this proceeding is \$0.007160 per gallon.⁵ Potential applicants that

⁴ These amounts were recalculated according to the following formula: we divided the \$22,428 original principal amount into the new principal amount, \$27,848.88 to obtain a factor of 1.241701. We then multiplied this factor by the amounts attributed to each firm to obtain the revised refund amounts.

⁵ The volumetric factor has been calculated from information contained in ERA's audit workpapers. According to the audit, Panoco began sales of motor gasoline on February 22, 1974 and concluded these sales on approximately May 31, 1974. The

were not identified by the ERA audit of Panoco may use this volumetric figure to estimate the refund to which they may be entitled.

We recognize that the impact on an individual purchaser could have been greater than that estimated by using the volumetric factor, and any purchaser may file a refund application based on a claim that it suffered a disproportionate share of the alleged overcharges. See *Sid Richardson Carbon & Gasoline Co. and Richardson Products Co./Siouxland Propane Co.*, 12 DOE ¶85,054 at 88,164 (1984), and cases cited therein. Similarly, purchasers identified in the ERA audit may attempt to show that they should receive refunds greater than those indicated in the Appendix. If valid claims exceed the funds available in escrow, all refunds will be reduced proportionately. Actual refunds will be determined only after analyzing all appropriate claims.

As noted above, we are making a proposed finding that end users whose business operations are unrelated to the petroleum industry were injured by the alleged overcharges. These entities were not subject to DOE regulations during the relevant period, and are thus outside our inquiry concerning pass-through of injury. See *Office of Enforcement*, 10 DOE ¶85,072 (1983) (*PVM*); see also *Texas Oil & Gas Corp.*, 12 DOE at 88,209, and cases cited therein. Therefore, we propose that for end users of motor gasoline sold by Panoco, documentation of purchase volumes will provide a sufficient showing of injury.

In addition, if a reseller or a retailer made only spot purchases, we propose that it should not receive a refund since it is unlikely to have been injured. As we have previously stated with respect to spot purchasers:

[T]hose customers tend to have considerable discretion in where and when to make purchases and would therefore not have made spot market purchases of [the firm's product] at increased prices unless they were able to pass through the full amount of [the firm's] quoted selling price at the time of purchase to their own customers.

Vickers, 8 DOE at 85,396-97. We believe the same rationale holds true in the present case. Therefore, we propose that firms which made only spot purchases

workpapers indicate that Panoco sold a total of 4,037,469 gallons of motor gasoline during the consent order period. Panoco sold 1,223,951 gallons of that total to its retail end-users. The per gallon factor is computed by dividing the \$8,763.94 available for distribution to those customers not identified in the ERA audit (including downstream customers), by Panoco's total retail sales (1,223,951 gallons), to obtain a volumetric factor of \$0.007160 per gallon.

from Panoco not receive refunds unless they present evidence which rebuts the spot purchaser presumption and establishes the extent to which they were injured as a result of their purchases of motor gasoline from Panoco during the consent order period.

Finally, we propose that firms whose prices for goods and services are regulated by a governmental agency or by the terms of a cooperative agreement not be required to provide a detailed demonstration that they absorbed the alleged overcharges associated with Panoco's sales of motor gasoline. See, e.g., *Office of Special Counsel*, 9 DOE ¶82,538 (1982) (*Tenneco*), and *Office of Special Counsel*, 9 DOE ¶82,545 at 85,244 (1982) (*Pennzoil*). Those firms should provide with their applications a full explanation of the manner in which refunds would be passed through to their customers and of how the appropriate regulatory body or membership group will be advised of the applicant's receipt of any refund money. Sales by cooperatives to nonmembers, however, will be treated the same as sales by any other reseller.

III. Applications for Refund

In order to receive a refund, each claimant identified by ERA will be required to submit either a schedule of its monthly purchases of motor gasoline from Panoco or a statement verifying that it purchased motor gasoline from Panoco and is willing to rely on the data in the audit file. Purchasers not identified by the ERA audit will be required to provide schedules of their monthly purchases of motor gasoline from Panoco. Applicants should also provide all relevant information necessary to support their claim in accordance with the presumptions stated above. A claimant must indicate whether it has previously received a refund, from any source, with respect to the alleged overcharges identified in the ERA audit underlying this proceeding. Each applicant must also state whether there has been a change in ownership of the firm since the audit period. If there has been a change in ownership, the applicant must provide the names and addresses of the other owners, and should either state the reasons why the refund should be paid to the applicant rather than to the other owners or provide a signed statement from the other owners indicating that they do not claim a refund. Finally, an applicant should report whether it is or has been involved as a party in any DOE enforcement or private, § 210 actions. If these actions have been concluded the applicant should furnish a copy of any final order issued in the matter. If the

action is still in progress, the applicant should briefly describe the action and its current status. The applicant must keep OHA informed of any change in status while its Application for Refund is pending. See 10 CFR 205.9(d).

In the event that money remains after all meritorious claims have been satisfied, residual funds could be distributed in a number of ways in a subsequent proceeding. However, we will not be in a position to decide what should be done with any remaining funds until the initial stage of this refund proceeding has been completed. We encourage the submission by interested parties of proposals which address alternative methods of distributing any remaining funds.

It Is Therefore Ordered That

The refund amount remitted to the Department of Energy by Pacific Northern Oil Company pursuant to the Consent Order executed on September 1, 1981, will be distributed in accordance with the foregoing Decision.

APPENDIX

Name and address	Share of settlement*
Maxwell Oil Co., 701 S. Plum, Olympia, Washington 98507	\$5,709.34
Fletcher Oil Co., 606 Alexander Ave., Tacoma, Washington 98421	12,250.62
Jack Pay-Jess, Inc., 9243 Empire Way, Seattle, Washington 98122	1,124.98
Total	19,084.94

*This figure does not include accrued interest.

[FR Doc. 86-1549 Filed 1-23-86; 8:45 am]

BILLING CODE 6450-01-M

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, Department of Energy.

ACTION: Notice of Implementation of Special Refund Procedures.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy solicits comments concerning the appropriate procedures to be followed in refunding a consent order fund of \$69,216.58 to members of the public. This money is being held in escrow following the settlement of an enforcement proceeding involving Wellen Oil, Inc. of Jersey City, New Jersey.

DATE AND ADDRESS: Comments must be filed within 30 days of publication of this notice in the *Federal Register* and should be addressed to the Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, D.C. 20585. All comments should conspicuously display a reference to Case Number HEF-0584.

FOR FURTHER INFORMATION CONTACT: Richard W. Dugan, Associate Director, Office of Hearings and Appeals, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 252-2860.

SUPPLEMENTARY INFORMATION: In accordance with § 205.282(b) of the procedural regulations of the Department of Energy, 10 CFR 205.282(b), notice is hereby given of the issuance of the Proposed Decision and Order set out below. The Proposed Decision relates to a Consent Order entered into by Wellen Oil, Inc. (Wellen) of Jersey City, New Jersey. The Consent Order settles possible pricing violations in Wellen's sales of petroleum products to customers during the period September 1, 1973 through December 31, 1973.

The Proposed Decision sets forth the procedures and standards that the DOE has tentatively formulated to distribute the contents of the escrow account funded by Wellen pursuant to the Consent Order. The DOE has tentatively decided that the consent order fund should be distributed to those customers of Wellen who establish that they were injured by Wellen's alleged overcharges. Such customers will receive refunds proportionate to the volume of petroleum products they purchased from Wellen. However, Applications for Refund should not be filed at this time. Appropriate public notice will be given when the submission of claims is authorized.

Any member of the public may submit written comments regarding the proposed refund procedures. Commenting parties are requested to submit two copies of their comments. Comments should be submitted within 30 days of publication of this notice in the *Federal Register*, and should be sent to the address set forth at the beginning of this notice. All comments received in the proceeding will be available for public inspection between the hours of 1:00 to 5:00 p.m., Monday through Friday, except federal holidays, in the Public Reference Room of the Office of Hearings and Appeals, located in Room 1E-234, 1000 Independence Avenue, SW., Washington, DC 20585.

Dated: January 14, 1986.

George B. Breznay,
Director, Office of Hearings and Appeals.

Proposed Decision and Order of the Department of Energy

Special Refund Procedures

January 14, 1986.

Name of Firm: Wellen Oil, Inc.
Date of Filing: May 28, 1985.
Case Number: HEF-0584.

Under the procedural regulations of the Department of Energy (DOE), the Economic Regulatory Administration (ERA) of the DOE may request the Office of Hearings and Appeals (OHA) to formulate and implement special procedures to make refunds in order to remedy the effects of alleged violations of the DOE regulations. See 10 CFR Part 205, Subpart V. The ERA filed such a petition on May 28, 1985 requesting that the OHA implement a proceeding to distribute funds received pursuant to a Consent Order entered into by the DOE and Wellen Oil, Inc. (Wellen) of Jersey City, New Jersey.

I. Background

Wellen is a "reseller-retailer" of petroleum products, as this term was defined in 10 CFR 212.31. In a Proposed Remedial Order (PRO) issued to Wellen on July 31, 1979, the ERA alleged that Wellen had overcharged members of its barge class of purchaser by \$849,713 in sales of No. 2 heating oil during the period September 1, 1973 through December 31, 1973 (the audit period). In order to settle all claims and disputes between Wellen and the DOE regarding Wellen's compliance with the Federal Petroleum Price and Allocation Regulations during the audit period (hereinafter referred to as the consent order period), the firm entered into a Consent Order with the DOE on June 25, 1984. Under the terms of the Consent Order, the firm agreed to deposit \$69,216.58 in an interest-bearing escrow account pending distribution by the DOE. The Consent Order refers to the ERA's allegations of overcharges, but notes that no formal findings of violations were made. Additionally, the Consent Order states that Wellen does not admit it committed any such violations.

II. Jurisdiction

The procedural regulations of the DOE set forth general guidelines by which the OHA may formulate and implement a plan of distribution for funds received as a result of an enforcement proceeding. 10 CFR Part 205, Subpart V. It is DOE policy to use the Subpart V process to distribute such funds. For a more detailed discussion of Subpart V and the authority of the OHA to fashion procedures to distribute refunds obtained as part of settlement agreements, see *Office of Enforcement*, 9 DOE ¶ 82,553 (1982); *Office of Enforcement*, 9 DOE ¶ 82,508 (1981); *Office of Enforcement*, 8 DOE ¶ 82,597 (1981) (hereinafter cited as *Vickers*). After reviewing the record in the present case, we have concluded that a Subpart V proceeding is an appropriate

mechanism for distributing the Wellen consent order fund. We therefore propose to grant the ERA's petition and assume jurisdiction over distribution of the fund.

III. Proposed Refund Procedures

A. Eligible Claimants

We propose to establish a claims procedure whereby claimants who can demonstrate that they were injured as a result of Wellen's pricing practices during the consent order period will be eligible to receive a refund. Although the PRO lists specific alleged overcharges for customers in the barge class of purchaser who bought No. 2 heating oil from Wellen during the consent order period, the terms of the Consent Order are global in scope and cover all claims and disputes regarding Wellen's compliance with the DOE regulations during the consent order period, "whether or not those claims and disputes have been previously raised." See Consent Order ¶ 101. Accordingly, we propose to allow any customer who purchased petroleum products from Wellen during the consent order period to apply for a refund in this proceeding.¹

B. Showing of Injury

We propose that claimants who resold petroleum products purchased from Wellen be required to demonstrate that they did not pass on to their customers the price increases implemented by Wellen. Accordingly, in order to qualify for a refund, a reseller claimant (including retailers) must show that it would have maintained its prices for the product purchased from Wellen at the same level had the alleged overcharges not occurred. While there are a variety of ways to make this showing, a reseller should generally demonstrate that at the time it purchased petroleum products from Wellen, market conditions would not permit it to increase its prices to pass through the additional costs associated with the alleged overcharges. See *OKC Corp./Hornet Oil Co.*, 12 DOE ¶ 85,168 (1985); *Tenneco Oil Co./Mid-Continent Systems, Inc.*, 10 DOE ¶ 85,009 (1982). In addition, a reseller will be required to show that it had "banks" of unrecovered increased product costs in order to demonstrate that it did not recover the increased costs associated with the alleged overcharges by

¹ The Consent Order required Wellen to pay the State of Virginia \$180,783.42, representing the State's prorated share of the No. 2 heating oil overcharges alleged in the PRO. Accordingly, the State of Virginia will not be eligible to apply for a refund based on its purchases of No. 2 heating oil from Wellen. In addition, JOC Oil, Inc., an entity related to Wellen, has waived its right to apply for a refund in this proceeding. See Consent Order ¶ 502.

increasing its prices. The maintenance of banks will not, however, automatically establish injury. See, e.g., *Tenneco Oil Co./Chevron U.S.A.*, 10 DOE ¶ 85,014 (1982).

C. Applicants Claiming a Refund of \$5,000 or Less

In the present case, we propose to adopt a presumption of injury which has been used in many previous special refund cases. We will presume that reseller applicants who are claiming small refunds (\$5,000 or less) were injured by the alleged overcharges. We recognize that making a detailed showing of injury may be too complicated and burdensome for resellers who purchased relatively small amounts of product from Wellen. For example, such firms may have limited accounting and data-retrieval capabilities and may therefore be unable to produce the records necessary to prove the existence of banks of unrecovered costs or to show that they did not pass on the alleged overcharges to their own customers. We also are concerned that the cost of the applicant and to the government of compiling and analyzing information sufficient to make a detailed showing of injury not exceed the amount of the refund to be gained. In the past, we have adopted a small claims procedure to assure that the costs of filing and processing a refund application do not exceed the benefits. See, e.g., *Aztex Energy Co.*, 12 DOE ¶ 85,116 (1984); *Marion Corp.*, 12 DOE ¶ 85,014 (1984) (*Marion*). We propose to adopt such a procedure in this case. Therefore, any applicant claiming a refund of \$5,000 or less need not make a detailed showing of injury in order to be eligible to receive a refund.²

D. Sport Purchasers

We further propose that resellers who make spot purchases from Wellen be ineligible to receive a refund, even a refund at or below the threshold level, unless they can make a showing that rebuts the presumption that they were not injured. As we have previously noted, a spot purchaser tends to have considerable discretion in where and when to make purchases and would therefore not have made spot purchases of the consent order firm's product at increased prices unless it was able to pass through the full amount of the alleged overcharges to its own customers. See *Vickers*, 8 DOE at

² As in prior refund cases, resellers whose calculated refund exceeds the threshold amount may elect to apply for a refund of \$5,000 without being required to make a detailed demonstration of injury.

85,396-97. Accordingly, in order to overcome the rebuttable presumption that it was not injured, a spot purchaser must submit evidence to establish that it was unable to recover the prices it paid for Wellen product and did not have discretion as to where and when to make the purchase(s) upon which its refund claim is based.

E. End-Users

We will not require end-users or ultimate consumers whose businesses are unrelated to the petroleum industry to make a detailed showing of injury. See *Texas Oil & Gas Corp.*, 12 DOE ¶ 85,069 at 88,209 (1984). Unlike regulated firms in the petroleum industry, members of this group generally were not subject to price controls during the consent order period and were not required to keep records which justified selling price increases by reference to cost increases. For these reasons, an analysis of the impact of the alleged overcharges on the final prices of non-petroleum goods and services would be beyond the scope of a special refund proceeding. *Id.* We have therefore concluded that end-users of Wellen petroleum products need only document their purchase volumes from the firm to make a sufficient showing that they were injured by the alleged overcharges. On the other hand, refund applicants whose business operations were subject to the DOE regulatory program and who purchased Wellen petroleum products for consumption as fuel or raw materials will not be considered end-users for the purposes of the showing of injury. See *Seminole Refining, Inc.*, 12 DOE ¶ 85,188 (1985).

F. Calculation of Refund Amounts

We propose to use a volumetric method to divide the consent order fund among applicants who demonstrate that they are eligible to receive refunds. This method presumes that the alleged overcharges were spread equally over all the gallons of the consent order product(s) sold by a consent order firm. See, e.g., *Vickers*. In the present case, we have calculated the volumetric refund amount by dividing the consent order fund (\$69,216.58) by the estimated total volumes of petroleum products sold by Wellen during the consent order period and covered by the present proceeding (14,891,239 gallons), resulting in a per gallon refund amount of \$0.004648.³ The interest that has accrued

on the money in the escrow account will be added to the refund of each successful claimant in proportion to the size of its refund.

As in previous cases, we propose to establish a minimum refund amount of \$15 for first stage claims. We have found through our experience in prior refund cases that the cost of processing claims in which refunds are sought for amounts less than \$15 outweighs the benefits of restitution in those situations. See, e.g., *Uban Oil Co.*, 9 DOE ¶ 82,541 at 85,225 (1985).

Refund applications in the Wellen proceeding should not be filed until after issuance of a final Decision and Order. Detailed procedures for filing applications will be provided in the final Decision and Order. Before disposing of any of the funds received as a result of the Consent Order involved in this proceeding, we intend to publicize the distribution process to solicit comments on the proposed refund procedures and to provide an opportunity for any affected party to file a claim.

In the event that money remains after all first stage claims have been processed, undistributed funds could be disbursed in a number of different ways. We will not be in a position to decide what should be done with any remaining funds until the first stage refund procedure is completed.

It Is Therefore Ordered That the refund amount remitted to the Department of Energy by Wellen Oil, Inc. pursuant to the Consent Order executed on June 25, 1984 will be distributed in accordance with the foregoing Decision.

[FR Doc. 86-1550 Filed 1-23-86; 8:45 am]

BILLING CODE 6450-01-M

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, Department of Energy.

ACTION: Notice of Implementation of Special Refund Procedures.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy solicits comments concerning the appropriate procedures to be followed in refunding to adversely affected parties \$61,000 obtained as a result of a consent order which the DOE entered into with McCleary Oil Company, Inc., a reseller-

retailer of refined petroleum products located in Chambersburg, Pennsylvania. The money is being held in escrow following the settlement of enforcement proceedings brought by the DOE's Economic Regulatory Administration.

DATE AND ADDRESS: Comments must be filed within 30 days of publication of this notice in the *Federal Register* and should be addressed to the Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585. All comments should conspicuously display a reference to case number HEF-0127.

FOR FURTHER INFORMATION CONTACT: Sharon Dennis, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 252-6602.

SUPPLEMENTARY INFORMATION: In accordance with § 205.282(b) of the procedural regulations of the Department of Energy, 10 CFR 205.282(b), notice is hereby given of the issuance of the Proposed Decision and Order set out below. The Proposed Decision sets forth procedures and standards that the DOE has tentatively formulated to distribute to adversely affected parties \$61,000 plus accrued interest obtained by the DOE under the terms of a consent order entered into with McCleary Oil Company. The funds were provided to the DOE by McCleary to settle all claims and disputes between the firm and the DOE regarding the manner in which the firm applied the federal price regulations with respect to its sales of refined petroleum products during the period November 1, 1973 through April 30, 1974.

OHA proposes that a two-stage refund process be followed. In the first stage, OHA has tentatively determined that a portion of the consent order funds should be distributed to firms and individuals who purchased Nos. 2, 4 and 5 heating oil, gasoline, kerosene and/or diesel fuel from McCleary. In order to obtain a refund, a claimant will be required to submit a schedule of its monthly purchases from McCleary and to demonstrate that it was injured by McCleary's pricing practices. Applicants must submit specific documentation regarding the date, place, and volume of product purchased, whether the increased costs were absorbed by the claimant or passed through to other purchasers, and the extent of any injury alleged to have been suffered. An applicant claiming \$5,000 or less, however, will be required to document only its purchase volumes.

Applications for refund should not be filed at this time. Appropriate public

³ Because the available ERA audit files do not list the volumes of petroleum products sold by Wellen during the entire consent order period, we have extrapolated sales figures from the available audit data. In addition, we have omitted the volumes of

petroleum products sold to JOC and the volumes of No. 2 heating oil sold to the State of Virginia. Any alleged overcharges on these volumes are not covered by this special refund proceeding. See n.1, *supra*.

notice will be given when the submission of claims is authorized.

Some residual funds may remain after all meritorious first-stage claims have been satisfied. OHA invites interested parties to submit their views concerning alternative methods of distributing any remaining funds in a subsequent proceeding.

Any member of the public may submit written comments regarding the proposed refund procedures.

Commenting parties are requested to submit two copies of their comments. Comments should be submitted within 30 days of publication of this notice. All comments received in this proceeding will be available for public inspection between 1:00 and 5:00 p.m., Monday through Friday, except federal holidays, in the Public Reference Room of the Office of Hearings and Appeals, located in Room 1E-234, 1000 Independence Avenue, SW., Washington, DC 20585.

Dated: January 15, 1986.

George R. Breznay,

Director, Office of Hearings and Appeals.

Proposed Decision and Order of the Department of Energy

Implementation of Special Refund Procedures

Name of Firm: McCleary Oil Co., Inc.
Date of Filing: October 13, 1983
Case Number: HEF-0127

Under the procedural regulations of Department of Energy (DOE), the Economic Regulatory Administration (ERA) may request that the Office of Hearings and Appeals (OHA) formulate and implement special procedures to distribute funds received as a result of an enforcement proceeding in order to remedy the effects of actual or alleged violations of the DOE regulations. See 10 CFR Part 205, Subpart V. In accordance with the provisions of Subpart V, on October 13, 1983, ERA filed a Petition for the Implementation of Special Refund Procedures in connection with a consent order entered into with McCleary Oil Co., Inc. (McCleary).

I. Background

McCleary is a "reseller-retailer" of Nos. 2, 4 and 5 heating oil, gasoline, kerosene, and diesel fuel as those terms were defined in 10 CFR 212.31, and is located in Chambersburg, Pennsylvania. Based on an audit of McCleary's records, ERA issued a Notice of Probable Violation (NOPV) in which it alleged that McCleary had committed possible violations of the Mandatory Petroleum Price Regulations, 10 CFR Part 212, Subpart F. The NOPV stated that between November 1, 1973 and April 30, 1974, McCleary committed

certain pricing violations with respect to its sales of Nos. 2, 4 and 5 heating oil, gasoline, kerosene and diesel fuel.

In order to settle all claims and disputes between McCleary and the DOE regarding the firm's sales of Nos. 2, 4 and 5 heating oil, gasoline, kerosene and diesel fuel during the period covered by the audit, McCleary and the DOE entered into a consent order on August 15, 1979. The consent order fund represents 49.20 percent of the amount of the overcharge originally alleged in the NOPV. The consent order refers to ERA's allegations of overcharges, but notes that there was no finding that violations occurred. In addition, the consent order states that McCleary does not admit that it violated the regulations.

Under the terms of the consent order, McCleary agreed to deposit \$61,000 into an interest-bearing escrow account for ultimate distribution by the DOE. The consent order was paid in full on August 7, 1981. This decision concerns the distribution of the funds in the McCleary escrow account.¹

II. Proposed Refund Procedures

The procedural regulations of the DOE set forth general guidelines which may be used by OHA in formulating and implementing a plan of distribution for funds received as a result of an enforcement proceeding, 10 CFR Part 205, Subpart V. The Subpart V process is used in situations where the DOE is unable to identify readily those persons who likely were injured by alleged overcharges or readily ascertain the amount of such persons' injuries. For a more detailed discussion of Subpart V and the authority of OHA to fashion procedures to distribute refunds, see *Office of Enforcement*, 9 DOE ¶82,508 (1981), and *Office of Enforcement*, 8 DOE ¶82,597 (1981) (*Vickers*).

As in other Subpart V cases, we believe that the distribution of refunds in this proceeding should take place in two stages. In the first stage, we will attempt to provide refunds to identifiable purchasers of refined petroleum products that were injured by McCleary's alleged pricing practices between November 1, 1973 and April 30, 1974 (the consent order period). Any funds that remain after all meritorious first-stage claims have been paid may be distributed in a second-stage proceeding. See, e.g., *Office of Special Counsel*, 10 DOE ¶85,048 (1982) (*Amoco*).

¹ As of December 31, 1985, the McCleary escrow account contained a total of \$106,012.38 representing \$61,000 in principal and \$45,012.38 in accrued interest.

A. Refunds to Identified Purchasers

A special refund proceeding is designed to provide restitution to parties that were injured as a result of alleged or actual regulatory violations. In this proceeding, we have the benefit of access to material developed by the DOE during its audit of McCleary and we intend to rely in part on that information. In other Subpart V cases where audit material was available to identify purchasers, for example, the refund process has been facilitated by the use of that material. At the same time, these audit files do not necessarily provide a full and conclusive basis for the distribution of refunds. However, the audit material may reasonably be used to determine the identities of at least some of the purchasers allegedly overcharged and the amounts of the overcharges. See, e.g., *Marion Corp.* 12 DOE ¶ 85, 014 (1984) (the information contained in the audit file may be used to fashion a more accurate refund plan than that devised by using a general volumetric approach). See also *Armstrong and Associates/City of San Antonio*, 10 DOE ¶ 85,050 at 88,259 (1983).

On the basis of its audit, the ERA identified six first purchasers of Nos. 4 and 5 heating oil which it alleged had been overcharged by McCleary. In previous similar cases, we have proposed that the funds in the escrow account be apportioned among the purchasers identified by the audit, as well as other purchasers that may have been injured, including other as yet unidentified first purchasers and downstream customers. See, e.g., *Bob's Oil Co.*, 12 DOE ¶ 85,024 (1984); *Richards Oil Company*, 12 DOE ¶ 85,150 (1984). The identified first purchasers and the share of the settlement earmarked for each are listed in the Appendix.

Identification of first purchasers is only the first step in the distribution process. It is also necessary to determine whether these purchasers were injured or were able to pass through the effects of the alleged overcharges. To aid us in our assessment of a purchaser's injury, we are proposing certain presumptions which, together with the information in the audit files, will be used to distribute the consent order funds. Presumptions in refund cases are specifically authorized by applicable DOE procedural regulations, Section 205.282(e) of those regulations states that:

[I]n establishing standards and procedures for implementing refund distributions, the Office of Hearings and Appeals shall take into account the desirability of distributing

the refunds in an efficient, effective and equitable manner and resolving to the maximum extent practicable all outstanding claims. In order to do so, the standards for evaluation of individual claims may be based upon appropriate presumptions.

10 CFR 205.282(e). The presumptions we plan to adopt in this case will permit claimants to participate in the refund process without incurring inordinate expenses and will enable OHA to consider the refund applications in the most efficient way possible in view of the limited resources available.

Therefore, as in previous special refund proceedings, we intend to adopt a presumption that claimants seeking small refunds were injured by the pricing practices of the company from which they purchased products. In addition, we plan to use a volumetric presumption for applicants who were not identified during the audit. As a separate matter, we are making a proposed finding that end users experienced injury. The volumetric presumption and the end user finding will be discussed in Section B.

There are a number of bases for the presumption that claimants seeking small refunds were injured. *See, e.g., Uban Oil Co.*, 9 DOE ¶ 82,541 (1982). The firms that will be eligible for refunds are purchasers that were in the chain of distribution of the products to which the alleged overcharges are attached. These purchasers therefore experienced some impact of the alleged overcharges. Without some presumptions as to injury, in order to support a specific claim of injury a claimant would have to compile and submit very detailed factual information regarding the impact of alleged overcharges which occurred many years ago. Such a demonstration, if even possible, would generally be very time-consuming and expensive. In the case of relatively small claims, the cost to the claimant of gathering the necessary information and the cost to OHA of analyzing it could certainly exceed the value of any expected refund as well as any analytic benefits to be derived. Consequently, without simplified procedures, some potential claimants could be effectively denied an opportunity to seek a refund since it would be uneconomic to do so. As a result, we intend to adopt a small claims presumption which will eliminate the need for a claimant to submit and OHA to analyze extensive, detailed proof of the result of the initial impact of the alleged overcharges.

Under the small-claims presumption, a claimant that is a reseller or retailer will not be required to submit any additional evidence of injury beyond purchase volumes if its refund claim is based on

purchases below a certain level. Principal among the factors which determine the value of this threshold is the concern that the cost to the applicant and the government of compiling and analyzing information sufficient to show injury not exceed the amount of the refund to be gained. In this case, where the consent order period is many years past, \$5,000 is a reasonable value for the small-claim threshold. *See Texas Oil & Gas Corp.*, 12 DOE ¶ 85,069 at 88,210 (1984); *Office of Special Counsel*, 11 DOE ¶ 85,226 (1984) (*Conoco*), and cases cited therein. The record in this proceeding indicates that the purchases of all six of the customers identified by the ERA audit fell below this threshold.

Any reseller or retailer which seeks a refund of more than \$5,000 will be required to document its claim. While there are a variety of methods by which a claimant could show that it did not pass the alleged overcharges on to its customers, the claimant would generally have to show that at the time of the alleged overcharges, it maintained a "bank" of unrecovered costs, and that market conditions would not permit it to pass through those increased costs.²

As in previous cases, only claims for at least \$15 plus interest will be processed. In prior refund cases we have found that the cost of processing claims for smaller amounts outweighs the benefits of restitution. *See, e.g., Uban Oil Co.*, 9 DOE at 85,225. *See also* 10 CFR 205.286(b). The same principle applies here.

On the basis of the information in the record at this time, we propose to distribute a portion of the escrow funds to the firms listed in the Appendix, provided they can successfully document their injury with regard to their purchases from McCleary. Refunds will be authorized to successful applicants in the amounts indicated, plus accrued interest.

B. Refunds to Unidentified Purchasers

The refunds tentatively allotted to identified purchasers total \$1,220,000. As a result, the remaining portion of the McCleary consent order funds may be distributed among first purchasers other than those identified by the ERA audit, and to downstream customers of

² Resellers or retailers who claim a refund in excess of \$5,000 but who cannot establish that they did not pass through the price increases will be eligible for a refund of up to the \$5,000 threshold, without being required to submit evidence of injury beyond documentation of volumes purchased. Firms potentially eligible for greater refunds may choose to limit their claims to \$5,000. *See Vickers*, 8 DOE at 85,396. *See also* Office of Enforcement, 10 DOE ¶ 85,029 at 88,125 (1982) (Ada).

McCleary, provided they can make the necessary demonstration of injury.

To assist potential claimants in deciding whether to apply for a refund, we propose using the small-claims presumption discussed above. In addition, we will adopt a presumption that the alleged overcharges were dispersed evenly among all sales of Nos. 2, 4 and 5 heating oil, gasoline, kerosene and diesel fuel made by McCleary during the consent order period. In the past, OHA has used a volumetric refund amount as an equitable means of distributing funds based on this presumption. In the absence of better information, the volumetric presumption is sound because the DOE price regulations generally required a regulated firm to account

Using a volumetric approach means that a portion of the McCleary consent order amount would be allocated to each gallon of product sold by the consent order firm. The average per gallon refund, or volumetric refund amount, in this proceeding is \$.0178 per gallon.³ Potential applicants that were not identified by the ERA audit of McCleary may use this volumetric figure to estimate the refund to which they may be entitled.⁴

We recognize that the impact on an individual purchaser could have been greater than that estimated by using the volumetric factor, and any purchaser may file a refund application based on a claim that it suffered a disproportionate share of the alleged overcharges. *See Sid Richardson Carbon & Gasoline Co., and Richardson Products Co./Siouxland Propane Co.*, 12 DOE ¶ 85,054 at 88,164 (1984), and cases cited therein. Similarly, purchasers identified in the ERA audit may attempt to show that they should receive refunds greater than those indicated in the Appendix. If valid claims exceed the funds available in escrow, all refunds will be reduced proportionately. Actual refunds will be determined only after analyzing all appropriate claims.

As noted above, we are making a proposed finding that end users whose business operations are unrelated to the petroleum industry were injured by the alleged overcharges. These entities were

³ This per gallon factor is computed by dividing the remaining \$59,780 available for distribution to unidentified customers of McCleary by 3,351,942 gallons, which represents an estimate of the total sales volumes to those unidentified firms during the consent order period. Included in this volumetric computation were the No. 2 fuel oil gallons sold to the American Can Company.

⁴ This volumetric figure is based upon an estimate of the number of gallons sold by McCleary. Specific volume information has been requested from McCleary, and thus this figure is subject to change.

not subject to DOE regulations during the relevant period, and are thus outside our inquiry about pass-through of injury. See *Office of Enforcement*, 10 DOE ¶ 85,072 (1983) (PVM); see also *Texas Oil & Gas Corp.*, 12 DOE at 88,209, and cases cited therein. Therefore, we propose that for end users of Nos. 2, 4 and 5 heating oil, gasoline, kerosene, and diesel fuel sold by McCleary, for increased costs on a firm-wide basis in determining its prices, documentation of purchase volumes will provide a sufficient showing of injury.

In addition, we propose that firms whose prices for goods and services are regulated by a governmental agency or by the terms of a cooperative agreement not be required to provide a detailed demonstration that they absorbed the alleged overcharges associated with McCleary's sales of Nos. 2, 4 and 5 heating oil gasoline, kerosene and diesel fuel. See, e.g., *Office of Special Counsel*, 9 DOE ¶ 82,538 (1982) (*Tenneco*) and *Office of Special Counsel*, 9 DOE ¶ 82,545 at 85,244 (1982) (*Pennzoil*). Those firms should provide with their applications a full explanation of the manner in which refunds would be passed through to their customers and of how the appropriate regulatory body or membership group will be advised of the applicant's receipt of any refund money. Sales by cooperatives to nonmembers, however, will be treated the same as sales by any other reseller.

III. Applications for Refund

In order to receive a refund, each claimant identified by ERA will be required to submit either a schedule of its monthly purchases of Nos. 2, 4 and 5 heating oil, gasoline, kerosene and/or diesel oil from McCleary or a statement verifying that it purchased Nos. 2, 4 and 5 heating oil, gasoline, kerosene and/or diesel oil from McCleary and is willing to rely on the data in the audit file. Purchasers not identified by the ERA audit will be required to provide schedules of their monthly purchases of Nos. 2, 4 and 5 heating oil, gasoline, kerosene and diesel oil from McCleary. If they claim injury at a level greater than the volumetric level, they must document this injury in accordance with the procedures described above. A claimant must also indicate whether it has previously received a refund, from any source, with respect to the alleged overcharges identified in the ERA audit underlying this proceeding. Each applicant must also state whether there has been a change in ownership of the firm since the audit period. If there has been a change in ownership, the applicant must provide the names and addresses of the other owners, and

should either state the reasons why the refund should be paid to the applicant rather than to the other owners or provide a signed statement from the other owners indicating that they do not claim a refund. Finally, an applicant should report whether it is or has been involved as a party in any DOE enforcement or private, § 201 actions. If these actions have been concluded the applicant should furnish a copy of any final order issued in the matter. If the action is still in progress, the applicant should briefly describe the action and its current status. The applicant must keep OHA informed of any change in status while its Application for Refund is pending. See 10 CFR 205.9(d).

In the event that money remains after all meritorious claims have been satisfied, residual funds could be distributed in a number of ways in a subsequent proceeding. In this special refund proceeding, however, the State of Pennsylvania is a general claimant. Based on the fact that many McCleary sales were made in Pennsylvania and all of the identified firms were located in Pennsylvania, we propose to distribute at least 50 percent of the remainder of the funds to the State of Pennsylvania in a second-stage refund proceeding. To the extent that unidentified purchasers may change this configuration, this proposal will be subject to modification.

It Is Therefore Ordered That:

The refund amount remitted to the Department of Energy by McCleary Oil Co., Inc. pursuant to the Consent Order executed on November 3, 1980, will be distributed in accordance with the foregoing Decision.

APPENDIX

MCCLEARY OIL CO., INC.

First purchaser	*Share of settlement
Tuscorora School District, P.O. Box 149, Mercersburg, PA 17236.....	\$156.60
Green Castle Antrim School District, 370 South Ridge Ave., Green Castle, PA 17226.....	73.20
Chambersburg School District, 511 South 6th St., Chambersburg, PA 17201.....	274.50
Fannet Metal School District, Willow Hill, PA 17271.....	140.30
Shippensburg School District, North Morris St., Shippensburg, PA 17257.....	500.20
Phoenix Clothing (Jordan Clothing), North Lurgan Ave., Shippensburg, PA 17257.....	73.20
Total escrow to identifiable first purchasers.....	1,220.00
Total escrow to unidentifiable first purchasers.....	59,780.00
Total escrow amount.....	61,000.00

*This figure includes the share of installment interest. It does not include accrued interest. See n.1, p.2.

[FR Doc. 86-1548 Filed 1-23-86; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[AD-FRL-2958-2]

Intent To List 1,3-Butadiene as a Hazardous Air Pollutant; Extension of Comment Period

AGENCY: Environmental Protection Agency.

ACTION: Extension of the Public Comment Period.

SUMMARY: This notice extends the public comment period provided in EPA's Notice of Intent to List 1,3-butadiene under section 112 of the Clean Air Act published on October 10, 1985 (50 FR 41466). That notice described the results of EPA's preliminary assessment of 1,3-butadiene as a potentially toxic air pollutant and announced EPA's intent to add 1,3-butadiene to the section 112(b)(1)(A) listed based on the health and risk assessment. In response to the 60-day public comment period provided in the notice, a request was submitted for an extension of the public comment period. For this reason the public comment period has been extended for an additional 60 days and will now close on February 10, 1986.

FOR FURTHER INFORMATION CONTACT: Ila Cote at (919) 541-5645.

Dated: January 14, 1986.

Charles L. Elkins,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 86-1215 Filed 1-23-86; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-2959-6]

Environmental Impact Statements; Availability

Responsible Agency: Office of Federal Activities, General Information (202) 382-5073 or (202) 382-5075.

Availability of Environmental Impact Statements filed January 13, 1986 Through January 17, 1986 Pursuant to 40 CFR 1506.9.

EIS No. 860013, Draft, AFS, NM, Santa Fe National Forest, Land and Resource Management Plan, Due: April 30, 1986, Contact: Maynard Rost (505) 988-6945.

EIS No. 860014, Draft, COE, TT, Kwajalein Atoll Causeway, Dredged and Fill Material Discharge Project, Permit, Republic of the Marshall Island, Due: March 10, 1986, Contact: Michael Lee (808) 438-9258.

EIS No. 860015, Final, EPA, REG, Basic Oxygen Process Furnaces, Secondary Emissions, Revised Performances

Standards, Due: February 24, 1986,
Contact: Doug Bell (919) 541-5578.

EIS No. 860016, Draft, AFS, OR,
Deschutes National Forest, Land and
Resource Management Plan, Due: May
9, 1986. Contact: Lee Coonce (503)
388-2715.

EIS No. 860017, Draft, HUD, MN, Duluth
Paper Mill Project, Construction and
Operation, CDBG, Due: March 10,
1986. Contact: David Sebok (218) 723-
3556.

EIS No. 860018, FSuppl, EPA, SC,
Georgetown Harbor Area, Ocean
Dredged Material Disposal Site,
Designation, Due: February 24, 1986,
Contact: Theodore Bisterfeld (404)
881-3776.

Dated: January 21, 1986.

Allan Hirsch,

Director, Office of Federal Activities.

[FR Doc. 86-1592 Filed 1-23-86; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-2959-7]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared January 6, 1986 through January 10, 1986 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 382-5075/76. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated October 19, 1984 (49 FR 41108).

Draft EISs

ERP No. D-FHW-E40689-TN, Rating EC2, TN Connector Route Construction, TN-6/US 31 to I-65, Right-of-Way Acquisition, (Possible 404 Permit), TN. Summary: EPA is concerned about the potential secondary impacts of the proposed connector on new alignment and the Federal Highway Administration's consideration of one or more additional feasible build alternatives. Discussion in these areas, additional no-build noise and air quality analyses, and potential karst geology impact information are requested.

Final EISs

ERP No. F-AFS-J55134-WY, Medicine Bow Nat'l Forest and Thunder Basin Nat'l Grassland, Land and Resource Mgmt. Plan, WY. Summary: EPA identified several unresolved concerns regarding: protection of water quality

standards and ground water; watershed planning; cumulative impacts assessment and tracking; management of riparian areas and wetlands, mineral development, and vegetation; pesticide applications; and monitoring. Additionally, EPA has recommended inter-agency consultation with EPA to resolve the concerns.

ERP No. F-COE-C36055-PR, Rio Puerto Nuevo Basin Flood Control Plan, PR. Summary: Based on the review of the Final EIS, EPA still has concerns about the loss of mangrove and mudflat areas without adequate compensation, and potential groundwater contamination from the upland disposal sites. EPA indicated that the bioassay data should be updated, if required. EPA requested that its concerns be addressed during the design phase, and that EPA be provided the opportunity for further review.

ERP No. F-COE-D36095-WV, Island Creek Basin Flood Control Plan, Guyandotte R., WV. Summary: EPA concurred with the final EIS and has no objection to the proposed alternative.

ERP No. F-COE-G36129-AR, L'Angeville River and Tributaries Flood Control Plan, AR. Summary: EPA has environmental concerns about the potential loss of forested bottomland hardwoods and questions regarding the reduction of adverse impacts that will depend on actions by individuals rather than the Corps of Engineers (COE). Mitigation by purchasing upland habitat is not considered sufficient. Specific permit conditions and COE surveillance are necessary for an acceptable project.

ERP No. F-FHW-G40038-TX, Beltway 8 Construction, US 59 N. to I-10 East, Right-of-Way Acquisition, TX. Summary: EPA expressed no objections to the proposed action as described.

Amended Notices

The following reviews were completed during this week of December 30, 1985 through January 3, 1986 and should have appeared in the FR Notice published on January 17, 1986.

ERP No. D-FHW-D40211-MD, Rating EC2, Calvert Road Closure, US-1 to MD-201, Construction of Metro Line, Right-of-Way Acquisition, MD. Summary: EPA expressed concern about the impacts and mitigation with regard to drainage design, floodplains, sediment control, and wetlands. It was recommended that the final EIS include an analysis of these issues in greater depth.

ERP No. D-FHW-D40213-DE, Rating EC2, US 13 Relief Rt. Construction, DE-7 to US 113/US 13, 404 Permit, DE. Summary: EPA identified a number of deficiencies in the document, including

the adequacy of the mitigation proposals, and the need for further detailed documentation of impacts.

Dated: January 21, 1986.

Allan Hirsch,

Director, Office of Federal Activities.

[FR Doc. 86-1591 Filed 1-23-86; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-82024; FRL-2959-2]

Comprehensive Assessment Information Rule; Notice of CAIR Form Pretest

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of CAIR form pretest.

SUMMARY: EPA is developing a model rule under section 8(a) of the Toxic Substances Control Act (TSCA) called the Comprehensive Assessment Information Rule (CAIR). The rule will establish uniform reporting and recordkeeping requirements, including a reporting form containing a list of questions from which specific information requests would be assembled on a chemical-by-chemical basis. EPA will be conducting a pretest of the form during the comment period for the proposed rule (Spring 1986). Persons wishing to participate in this pretest should notify EPA's contractor no later than February 24, 1986.

DATE: Persons requesting additional information should contact the EPA TSCA Assistance Office on or before February 24, 1986.

FOR FURTHER INFORMATION CONTACT: Edward A. Klein, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. E-543, 401 M St., SW., Washington, DC 20460, Toll free: (800-424-9065). In Washington, DC: (554-1404). Outside the USA: (Operator-202-554-1404).

SUPPLEMENTARY INFORMATION: EPA is conducting this pretest to determine potential problems with the form and provide EPA with an opportunity to improve the form before the rule is promulgated. In order to develop a pretest which will be representative of the industry as a whole, EPA is interested in having the widest variety of companies participate. EPA's contractor, Science Applications International Corporation (SAIC) will be conducting the pretest and any data received during the pretest will not be revealed to EPA or the public. EPA encourages all companies interested in participating to contact SAIC. However, the selection of companies will be made

at random by SAIC, so EPA cannot guarantee that all volunteers will be able to participate in the pretest due to limitations on the number of total participants. Send requests in writing or call SAIC at the following location: Ms. Carolyn Bosserman, Science Applications International Corporation, 8400 Westpark Drive, McLean, VA 22102, (703-821-4812).

Those persons interested in participating in this pretest should send the following information with their request:

1. Company name and mailing address.
2. Contact person and telephone number.
3. Whether the company manufactures, processes or imports chemicals.
4. Relative size of company (e.g., Is it a small, medium or large business?).
5. Level of automation of files (e.g., How long have records been computerized?).

SAIC will be accepting responses to this notice until February 24, 1986.

Dated: January 14, 1986.

Don R. Clay,

Director, Office of Toxic Substances.

[FR Doc. 86-1557 Filed 1-23-86; 8:45 am]

BILLING CODE 6560-50-M

[OW-5-FRL 2959-1]

Region V; Proposed Revocation of Certain Safe Drinking Water Act Variances Issued by the Illinois Pollution Control Board; Public Hearings

AGENCY: Environmental Protection Agency.

ACTION: Notice of Public Hearing and Proposed Revocation of Certain Safe Drinking Water Act Variances.

SUMMARY: U.S. EPA is proposing to revoke several variances to the National Interim Primary Drinking Water Regulations issued by the Illinois Pollution Control Board. The Illinois Pollution Control Board issued several variances which do not meet Federal requirements, and U.S. EPA has, therefore, proposed revocation of these variances. This notice establishes a public hearing at which U.S. EPA will take comments on the proposed revocations.

DATES: April 1, 1986, and April 2, 1986 from 10:00 a.m. to 4:30 p.m. both days.

ADDRESS: The Executive House of the Ramada Hotel, The Illinois Room, 71 East Wacker Drive, Chicago, Illinois.

FOR FURTHER INFORMATION CONTACT: Write to Branch Chief, Safe Drinking

Water Branch, United States Environmental Protection Agency, Mail Code 5WD, 230 South Dearborn Street, Chicago, Illinois 60604, or call Joseph F. Harrison or Steven J. Lemon, at (312) 353-2151.

SUPPLEMENTARY INFORMATION:

I. Background

In order to protect the public from health hazards associated with contaminated drinking water, Congress passed the Safe Drinking Water Act of 1974 ("the Act"). The goal of the Act is to assure that drinking water meets certain water quality standards, and that it is tested regularly for the various types of contaminants.

As required by the legislation, U.S. EPA established National Interim Primary Drinking Water Regulations in 1975. The regulations set limits on concentrations of bacteriological, chemical, and physical contaminants known to be dangerous to public health. These concentration limits are known as maximum contaminant levels ("MCLs"). U.S. EPA has also identified treatment technology designed to achieve these MCLs.

The goal of the Act is to assure the provision of safe drinking water by combining the efforts of Federal and State authorities. Under the Act, U.S. EPA has the responsibility of establishing regulations defining safe drinking water quality for public water systems, and of assuring that all public water systems provide water meeting this definition. States which adopt regulations at least as stringent as those established by U.S. EPA, and adopt appropriate administrative and enforcement procedures, are delegated primary enforcement responsibility, or "primacy" for administration of the program.

U.S. EPA supports the efforts of primacy States with technical assistance, with financial assistance in the form of program grants, and by review of various actions taken by the States. Where States do not assume primacy, U.S. EPA must administer the regulations directly.

In August of 1979, the Illinois Environmental Protection Agency ("IEPA") was granted primary enforcement responsibility for public water systems in the Act. 44 FR 50649 (August 29, 1979). This determination was, in part, based upon an understanding that the Illinois Pollution Control Board ("the Board") will follow the Federal variance and exemption regulations set forth at 40 CFR Part 142, Subparts E and F. *Id.* at 50649.

Under 40 CFR Part 142.22, the Regional Administrator, as delegated by

the Administrator, has the authority to review the variances granted by the States with primary enforcement responsibility. Upon review of the variances granted by the Board, the Regional Administrator found that the State of Illinois has, in a substantial number of instances, abused its discretion in granting variances from the National Primary Drinking Water Regulations under section 1415(a) of the Act, 42 U.S.C. 300g-4.

U.S. EPA is proposing revocation of the variances listed in Section III of this notice. A letter setting forth the notice and findings by the Regional Administrator and the proposed revocation of the variances was sent to IEPA on December 27, 1985. A copy of this letter is available by writing to the Branch Chief of the Safe Drinking Water Branch at the address listed above.

II. Public Hearings

The public hearing will be conducted before a public hearing officer designated by the Regional Administrator. The hearing officer shall have the authority to call witnesses, receive oral and written testimony, and take any other action to ensure a fair and efficient hearing. A court reporter will record all statements and comments given during the 2 day hearing.

The hearing officer will take public comments on those variances numbered 1 through 13 on April 1, 1986, and public comments will be taken on those variances numbered 14 through 21 on April 2, 1986.

Any member of the public may file a written statement with the hearing officer before, during, or within 30 days after the hearing. These written statements may be sent to the Branch Chief at the address listed above. To ensure a fair and efficient hearing, the hearing officer may limit the duration of public comments.

Public attendance, depending upon available space, may be limited to those persons who have notified the Branch Chief of the Safe Drinking Water Branch, in writing, by March 18, 1986. Persons may notify the Branch Chief of their attendance by writing to the address listed above.

Following the conclusion of the 2 day public hearing, the hearing officer shall forward the record of the hearing to the Regional Administrator. Within 180 days after IEPA is notified of the proposed revocation and of the public hearing, the Regional Administrator shall either (1) rescind the finding for which the notice was given and promptly notify IEPA, or (2) promulgate with any modifications, as appropriate, the revocations

proposed in the notice and promptly notify IEPA of such action.

III. Findings

On May 3, 1985, U.S. EPA informed IEPA that certain variances granted by the Board are inconsistent with Federal regulations as outlined in section 1415 of the Safe Drinking Water Act, 42 U.S.C. 300g-4 and 40 CFR Part 142, Subpart E. Neither IEPA nor the Board has taken any corrective action, however, and the Board continues to issue variances using requirements which are less stringent than those required by Federal law.

Pursuant to 40 CFR Part 142.23, U.S. EPA notified IEPA in the letter of December 27, 1985, of (1) each public water system in Illinois with an improperly issued variance; (2) the reasons each variance is improper; and (3) U.S. EPA's proposed revocation of each improper variance.

The Regional Administrator has determined that the following public water supply variances issued by the Board do not meet Federal requirements, and therefore, has proposed that they be revoked:

1. Abingdon (PCB 84-184)
2. Blake (PCB 81-137)
3. Central Illinois Utility (PCB 80-234)
4. Hanna City (PCB 80-206)
5. Hanna City (PCB 80-206, 3/5/81)
6. Henderson (PCB 81-84)
7. Kirkwood (PCB 81-111)
8. Little Swan Lake (PCB 83-74)
9. Oneida (PCB 81-154)
10. Parkersburg (PCB 81-195)
11. Rio (PCB 81-146)
12. Trivoli (PCB 80-208)
13. Wataga (PCB 85-20)
14. Aurora (PCB 85-51)
15. Batavia (PCB 85-11)
16. Burlington (PCB 80-203)
17. Crystal Lake (PCB 84-2)
18. Hampshire (PCB 80-165)
19. Hampshire (PCB 85-114)
20. Hanover Park (PCB 85-22)
21. Knoxville (PCB 84-70)

The above variances failed to meet the initial requirement for the issuance of a variance as detailed in section 1415(a)(1)(A) of the Safe Drinking Water Act, which requires that a State with primary enforcement responsibility may grant one or more variances to a public water system if the system:

... because of characteristics of the raw water sources which are reasonably available to the systems, cannot meet the requirements respecting the maximum contaminant levels of such drinking water regulations despite the application of the best technology, treatment techniques, or other means, which the Administrator finds are generally available (taking costs into consideration).

These variance recipients have neither installed nor agreed to install by a time

certain, the treatment technology to remove the contaminants for which the variances were granted.

These variances also failed to meet the following requirements of a variance, as outlined in 40 CFR Part 142, Subpart E:

(1) The variances did not contain expeditious compliance schedules prescribed by the State within 1 year of the date of the variance. These compliance schedules must include implementation of interim control measures and must specify interim treatment techniques, methods and equipment, and dates by which steps toward meeting interim control measures are to be met;¹

(2) The variances did not include dates for increments of progress, implementation of control measures and final compliance;

(3) The variances did not include the date by which arrangements will be made for a new water source, or improvements in the existing source.

(4) The variances did not include the date of initiation of the alternative water source, or improvements in the existing source.

(5) The State failed to document that the granting of a variance would not result in an unreasonable risk to health.

(6) U.S. EPA has received no evidence from IEPA that the variance request included the following requirements: relevant analytical results, a proposed expeditious compliance schedule; a discussion of best available technology; economic and legal factors; a plan for emergency provision of safe water; a plan for interim control measures; and a statement that the system will perform monitoring requirements.

All of the above-mentioned variances must be revoked or voided by the State of Illinois. The variances must be replaced with enforceable compliance schedules embodied in a State judicial or administrative order, as appropriate to the violator. Each order must require the following: (1) An expeditious and enforceable schedule for implementation of control measures that will result in final compliance with the National Interim Primary Drinking Water Regulations under the Safe Drinking Water Act; (2) Enforceable implementation milestones sufficient in number to guarantee expeditious final compliance; and (3) The implementation of specific interim control measures to

¹ The Aurora and Wataga variances contain conditions that could be interpreted as requiring compliance by a date certain. The schedules, however, are inadequate because of too few increments of progress and vaguely worded directives for final compliance.

reduce contaminants to the greatest extent possible pending final compliance. Minimum increments of progress are: the submittal of plans to IEPA; the beginning of construction; the expeditious completion of construction; and the achievement and demonstration of final compliance with the MCL and specified reporting and monitoring requirements.

Each schedule, as well as the increments of progress and interim contaminant reduction measures, must be approved by U.S. EPA. The State must, in each enforcement action, consider seeking other appropriate legal remedies.

U.S. EPA will consider the withdrawal of this action only if IEPA takes corrective action in accordance with Federal guidance and regulations, and with State enforcement procedures² prior to the public hearing.

Dated: January 6, 1986.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 86-1439 Filed 1-23-86; 8:45 am]

BILLING CODE 6560-52-M

[OW-TO-FRL 2958-9]

State of Oregon Drinking Water Program; Determination of Primary Enforcement Responsibility

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Determination.

SUMMARY: The State of Oregon has submitted an application for primary enforcement authority over public water systems in the State to implement the Safe Drinking Water Act (SDWA). EPA has determined that the State meets the requirements for primary enforcement responsibility. This determination becomes effective February 24, 1986, unless a hearing is requested and held.

DATES: Requests for a hearing must be received by February 17, 1986. EPA will determine by February 19, 1986 whether to hold a hearing. If a hearing is held it will be held at 7:00 p.m. at the address

² Thirteen of the above-mentioned improper variances were granted to public water systems which are in violation of the maximum contaminant level for fluoride. U.S. EPA recognizes the ambiguity surrounding the fluoride standard at this time. A November 14, 1985 Federal Register notice proposed a revised maximum contaminant level of 4 milligrams/liter (mg/l). The present fluoride level is 1.5 through 2.4 mg/l. (This range is based upon average maximum daily temperature.) Assuming that the proposed level will be promulgated as a final rule at 4 mg/l, only the Parkersburg public water system will be in violation of the fluoride level. This fact will be considered, along with other evidence, at the public hearing.

listed below on February 24, 1986. Written comments must be received by EPA by the close of business on February 24, 1986.

ADDRESSES:

If a hearing is held it will be held at: 7:00 p.m.—EPA Conference Room, 2nd Floor Yeon Building, 522 Southwest Fifth Avenue, Portland, OR 97204
Written comments must be submitted to: Mr. Richard R. Thiel, Chief, Drinking Water Programs Branch, Mail Stop 409, U.S. EPA—Region 10, 1200 Sixth Avenue, Seattle, WA 98101 (206) 442-4092

FOR FURTHER INFORMATION CONTACT:

Mr. Richard R. Thiel, Chief, Drinking Water Programs Branch, Mail Stop 409, U.S. EPA—Region 10, 1200 Sixth Avenue, Seattle, WA 98101 (206) 442-4092

SUPPLEMENTARY INFORMATION: Public notice is hereby given, in accordance with the provisions of section 1413 of the SDWA (Pub. L. 93-523, December 16, 1974, 88 Stat. 1661; 42 U.S.C. 300f et seq., as amended) and 40 CFR 142.10, the National Interim Primary Drinking Water Regulations, that the Health Division of the Oregon Department of Human Resources has submitted an application requesting primary enforcement responsibility for public drinking water systems under the Safe Drinking Water Act (SDWA) to the U.S. Environmental Protection Agency (EPA) Region 10 office for concurrence and approval.

Ernesta B. Barnes, Regional Administrator for EPA Region 10, has approved this application from the State of Oregon for primary enforcement responsibility. This determination is based upon a thorough evaluation of Oregon's public water system supervision program, which meets the requirements stated in 40 CFR 142.10, and shall become effective on February 24, 1986, unless a hearing is requested and held. The State has adopted and implemented:

- Primary drinking water regulations no less stringent than the national interim primary drinking water regulations;
- Procedures to maintain an inventory of public water system facilities;
- A systematic program for conducting sanitary surveys of public water systems;
- A program for certifying laboratories which conduct analytical measurements of drinking water contaminants;
- Laboratory facilities certified by EPA for conducting all required analytical measurements;

- A program capability to assure proper design and construction of new or substantially modified public water system facilities;
- Authority to compel compliance with the State's drinking water standards;
- Authority to sue in courts to enjoin continuing violations;
- Authority for right of entry and inspection of public water systems;
- Authority to require public water systems to keep appropriate records and make appropriate reports to the State;
- Authority to require notification of the public regarding regulatory violations; or, when circumstances make a more immediate notice appropriate, to directly provide notice as needed to protect public health;
- Authority to assess civil or criminal penalties for violation of the State's drinking water regulations or public notification requirements, including multiple penalties for continuing violations;
- Recordkeeping and reporting of its activities pursuant to 40 CFR 142.14 and 142.15 of the Federal regulations;
- A system for issuing variances, and
- A plan for the provision of safe drinking water under emergency circumstances.

Oregon's drinking water program, as presented and evaluated against these criteria, is fully capable of conducting all activities required to implement primary enforcement responsibility. During the final review of Oregon's application, three issues were identified that required resolution before deciding that Oregon's regulations are at least as stringent as the National Interim Primary Drinking Water Regulations. These issues are as follows:

1. The Oregon Drinking Water Quality Act (ODWQA) appears to provide that a permit (which is analogous to an exemption under SDWA section 1416) is to be issued when certain criteria are met. (ORS section 448-145). Under the SDWA, exemptions were available to excuse non-compliance with primary drinking water regulations but were to require compliance by January 1, 1984. Therefore, exemptions may not now be issued under the Safe Drinking Water Act. Oregon's permits, if issued, would excuse non-compliance inconsistent with the Safe Drinking Water Act.

Oregon regulations were recently amended to authorize the issuance of permits, if consistent with the Safe Drinking Water Act. (See new OAR section 333-61-045(5).) EPA believes that this regulation and the underlying State statutes and accompanying legislative history provide the State with

some discretion not to issue permits, particularly where the permits would allow non-compliance beyond the limits authorized by the SDWA. The Administrator of the Health Division has stated that the Division will not issue permits until authorized by the SDWA. Therefore, State law is not less stringent.

2. It appeared that Oregon regulations are less stringent than EPA regulations by excluding from coverage those water systems that provide treatment not designed to comply with maximum contaminant levels (MCLs). However, the Administrator of the Health Division has stated that there are no systems in Oregon which fall under the coverage of the SDWA but would be excluded by this provision of Oregon's regulations. Therefore, the State program is not less stringent than EPA's program.

3. Another concern related to requirements in the Oregon rules for total trihalomethane (TTHM) sampling. Oregon regulations calculate compliance for TTHM by the number of samples per water source. EPA regulations calculate compliance by the number of samples per treatment plant. If a system had more water sources than treatment plants, Oregon regulations would show a system in compliance when it might be out of compliance under EPA regulations. However, the State has informed EPA that no systems have more water sources than treatment plants. Therefore, the State program is not less stringent than EPA's regulations.

If the status quo changes in Oregon and systems are excluded or if compliance is calculated in a less stringent manner, the State program will have to be revised to remain equivalent.

If significant public interest is expressed, a public hearing will be held to receive comments on the application. If the level of interest is judge to be sufficient, a public hearing will be held on February 24, 1986, at 7 p.m. at the EPA Conference Room, 2nd Floor, Yeon Building, 522 Southwest Fifth Avenue, Portland, OR 97204. The Oregon State Health Division will be represented at the hearing. EPA reserves the right to cancel the public hearing if sufficient public interest is not communicated to EPA, in writing, by February 17, 1986. EPA will determine by February 19, 1986 whether a public hearing will be held. If EPA decides not to hold a hearing, parties who had contacted EPA will be notified. All written comments on Oregon's final application for primary enforcement responsibility under the SDWA must be received by EPA by the close of business on February 24, 1986.

Written comments on this determination and the application, and written communication expressing interest in holding a public hearing on the Oregon application, must be sent to Mr. Richard R. Thiel at the address listed at the front of this notice.

A request for a public hearing shall include the following information:

1. The name, address, and telephone number of the individual(s), organization(s), or other entity requesting a hearing.
2. A brief statement of the requesting person's interest in the Regional Administrator's determination and a brief description of information that the requesting person intends to submit at such a hearing.
3. The signature of the individual(s) making the request; or, if the request is made on behalf of an organization(s) or other entity, the signature(s) of a responsible official(s) of the organization(s) or other entity.

Frivolous or insubstantial requests for a hearing may be denied by the Regional Administrator; however, if a substantial request for a public hearing is made by February 17, 1986, a public hearing will be held. If no timely and appropriate request for a hearing is received and the Regional Administrator does not elect to hold a hearing on her own motion, a hearing will not be held and parties who had contacted EPA will be notified.

If a hearing is held, the Regional Administrator will review the hearing record and will issue an order affirming or rescinding her original determination. If such an order affirms the determination, primary enforcement responsibility will become effective as of the date of the order. If a hearing is not held, the determination will become effective 30 days from the date of this notice.

A complete copy of Oregon's application for primary enforcement responsibility is available for public inspection during normal business hours at the office of the Regional Administrator and at the Oregon State Health Division, Drinking Water Section, Sixth Floor, 1400 Southwest Fifth Avenue, Portland, Oregon 97201.

Dated: January 10, 1986.

Ernesta B. Barnes,

Regional Administrator, Region 10.

[FR Doc. 86-1438 Filed 1-23-86; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Department of Health and Human Services (HHS) publishes a list of information collection packages it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). The following are those packages submitted to OMB since the last list was published on January 17, 1986.

Office of the Secretary

Subject: 45 CFR 95.624 State Requests for HHS Approval of Federal Financial Participation in the Cost of ADP Systems, Equipment and Services—Emergency Situations—NEW

Respondents: States and Local Governments

OMB Desk Officer: Fay S. Iudicello

Office of Human Development Services

Subject: Program Performance Standards Information Collection—Centers for Runaway and Homeless Youth—Existing Collection

Respondents: Non-profit Institutions

Subject: Program Performance Standards—Runaway and Homeless Youth Centers Self-Assessment Instrument—Reinstatement—(0980-0037)

Respondents: State or Local Governments

Subject: Individualized Habilitation Plan—Reinstatement—(0980-0139)

Respondents: State or Local Governments

OMB Desk Officer: Fay S. Iudicello

Public Health Service

National Institutes of Health

Subject: Clinical, Laboratory and Epidemiologic Characterization of Individuals at High Risk of Cancer—Extension (0925-0194)

Respondents: Individuals or Households

Food and Drug Administration

Subject: Registration of Cosmetic Product Establishment Extension—(0910-0027)

Respondents: Businesses or Other For-Profit Institutions

OMB Desk Officer: Bruce Artim

Social Security Administration

Subject: Notification of Projected Completion Date—Existing Collection
Respondents: State or local Governments

Subject: Statement of Income and Resources Extension—(0960-0124)
Respondents: Individuals or Households
OMB Desk Officer: Judy A. McIntosh

Copies of the above information collection clearance packages can be obtained by calling the HHS Reports Clearance Officer on 202-245-6511.

Written comments and recommendations for the proposed information collections should be sent directly to the appropriate OMB Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, Room 3208, Washington, DC 20503, Attn: (name of OMB Desk Officer).

Dated: January 17, 1986.

Wallace O. Keene,

Acting Deputy Assistant Secretary for Management Analysis and Systems.

[FR Doc. 88-1545 Filed 1-23-86; 8:45 am]

BILLING CODE 4150-04-M

Centers for Disease Control

Mine Health Research Advisory Committee; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), the Centers for Disease Control (CDC) announces the following National Institute for Occupational Safety and Health (NIOSH) committee meeting:

Name: Mine Health Research Advisory Committee (MHRAC).

Date: February 3-4, 1986.

Place: Emory Room, Stafford Emory Inn, 1641 Clifton Road, NE., Atlanta, Georgia 30333.

Time and Type of Meeting:

Open 1:00 p.m. to 4:30 p.m.—February 3.

Closed 4:30 p.m. to 5:00 p.m.—February 3.

Open 8:30 a.m. to 4:00 p.m.—February 4.

Contact Person: Robert E. Glenn, Executive Secretary, MHRAC, NIOSH, CDC, 944 Chestnut Ridge Road, Morgantown, West Virginia 26505, Telephone: Commercial: (304) 291-4474, FTS: 923-4474.

Purpose: The Committee is charged with advising the Secretary of Health and Human Services on matters involving or relating to mine health research, including grants and contracts for such research.

Agenda: Agenda items for the meeting will include announcements; consideration of minutes of the previous meeting and future meeting dates; discussion of the MHRAC subgroup's report of the x-ray surveillance program for underground coal miners; the

NIOSH mining program; Bureau of Mines musculoskeletal and noise research program; MSHA's organizational structure and function; and worker notification.

Beginning at 4:30 p.m. through 5:00 p.m., February 3, the Committee will be performing the final review of the mine health research grant applications for Federal assistance. This portion of the meeting will not be open to the public in accordance with the provisions set forth in Section 552b(c)(6), Title 5 US Code, and the Determination of the Director, Centers for Disease Control, pursuant to Public Law 92-463.

Agenda items are subject to change as priorities dictate.

The portion of the meeting so indicated is open to the public for observation and participation. Anyone wishing to make an oral presentation should notify the contact person listed above as soon as possible before the meeting. The request should state the amount of time desired, the capacity in which the person will appear, and a brief outline of the presentation. Oral presentations will be scheduled at the discretion of the Chairperson and as time permits. Anyone wishing to have a question answered by a scheduled speaker during the meeting should submit the question in writing, along with his or her name and affiliation, through the Executive Secretary to the Chairperson. At the discretion of the Chairperson and as time permits, appropriate questions will be asked of the speaker.

The requirement for 15 days advance meeting notice was not met because the meeting was changed from February 10-11, 1986.

A roster of members and other relevant information regarding the meeting may be obtained from the contact person listed above.

Dated: January 17, 1986.

Elvin Hilyer,

Associate Director for Policy Coordination,
Centers for Disease Control.

[FR Doc. 86-1757 Filed 1-23-86; 10:53 am]

BILLING CODE 4160-19-M

Food and Drug Administration

[Docket No. 85M-0579]

Cardiac Pacemakers, Inc.; Premarket Approval of Delta® Model 925 Pulse Generator, Model 2040 Desktop Programmer With the Model 2041 Program Module, and Model 6564 Telemetry Wand

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the applications submitted by Cardiac Pacemakers, Inc., St. Paul, MN, for premarket approval, under the Medical Device Amendments of 1976, of the DELTA® Model 925 Pulse Generator,

Model 2040 Desktop Programmer with the Model 2041 Program Module, and Model 6564 Telemetry Wand. After reviewing the recommendation of the Circulatory System Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant of the approval of the application.

DATE: Petitions for administrative review by February 24, 1986.

ADDRESS: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT:

Donald F. Dahms, Center for Devices and Radiological Health (HFZ-450), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7594.

SUPPLEMENTARY INFORMATION: On December 21, 1984, Cardiac Pacemakers, Inc., St. Paul, MN 55164-0079, submitted to CDRH an application for premarket approval of the DELTA® Model 925 Pulse Generator, Model 2040 Programmer with the Model 2041 Program Module, and Model 6564 Telemetry Wand. The device is indicated for use as a cardiac pacing system. On July 26, 1985, the Circulatory System Devices Panel, an FDA advisory committee, reviewed and recommended approval of the application. On November 27, 1985, CDRH approved the application by a letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

A copy of all approved labeling is available for public inspection at CDRH—contact Donald F. Dahms (HFZ-450), address above.

Opportunity for Administrative Review

Section 515(d)(3) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under Part 12 [21 CFR Part 12] of FDA's administrative

practices and procedures regulations or a review of the application and of CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the Federal Register. If FDA grants the petition, the notice will state the issue to be reviewed, the form of the review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before February 24, 1986, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h), 90 Stat. 554-555, 571 [21 U.S.C. 360e(d), 360j(h)]) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: January 15, 1986.

John G. Villiforth, Center for Devices and Radiological Health.

Director,

[FR Doc. 86-1487 Filed 1-23-86; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 86M-001]

University Optical Products, Co.; Premarket Approval of the Boston Lens® II (Itafocon A) ALGES® Bifocal Contact Lens (Clear and Tinted)

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by University Optical Products Co., Largo, FL, for premarket approval, under the Medical Device Amendments of 1976, of

the BOSTON LENS® II (itafocon A) ALGES® Bifocal Contact Lens, after reviewing the recommendation of the Ophthalmic Devices Panel, FDA's Center of Devices and Radiological Health (CDRH) notified the applicant of the approval of the application.

DATE: Petition for administrative review by February 24, 1986.

ADDRESS: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Richard E. Lippman, Center for Devices and Radiological Health (HFZ-460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7940.

SUPPLEMENTARY INFORMATION: On February 15, 1985, University Optical Products Co., Largo, FL 33543, submitted to CDRH an application for premarket approval of the BOSTON LENS® II (itafocon A) ALGES® Bifocal Contact Lens (clear and tinted). The spherical BOSTON LENS® II (itafocon A) ALGES® Bifocal Contact Lens is indicated for daily wear for the correction of visual acuity in not-aphakic persons with nondiseased eyes that are myopic presbyopic or hyperopic presbyopic and for the correction of corneal astigmatism of 4.00 diopters (D) or less that does not interfere with visual acuity. The lens ranges in powers from -10.00 D to +10.00 D with add powers ranging from 0.25 D to 5.00 D. The tinted version of the contact lens contains the color additive D&C Green No. 6 in accordance with the color additive listing provisions of 21 CFR 74.3206. The clear and tinted lenses are to be disinfected using the chemical lens care system specified in the approved labeling.

On October 17, 1985, the Ophthalmic Devices Panel, and FDA advisory committee, reviewed and recommended approval of the application. On December 10, 1985 CDRH approved the application by a letter to the applicant from the director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file with the Dockets Management Branch (address above) and is available from that office upon written request. Request should be identified with the name of the device and the docket number found in brackets in the heading of this document.

A copy of all approved labeling is available for public inspection at

CDRH—contact Richard E. Lippman (HFZ-460), address above.

The labeling of the BOSTON LENS® II (itafocon A) ALGES® Biofocal Contact Lens (clear and tinted) states that the lens is to be used only with certain solutions for disinfection and other purposes. The restrictive labeling informs new users that they must avoid using certain products, such as solutions intended for use with hard contact lenses only. The restrictive labeling needs to be updated periodically, however, to refer to new lens solutions that CDRH approves for use with approved contact lenses made of polymers other than polymethylmethacrylate, to comply with the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 301 et seq.), and regulations thereunder, and with the Federal Trade Commission Act (15 U.S.C. 41-58), as amended. Accordingly, whenever CDRH publishes a notice in the *Federal Register* of the approval of a new solution for use with an approved lens, the applicant shall correct its labeling to refer to the new solution at the next printing or at any other time CDRH prescribes by letter to the applicant.

Opportunity for Administrative Review

Section 515(d)(3) of the act (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under Part 12 (21 CFR Part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the *Federal Register*. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before February 24, 1986, file with the Dockets Management Branch (address above) two copies of each petition and

supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h), 90 Stat. 554-555, 571 (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner for Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: January 15, 1986.

John C. Villforth,

Director, Center for Devices and Radiological Health

[FR Doc. 86-1488 Filed 1-23-86; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 85N-0514]

Clinical Studies of Safety and Effectiveness of Orphan Products; Availability of Funds; Request for Applications

Correction

In FR Doc. 86-526 beginning on page 1299 in the issue of Friday, January 10, 1986, make the following corrections:

On page 1301, first column, VI. **Submission Requirements**, second complete paragraph, third line, "of" should read "to"; and in the second column, sixth line, "address" should appear between "the" and "section".

BILLING CODE 1505-01-M

National Institutes of Health

National Cancer Institute; Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Cancer Therapeutics Program Project Review Committee, National Cancer Institute, National Institutes of Health, April 21-22, 1986, Building 31C, Conference Room 6, Bethesda, Maryland 20892. This meeting will be open to the public on April 21, from 8:30 a.m. to 9:00 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 April 21, from approximately 9:00 a.m. until recess, and on April 22, from 8:30 a.m. until adjournment for the review, discussion

and evaluation of grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mrs. Winfred Lumsden, the Committee Management Officer, National Cancer Institute, Building 31, Room 10A06, National Institutes of Health, Bethesda, Maryland 20892 (301)/496-5708 will provide summaries of the meeting and rosters of committee members, upon request.

Dr. Suzanne E. Fisher, Executive Secretary, Cancer Therapeutics Program Project Review Committee, National Cancer Institute, Westwood Building, Room 834, National Institutes of Health, Bethesda, Maryland 20892 (301)/496-2330 will furnish substantive program information.

Dated: January 14, 1986.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 86-1531 Filed 1-23-86; 8:45 am]

BILLING CODE 4140-01-M

National Cancer Institute; Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Cancer Research Manpower Review Committee, National Cancer Institute, National Institutes of Health, February 20-21, 1986, Crowne Plaza, 1750 Rockville Pike, Rockville, Maryland 20814. This meeting will be open to the public on February 20, from 8:30 a.m. to 9:00 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 February 20, from approximately 9:00 a.m. until recess, and on February 21, from 8:30 a.m. until adjournment for the review, discussion and evaluation of grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, 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 20892 (301)/496-5708 will provide summaries of the meeting and rosters of committee members, upon request.

Ms. Cynthia L. Sewell, Executive Secretary, Cancer Research Manpower Review Committee, National Cancer Institute, Westwood Building, Room 838, National Institutes of Health, Bethesda, Maryland 20892 (301)/496-7721 will furnish substantive program information.

Dated: January 14, 1986.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 86-1537 Filed 1-23-86; 8:45 am]

BILLING CODE 4140-01-M

National Cancer Institute; Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Clinical Cancer Program Project Review Committee, National Cancer Institute, National Institutes of Health, March 27-28, 1986, Building 31A, Conference Room 4, Bethesda, Maryland 20892. This meeting will be open to the public on March 27 from 8:30 a.m. to 9:00 a.m. to review administrative details. Attendance by the public will be limited to space available.

In accordance with provisions set forth in section 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 March 27, from approximately 9:00 a.m. to recess; and on March 28, from 8:30 a.m. to adjournment, for the review, discussion, and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, 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 20892 (301)/496-5708 will provide summaries of the meeting and rosters of committee members, upon request.

Dr. Carolyn Strete, Acting Executive Secretary, Clinical Cancer Program Project Review Committee, National Cancer Institute, Westwood Building, Room 822, National Institutes of Health, Bethesda, Maryland 20892 (301)/496-2378 will furnish substantive program information.

Dated: January 14, 1986.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 86-1539 Filed 1-23-86; 8:45 am]

BILLING CODE 4140-01-M

National Cancer Institute; Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Cancer Preclinical Program Project Review Committee, National Cancer Institute, National Institutes of Health, March 27-28, 1986, Bethesda Marriott Hotel, 5151 Pooks Hill Road, Bethesda, Maryland 20814. This meeting will be open to the public on March 27, from 8:30 a.m. to 9:15 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 March 27 from approximately 9:15 a.m. to recess and on March 28 from 8:30 a.m. to adjournment, for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, 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 20892 (301)/496-5708 will provide summaries of the meeting and rosters of committee members, upon request.

Dr. Edwin M. Bartos, Executive Secretary, Cancer Preclinical Program Project Review Committee, National Cancer Institute, Westwood Building, Room 836, National Institutes of Health, Bethesda, Maryland 20892 (301)/496-7565 will furnish substantive program information.

Dated: January 14, 1986.

Betty J. Beveridge

Committee Management Officer, NIH.

[FR Doc. 86-1540 Filed 1-23-86; 8:45 am]

BILLING CODE 4140-01-M

National Cancer Institute; Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Cancer Clinical Investigation Review

Committee, National Cancer Institute National Institutes of Health, March 3-5, 1986, Building 31C, Conference Room 10, Bethesda, Maryland 20892. This meeting will be open to the public on March 3, from 8:30 a.m. to 9:00 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 March 3, from approximately 9:00 a.m. until recess, March 4, from 8:30 a.m. until recess, and March 5, from 8:30 a.m. to adjournment for the review, discussion and evaluation of cooperative agreement applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, 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 20892 (301/496-5708) will provide summaries of the meeting and rosters of committee members, upon request.

Dr. Richard Hsieh, Executive Secretary, Cancer Clinical Investigation Review Committee, National Cancer Institute, Westwood Building, Room 819, National Institutes of Health, Bethesda, Maryland 20892 (301/496-7481) will furnish substantive program information.

Dated: January 14, 1986.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 86-1542 Filed 1-23-86; 8:45 am]

BILLING CODE 4140-01-M

National Heart, Lung, and Blood Institute; Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Clinical Trials Review Committee, National Heart, Lung, and Blood Institute, February 23-27, 1986, at the Holiday Inn Crowne Plaza, 1750 Rockville Pike, Rockville, Maryland 20852.

This meeting will be open to the public on February 23, 1986, from 7:00 p.m. to approximately 9:00 p.m. for orientation of new members, to discuss administrative details and to hear a report concerning the current status of

the National Heart, Lung, and Blood Institute. Attendance by the public is limited to space available.

In accordance with the 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 February 23 from approximately 9:00 p.m. to recess, and from 8:00 a.m. on February 24 to adjournment on February 27, for the review, discussion, and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with these applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. Therefore, this meeting is concerned with matters exempt from mandatory disclosure under section 552b(c)(4) and 552b(c)(6) of Title 5, U.S. Code.

Ms. Terry Bellicha, Chief, Public Inquiries Reports Branch, National Heart, Lung, and Blood Institute, Building 31, Room 4A-21, National Institutes of Health, Bethesda, Maryland 20892, phone (301) 496-4236, will provide a summary of the meeting and a roster of the Committee members.

Dr. Norman S. Braveman, Contracts, Clinical Trials and Training Review Section, Division of Extramural Affairs, National Heart, Lung, and Blood Institute, Westwood Building, Room 550B, Bethesda, Maryland 20892, phone (301) 496-7361, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program Nos. 13.837, Heart and Vascular Diseases Research, also 13.839, Division of Blood Diseases and Resources, National Institutes of Health.)

Dated: January 14, 1986.

Betty J. Beveridge,

NIH Committee Management Officer.

[FR Doc. 86-1538 Filed 1-23-86 8:45 am]

BILLING CODE 4140-01-M

National Cancer Institute; Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the National Cancer Advisory Board, February 25, 1986, National Cancer Institute, Building 31C, Conference Room 6, 6th floor, National Institutes of Health, Bethesda, Maryland 20892. Meetings of Subcommittees of the Board will be held at the times and places listed below. Portions of the Board meeting and its Subcommittees will be open to the public to discuss committee business as indicated in the notice.

Attendance by the public will be limited to space available.

Portions of these meetings will be closed to the public as indicated below in accordance with the provisions set forth in sections 552b(c)(4) 552b(c)(6), Title 5, U.S. Code and section 10(d) of Pub. L. 92-463, for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

The Subcommittee on Planning and Budget will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(9)(B), Title 5, U.S. Code and section 10(d) of Pub. L. 92-463, to discuss the 1987 Presidential Budget.

Mrs. Winifred Lumsden, the Committee Management Officer, NCI, Building 31, Room 10A06, National Institutes of Health, Bethesda, Maryland 20892 (301/496-5708) will provide summaries of the meetings and rosters of Board members, upon request.

Mrs. Barbara S. Bynum, Executive Secretary, National Cancer Advisory Board, National Cancer Institute, Building 31, Room 10A03, National Institutes of Health, Bethesda, Maryland 20892 (301/496-5147) will furnish substantive program information.

Name of Committee: *National Cancer Advisory Board.*

Dates of Meeting: February 3-5, 1986.

Place of Meeting: Building 31C, Conference Room 6, 6th floor, National Institutes of Health.

Open: February 3, 8:30 a.m.—recess, February 5, 8:00 a.m.—adjournment.

Agenda: Reports on activities of the President's Cancer Panel and the Director's Report on the National Cancer Institute; Subcommittee Reports and New Business.

Closed Session: February 4, 8:30 a.m.—recess.

Closure Reason: To review grant applications.

Name of Committee: *Subcommittee on Cancer Information.*

Date of Meeting: February 2, 1986.

Place of Meeting: Building 31A, Conference Room 2, 1st Floor, National Institutes of Health.

Open: February 2, 6:00 p.m.—adjournment.

Agenda: A discussion of the cancer information program.

Name of Committee: *Subcommittee on Organ Systems.*

Date of Meeting: February 2, 1986.

Place of Meeting: Building 31, C Wing, Conference Room 7, Sixth Floor, National Institutes of Health.

Open: February 2, 7:00 p.m.—adjournment.

Agenda: A review of the organ systems program.

Name of Committee: *Ad Hoc Subcommittee on Construction.*

Date of Meeting: February 3, 1986.

Place of Meeting: Building 31, C Wing, Conference Room 6, Sixth Floor, National Institutes of Health.

Closed: February 3, Immediately following the open session of the National Cancer Advisory Board meeting.

Closure Reason: To review construction grants available for funding in FY 86.

Name of Committee: *Subcommittee on Planning and Budget.*

Date of Meeting: February 3, 1986.

Place of Meeting: Building 31, A Wing, Conference Room 11A10, 11th Floor, National Institutes of Health.

Closed: February 3, 7:30 p.m.—adjournment.

Closure Reason: To discuss the President's FY 87 Budget.

Name of Committee: *Subcommittee on Special Actions for Grants.*

Date of Meeting: February 4, 1986.

Place of Meeting: Building 31, C Wing, Conference Room 6, 6th Floor, National Institutes of Health.

Closed: February 4, 8:30 a.m.—adjournment.

Closure Reason: To review grant applications.

Name of Committee: *Subcommittee on Innovations in Surgical Oncology.*

Date of Meeting: February 4, 1986.

Place of Meeting: Building 31, C Wing, Conference Room 7, Sixth Floor, National Institutes of Health.

Open: February 4, 7:30 p.m.—adjournment.

Agenda: A progress report on the surgical oncology program.

(Catalog of Federal Domestic Assistance Program Numbers: 13.392, project grants in cancer construction. 13.393, project grants in cancer cause and prevention. 13.394, project grants in cancer detection and diagnosis. 13.395, project grants in cancer treatment. 13.396, project grants in cancer biology. 13.397, project grants in cancer centers support. 13.398, project grants in cancer research manpower. 13.399, project grants and contracts in cancer control)

Dated: January 14, 1986.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 86-1529 Filed 1-23-86; 8:45 am]

BILLING CODE 4140-01-M

National Heart, Lung, and Blood Institute; Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Heart, Lung, and Blood Research Review Committee A, National Heart, Lung, and Blood Institute, National Institutes of Health, on April 3-4, 1986, in Building 31, Conference Room 7, 9000 Rockville Pike, Bethesda, Maryland 20892.

This meeting will be open to the public on April 3, 1986 from 8:30 AM to approximately 9:30 AM to discuss administrative details and to hear reports concerning the current status of the National Heart, Lung, and Blood Institute. Attendance by the public will be limited to space available.

In accordance with the 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 April 3, from approximately 9:30 AM until recess, and from 8:30 AM to adjournment on April 4, for the review, discussion, and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Terry Bellicha, Chief, Public Inquiry Reports Branch, National Heart, Lung, and Blood Institute, Building 31, Room 4A21, National Institutes of Health, Bethesda, Maryland 20892, (301) 496-4236, will provide a summary of the meeting and a roster of the committee members.

Dr. Peter M. Spooner, Executive Secretary, Heart, Lung, and Blood Research Review Committee A, Westwood Building, Room 554, National Institutes of Health, Bethesda, Maryland 20892, phone (301) 496-7265, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program Nos. 13.837, Heart and Vascular Diseases Research; 13.838, Lung Diseases Research; National Institutes of Health.)

Dated: January 14, 1986.

Betty J. Beveridge,

NIH Committee Management Officer.

[FR Doc. 86-1541 Filed 1-23-86; 8:45 am]

BILLING CODE 4140-01-M

National Institute of Child Health and Human Development; Meetings

Pursuant to Pub. L. 92-463, notice is hereby given of meetings of the review committees of the National Institute of Child Health and Human Development for March 1986.

These meetings will be open to the public to discuss items relative to committee activities including announcements by the Director, Scientific Review Program, and executive secretaries, for approximately one hour at the beginning of the first session of the first day of the meeting. Attendance by the public will be limited to space available.

In accordance with the 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, these meetings will be closed to the public for the review, discussion, and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mrs. Marjorie Neff, Committee Management Officer, NICHD, Landow Building, Room 6C08, National Institutes of Health, Bethesda, Maryland, Area Code 301, 496-1485, will provide a summary of the meeting and a roster of committee members.

Substantive program information may be obtained from each executive secretary whose name, room number, and telephone number are listed below each committee.

Name of Committee: Population Research Committee.

Executive Secretary: Dr. Dinesh Sharma, Room 6C03, Landow Building, Telephone: 301, 496-1696.

Date of Meeting: March 6-7, 1986.

Place of Meeting: Landow Building, Conference Room A.

Open: March 6, 1986, 9:00 a.m.—10:00 a.m.

Closed: March 6, 1986, 10:00 a.m.—5:00 p.m.; March 7, 1986, 9:00 a.m.—adjournment.

Name of Committee: Maternal and Child Health Research Committee.

Acting Executive Secretary: Dr. Stanley Slater, Room 6C03, Landow Building, Telephone: 301, 496-1696.

Date of Meeting: March 11-12, 1986.

Place of Meeting: Landow Building, Conference Room A.

Open: March 11, 1986, 9:00 a.m.—10:00 a.m.

Closed: March 11, 1986, 10:00 a.m.—5:00 p.m.; March 12, 1986, 9:00 a.m.—adjournment.

Name of Committee: Mental Retardation Research Committee.

Executive Secretary: Dr. Stanley Slater, Room 6C03, Landow Building, Telephone: 301, 496-1696.

Date of Meeting: March 13-14, 1986.

Place of Meeting: Landow Building, Conference Room A.

Open: March 13, 1986, 9:00 a.m.-10:00 a.m.

Closed: March 13, 1986, 10:00 a.m.-5:00 p.m.; March 14, 1986, 9:00 a.m.-adjournment.

(Catalog of Federal Domestic Assistance Program No. 13.864, Population Research and No. 13.865, Research for Mothers and Children, National Institutes of Health.)

Dated: January 14, 1986.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 86-1532 Filed 1-23-86; 8:45 am]

BILLING CODE 4140-01-M

National Institute of General Medical Sciences; Meetings

Pursuant to Pub. L. 92-463, notice is hereby given of the meetings of the committees of the National Institute of General Medical Sciences for March 1986.

These meetings will be open to the public to discuss administrative details relating to committee business for approximately two hours at the beginning of the first session of the first day of the meeting. Attendance by the public will be limited to space available. These meetings will be closed thereafter in accordance with provisions set forth in section 552b(c)(4) and 552b(c)(6), Title 5, U.S. Code and section 10(d) of Pub. L. 92-463, for the review, discussion, and evaluation of individual research training grant and research center grant applications. These applications and the discussion could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mrs. Ann Dieffenbach, Public Information Officer, National Institute of General Medical Sciences, National Institutes of Health, Building 31, Room 4A52, Bethesda, Maryland 20892 (Telephone: 301-496-7301), will provide a summary of the meeting and a roster of committee members.

Substantive program information may be obtained from each executive secretary whose name, room number, and telephone number are listed below each committee.

Name of committee: Cellular and Molecular Basis of Disease Review Committee.

Executive secretary: Dr. Helen Sunshine, Room 950 Westwood Building, Telephone: 301-496-7125.

Dates of meeting: March 3-4, 1986.

Place of meeting: Building 31C, Conference Room 6, National Institutes of Health, Bethesda, Maryland.

Open: March 3, 1986, 8:30 a.m.-10:30 a.m.

Closed: March 3, 1986, 10:30 a.m.-5:00 p.m.; March 4, 1986, 8:30 a.m.-adjournment.

Name of committee: Genetic Basis of Disease Review Committee.

Executive secretary: Ms. Linda Engel, Room 950 Westwood Building, Telephone: 301-496-7125.

Dates of meeting: March 7, 1986.

Place of meeting: Building 31C, Conference Room 7, National Institutes of Health, Bethesda, Maryland.

Open: March 7, 1986, 8:30 a.m.-10:30 a.m.

Closed: March 7, 1986, 10:30 a.m.-adjournment.

Name of committee: Pharmacological Sciences Review Committee.

Executive secretary: Dr. Rodney Ulane, Room 952 Westwood Building, Telephone: 301-496-4772.

Dates of meeting: March 10-11, 1986.

Place of meeting: Building 31C, Conference Room 6, National Institutes of Health, Bethesda, Maryland.

Open: March 10, 1986, 8:30 a.m.-10:30 a.m.

Closed: March 10, 1986, 10:30 a.m.-5:00 p.m.; March 11, 1986, 8:30 a.m.-adjournment.

Name of committee: Minority Access to Research Careers Review Committee.

Executive secretary: Dr. Agnes Donahue, Room 949 Westwood Building, Telephone: 301-496-7585.

Dates of meeting: March 13-14, 1986.

Place of meeting: Building 31C, Conference Room 8, National Institutes of Health, Bethesda, Maryland.

Open: March 13, 1986, 8:30 a.m.-10:30 a.m.

Closed: March 13, 1986, 10:30 a.m.-5:00 p.m.; March 14, 1986, 8:30 a.m.-adjournment. (Catalog of Federal Domestic Assistance Program No. 13-859, 13-862, 13-863, 13-860, National Institute of General Medical Sciences, National Institutes of Health)

Dated: January 14, 1986.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 86-1533 Filed 1-23-86; 8:45 am]

BILLING CODE 4140-01-M

National Institute on Aging; Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Geriatrics Review Committee, National Institute on Aging, on March 10 and 11, 1986, to be held in Building 31, Conference Room 7, National Institutes of Health, Bethesda, Maryland 20892.

The meeting will be open to the public from 8:30 a.m. to 9:00 a.m. on March 10 for introductory remarks. Attendance by the public will be limited to space available.

In accordance with the 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 March 10 from

9:00 a.m. to adjournment on March 11 for the review, discussion, and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. June C. McCann, Committee Management Officer, NIA, Building 31, Room 2C05, National Institutes of Health, Bethesda, Maryland 20892, (301/496-5898), will provide summaries of meetings and roster of Committee members as well as substantive program information.

(Catalog of Federal Domestic Assistance Program No. 13.866, Aging Research, National Institutes of Health)

Dated: January 14, 1986.

Betty J. Beveridge,

NIH Committee Management Officer.

[FR Doc. 86-1534 Filed 1-23-86; 8:45 am]

BILLING CODE 4140-01-M

National Institute of Arthritis, Diabetes, and Digestive and Kidney Diseases; Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of a meeting of the National Arthritis, Diabetes, and Digestive and Kidney Diseases Advisory Council and its subcommittees on February 12 and 13, 1986, in Conference Room 6, Building 31, National Institutes of Health, Bethesda, Maryland. The meeting will be open to the public February 12 from 8:30 a.m. to 12:00 p.m. to discuss administration, management, and special reports. Attendance by the public will be limited to space available.

The meeting of the full Council and its subcommittees will be closed to the public as indicated below 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, for the review, discussion and evaluation of individual grant applications. These deliberations could reveal confidential trade secrets or commercial property, such as patentable materials, and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

The following subcommittees will be closed to the public on February 12, 1986, from 1:00 p.m. to adjournment: Arthritis, Musculoskeletal and Skin Diseases; Diabetes, Endocrine, and Metabolic Diseases; Digestive Diseases

and Nutrition; and Kidney, Urology and Hematology. The full Council meeting will be closed to the public on February 13 from 8:30 a.m. to approximately 12:00 p.m.

The full Council meeting will then be open for the reports of the Division Directors on February 13 from approximately 1:00 p.m. to adjournment at 3:30 p.m.

Further information concerning the Council meeting may be obtained from Dr. Walter Stolz, Executive Secretary, National Arthritis, Diabetes, and Digestive and Kidney Diseases Advisory Council, NIADDD, Westwood Building, Room 637, Bethesda, Maryland 20892, (301) 496-7277.

A summary of the meeting and roster of the members may be obtained from the Committee Management Office, NIADDD, Building 31, Room 9A19, National Institutes of Health, Bethesda, Maryland 20892, (301) 496-6917.

(Catalog of Federal Domestic Assistance Program No. 13.846-849, Arthritis, Bone and Skin Diseases; Diabetes, Endocrine and Metabolic Diseases; Digestive Diseases and Nutrition; and Kidney Diseases, Urology and Hematology Research, National Institutes of Health)

Dated: January 14, 1986.

Betty J. Beveridge,

NIH, Committee Management Officer.

[FR Doc. 86-1536 Filed 1-23-86; 8:45 am]

BILLING CODE 4140-01-M

National Institute of Allergy and Infectious Diseases; Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Microbiology and Infectious Diseases Research Committee, National Institute of Allergy and Infectious Diseases, on February 13 and 14, 1986, in Conference Room 7, Building 31, at the National Institutes of Health, Bethesda, Maryland 20892.

The meeting will be open to the public from 8:30 a.m. to 9:30 a.m. on February 13, to discuss administrative details relating to committee business and for program review. Attendance by the public will be limited to space available. In accordance with the provisions set forth in section 552b(c)(4) and 552b(c)(6), Title 5, U.S. Code, and section 10(d) of Pub. L. 92-463, the meeting of the Microbiology and Infectious Diseases Research Committee will be closed to the public for the review, discussion, and evaluation of individual grant applications and contract proposals from 9:30 a.m. until adjournment on February 13, and from 9:30 a.m. until adjournment on February 14. These applications, proposals and the

discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Lynn Tribble, Office of Research Reporting and Public Response, National Institute of Allergy and Infectious Diseases, Building 31, Room 7A-32, National Institute of Health, Bethesda, Maryland 20892, telephone (301) 496-5717, will provide summaries of the meetings and rosters of the committees members.

Dr. M. Sayeed Quraishi, Executive Secretary, Microbiology and Infectious Diseases Research Committee, NIAID, NIH, Westwood Building, Room 706, Bethesda, Maryland 20892, telephone (301) 496-7465, will provide substantive program information.

(Catalog of Federal Domestic Assistance Program Nos. 13.855, Pharmacological Sciences; 13.856, Microbiology and Infectious Diseases Research, National Institutes of Health.)

Dated: January 14, 1986.

Betty J. Beveridge,

NIH Committee Management Officer.

[FR Doc. 86-1536 Filed 1-23-86; 8:45 am]

BILLING CODE 4140-01-M

Public Health Service

National Toxicology Program; Chemicals (7) Nominated for Toxicology Studies; Request for Comments

SUMMARY: On October 23, 1985, the Chemical Evaluation Committee (CEC)

Chemical	CAS No.	Committee recommendation
1. n-Butyl acrylate	141-32-2	Subchronic study. Carcinogenicity. Chemical disposition. Reproductive studies. Mutagenicity, including <i>Drosophila</i> and <i>in vitro</i> cytogenetics.
2. t-Butylhydroquinone	1948-33-0	Carcinogenicity.
3. Methyl ethyl ketoxime	98-29-7	In-depth toxicological evaluation to include behavioral studies by inhalation route. <i>In vitro</i> cytogenetics.
4. α -Methylstyrene	98-83-9	In-depth toxicological evaluation. Short-term <i>in vivo</i> reproductive toxicity studies. <i>In vitro</i> cytogenetics.
5. Styrene	100-42-5	Carcinogenicity by inhalation route.
6. Tung oil	8001-20-5	No testing.
7. 12-O-Hexadecanoyl-16-hydroxyphorbol-13-acetate	53202-98-5	No testing.

t-Butylhydroquinone is the Food and Drug Administration's Fiscal Year 1985 priority chemical for NTP carcinogenicity testing. In accordance with established NTP policy for

of the National Toxicology Program (NTP) met to review seven chemicals nominated for toxicology studies and to recommend the types of testing to be performed. With this notice, the NTP solicits public comment on the seven chemicals listed herein.

FOR FURTHER INFORMATION AND SUBMISSION OF COMMENTS, CONTACT: Dr. Victor A. Fung, Chemical Selection Coordinator, National Toxicology Program, Room 2B55, Building 31, National Institutes of Health, Bethesda, Maryland 20892, (301) 496-3511.

SUPPLEMENTARY INFORMATION: As part of the chemical selection process of the National Toxicology Program, nominated chemicals which have been reviewed by the NTP Chemical Evaluation Committee (CEC) are published with request for comment in the *Federal Register*. This is done to encourage active participation in the NTP chemical evaluation process, thereby helping the NTP to make more informed decisions as to whether to select, defer or reject chemicals for toxicology study. Comments and data submitted in response to this request are reviewed and summarized by NTP technical staff, are forwarded to the NTP Board of Scientific Counselors for use in their evaluation of the nominated chemicals, and then to the NTP Executive Committee for its decision-making about testing. The NTP chemical selection process is summarized in the *Federal Register*, April 14, 1981 (46 FR 21826), and also in the NTP FY 1985 *Annual Plan*, pages 201-202.

processing priority chemicals of the NTP participating agencies, t-butylhydroquinone will not be evaluated by the Board of Scientific Counselors

but will be submitted directly to the Executive Committee for action.

Two of the seven compounds have been previously selected for some type of toxicology study by the NTP. n-Butyl acrylate was non-mutagenic in *Salmonella typhimurium* strains TA98, TA100, TA1535, and TA1537, with and without metabolic activation. The NTP has also conducted a conventional teratology study on n-butyl acrylate. The chemical was administered orally to CD-1 mice at doses of 0, 0.1, 1.0, 1.5, 2.0, 2.5, and 3.0 g/kg/day on gestation days 6-15. Fetal malformation was observed in the 1.0 g/kg dosed group, maternal toxicity and reduced fetal weight in the 1.5 g/kg group, and increased prenatal death in the 2.5 g/kg group.

In a gavage carcinogenicity study on styrene in Fischer 344 rats and B6C3F1 mice, no evidence of carcinogenicity was obtained in male and female rats and in female mice; equivocal evidence, namely, an increased incidence of a combination of adenomas and carcinomas of the lung, was found in male mice. $\frac{1}{2}$

Interested parties are requested to submit pertinent information.

The following types of data are of particular relevance: (1) Modes of production, present production levels, and occupational exposure potential.

(2) Uses and resulting exposure levels, where known.

(3) Completed, ongoing and/or planned toxicologic testing in the private sector including detailed experimental protocols and results in the case of completed studies.

(4) Results of toxicological studies of structurally related compounds. Please submit all information in writing by (thirty days after date of publication). Any submissions received after the above date will be accepted and utilized where possible.

Dated: January 14, 1986.

David P. Rall, M.D., Ph.D.,

Director, National Toxicology Program.

[FR Doc. 86-1530 Filed 1-23-86; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Addition of Certain Lands to the Fond du Lac Indian Reservation

This notice is published in the exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary, Indian Affairs by 209 DM 8.1. Notice is hereby given that under the authority of section 7 of the Act of June 18, 1934 (25 U.S.C. 467; 48 Stat. 986), the

hereinafter described land located within the city limits of Duluth, Minnesota, was proclaimed a part of the Fond du Lac Reservation effective January 7, 1986, for the exclusive use of Indians entitled by enrollment or tribal membership to residence at such reservation.

4th Principal Meridian, St. Louis County, Minnesota

Lots twenty-nine (29) and thirty-one (31) Duluth Property First Division, East Superior Street.

Said land being subject to all valid rights, reservations, rights-of-way and easements of record.

Ross O. Swimmer,

Assistant Secretary, Indian Affairs.

[FR Doc. 86-1477 Filed 1-23-86; 8:45 am]

BILLING CODE 4310-02-M

Bureau of Land Management

[N-43026]

Airport Lease Application; Nevada

Notice is hereby given that pursuant to the Act of May 24, 1928 (49 U.S.C. 211-214), Henry W. Taylor has applied for an airport lease for the following land:

Mount Diablo Base and Meridian

T. 38 N., R. 36 E., Sec. 14 N $\frac{1}{2}$ N $\frac{1}{2}$.

A strip of land 300 feet wide and 3,960 feet long.

The area described is located in Humboldt County, Nevada. The application was filed on January 3, 1986, and on that date the land was segregated from all other forms of appropriation under the public land laws.

For a period of 45 days from the date of this notice, interested persons may submit comments to the District Manager, Bureau of Land Management, 705 East 4th Street, Winnemucca, NV 89445.

Dated: January 9, 1986.

Frank C. Shields,

District Manager.

[FR Doc. 86-1595 Filed 1-23-86; 8:45 am]

BILLING CODE 4310-HC-M

[Serial Number AA-55461]

Lease of Public Land in Southcentral Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action, FLPMA 302 Lease.

SUMMARY: The Bureau proposes to issue a noncompetitive lease, subject to a site specific environmental and land use analysis, for the following described tract of land.

Copper River Meridian

T. 5 S., R. 1 E.,

Sec. 34, N $\frac{1}{2}$ NE $\frac{1}{4}$ (portion) lying on and within the east edge of the Richardson Highway right-of-way at mile 57.4, comprising approximately one acre.

This notice of realty action proposes a long term lease of lands under the jurisdiction of the Bureau of Land Management. The proposed lease is intended to legalize improvements, long term occupancy, and to facilitate land use planning in the area. The annual rental of the lease, if issued, has been estimated at \$400 per acre per year, subject to final appraisal.

FOR FURTHER INFORMATION CONTACT:

Detailed information concerning this action, is available for review at the Glennallen Resource Area Office, P.O. Box 147 in Glennallen, Alaska 99588. For further information call Mark Phillips (907) 822-3218.

For a period of 45 days from the date of publication of this Notice, interested parties may submit comments at the above address. Any adverse comments will be evaluated by the Anchorage District Manager who may cancel or modify this action and issue a final determination. In the absence of any adverse action by the Anchorage District Manager, this will become the final determination of the Department of Interior.

Richard J. Verninen,

Associate District Manager.

[FR Doc. 86-1577 Filed 1-23-86; 8:45 am]

BILLING CODE 4310-JA-M

Hearing; Wild Horse and Burro Gather

Notice is hereby given in accordance with Pub. L. 92-195, as amended by Pub. L. 94-579, and Pub. L. 95-514, two public hearings will be held on February 26 and 27, 1986. The public hearing on February 26 will begin at 7:30 P.M. at the Humboldt County Fairgrounds, Winnemucca, Nevada. The public hearing on February 27 will begin at 7:30 P.M. in the Pershing County Community Center, 810 Sixth Street, Lovelock, Nevada 89419.

The agenda for the meeting will include: (1) Implementation of the Winnemucca District's approved Land Use Plans for reducing wild horse and burro populations to management levels; (2) the use of helicopters and motorized

vehicles when conducting wild horse and burro gatherings.

The hearing is open to the public. Interested persons may make oral statements to the hearing moderator or file written statements for management consideration. Anyone wishing to make an oral statement should notify the District Manager, 705 East Fourth Street, Winnemucca, Nevada 89445, by February 19, 1986. Depending on the number of persons wishing to make oral statements, a per-person time limit may be established by the hearing moderator.

Summary minutes of the hearing will be maintained in the Winnemucca District Office and available for public inspection (during regular business hours) within 30 days following the meeting.

Dated: January 8, 1986.

Frank C. Shields,
District Manager.

[FR Doc. 86-1594 Filed 1-23-86; 8:45 am]

BILLING CODE 4310-HC-M

[I, 22298, I-22299]

Realty Action; Noncompetitive Sale of Public Lands; Lemhi County, ID

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Notice of Realty Action, I-22298 and I-22299—Noncompetitive Sale of Public Lands in Lemhi County, Idaho.

DATE AND ADDRESS: The sale offering will be held on Thursday, March 27, 1986, at 10:00 a.m. at the Salmon District Office, Highway 93 South, Box 430, Salmon, Idaho 83467.

SUMMARY: Based on public supported land use plans the following described land has been examined and identified as suitable for disposal by public sale under section 203 of the Federal Land Policy and Management Act (FLPMA) of 1976 (90 stat. 2750, U.S.C. 1713), at no less than the appraised fair market value.

The below described lands are hereby segregated from appropriation under the public land laws, including the mining laws, as provided by 43 CFR 2711.1-2(d).

Parcel	Legal description	Acres	Sale type
I-22298	T. 22 N., R. 23 E., B.M. section 34: lot 5. T. 21 N., R. 23 E., B.M., section 3: lot 4, SW $\frac{1}{4}$ NW $\frac{1}{4}$.	97.05	Direct

Parcel	Legal description	Acres	Sale type
I-22299	T. 21 N., R. 23 E., B.M. section 4: NW $\frac{1}{4}$ SE $\frac{1}{4}$ Ne $\frac{1}{4}$, E $\frac{1}{2}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$, NE $\frac{1}{4}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$, E $\frac{1}{2}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$, SW $\frac{1}{4}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$. Section 9: E $\frac{1}{2}$ E $\frac{1}{2}$ S W $\frac{1}{4}$ NW $\frac{1}{4}$.	50.00	Direct

When patented the lands will be subject to the following reservations:

1. Ditches and Canals (43 U.S.C. 945).
2. Oil, gas, and coal leasing and development (43 U.S.C. 1719).
3. All valid and existing rights and reservations of record.
4. Mining Claims: The purchaser of this land further acknowledges that the property is encumbered by mining claims filed pursuant to the mining laws of the United States (20 U.S.C. 21 et. seq.). These include the placer claims under Serial Nos. 73217, 73218 and parcel I-22298 and 82134-82137 and 82139 on parcel I-22299. The conveyance will be made subject to those claims and includes the right of the claimant to (1) continue to prospect for, mine, and remove locatable minerals under applicable laws; (2) the right to obtain a mineral patent to both the surface and mineral estates within the mining claim(s) if valid discovery was made prior to the date of the FLPMA patent, or; (3) the right to obtain patent to the mineral estate only if discovery is made subsequent to the patent.

5. a. I-22298 only: Pursuant to the authority contained in Sec. 4 of E.O. 11990 of May 24, 1977 and section 203 of Pub. L. 94-579 (Federal Land Policy and Management Act) of October 21, 1976, the patent to this tract is subject to a restriction which constitutes a covenant running with the land, that the portion of the land lying within 35 feet on either side of the center of Geertson Creek (70 feet total), containing riparian habitat must be managed to protect and maintain the riparian habitat on a continuing basis.

b. I-22298 only: Pursuant to the authority contained in section 3(d) of Executive Order 11988 of May 24, 1977, and section 203 of Pub. L. 94-579 of October 21, 1976, the patent to this tract is subject to a restriction which constitutes a covenant running with the land, that the portion of the land lying within the 100-year floodplain may be used for agricultural purposes only and not the dwellings, buildings, dumps, landfills, placement of hazardous wastes, leach fields, lagoons, etc. which could contaminate the water source.

Sale Procedures

These parcels will be offered by *Direct Sale* to Bolton Ranch, Inc. at the appraised fair market value. These lands have been improved and used by Bolton Ranch, Inc. and they are the owner of the adjoining private land. Disposal by direct sale will legalize their use and protect their investments. The designated bidder will be notified of the final appraised fair market value prior to the date of sale. No other bids or bidders will be considered.

Bolton Ranch, Inc. will be required to submit payment of at least twenty (20) percent of the appraised fair market value by cash, certified or cashier's check, bank draft or money order at the above address on March 27, 1986. The balance will be due within 180 days, payable in the same form, and at the same location. Failure to submit the remainder of the payment within 180 days will result in cancellation of the sale offering and forfeiture of the deposit. A bid will also constitute an application for conveyance of the mineral interests of no known value. A \$50.00 non-returnable filing fee for processing the mineral conveyance must accompany each bid. If no bid is received from Bolton Ranch, Inc. on the sale date, the parcels will then be offered for sale by competitive bidding procedures beginning on April 3, 1986 and continuing until July 3, 1986.

SUPPLEMENTARY INFORMATION: Detailed information concerning these parcels, terms and conditions of the sale, and bidding instructions may be obtained by contacting Stephanie Snook at (208) 756-2201. For a period of 45 days from the date of this notice, interested parties may submit comments regarding the sale to the Salmon District Manager at the above address. Objections will be reviewed by the State Director who may sustain, vacate or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of the Interior.

Dated: January 13, 1986.

Kenneth G. Walker,
District Manager.

[FR Doc. 86-1576 Filed 1-23-86; 8:45 am]

BILLING CODE 4310-GG-M

[ES 35646]

Transfer of Lands; Mississippi

AGENCY: Bureau of Land Management, Interior.

ACTION: Transfer of submarginal lands, Mississippi band of Choctaw Indians.

SUMMARY: 1. Pursuant to Pub. L. 94-114 (89 Stat. 577) of October 17, 1975, as amended by Pub. L. 97-434 of January 8, 1983 (96 Stat. 2280), the lands described in paragraph 3 of this notice, together with all minerals underlying this land, whether acquired or otherwise owned by the United States, are hereby declared to be held by the United States in trust for the Mississippi Band of Choctaw Indians for the use and benefit of the Choctaw Indians subject to all valid rights, reservations, rights-of-way, and easements of record.

These lands were submarginal lands acquired under Title II of the National Industrial Recovery Act of June 18, 1933 (48 Stat. 200), and any subsequent Emergency Relief Appropriations Acts, including but not limited to section 5 of the Emergency Relief Appropriation Act of 1939 (53 Stat. 927, 930) and section 4 of the Emergency Relief Appropriation Act, fiscal year 1941 (54 Stat. 611, 617).

2. Any existing mineral leases, including oil and gas leases, which have been issued on this land will remain in force and effect in accordance with the terms and provisions of the Act under which the leases were issued. The lease files will be transferred to the Office of the Eastern Area Director, Bureau of Indian Affairs, Washington, DC. Future rentals for these leases will be paid to and collected by that office. Jurisdiction of these mineral leases is transferred from the Bureau of Land Management to the Bureau of Indian Affairs in trust for the Mississippi Band of the Choctaw Indians.

3. Choctaw Meridian, Mississippi

T. 11 N., R. 7 E.,

Sec. 22, 10 acres in the NE $\frac{1}{2}$ NE $\frac{1}{4}$ being described as follows: Beginning at the NE corner of said NE $\frac{1}{4}$ of NE $\frac{1}{4}$ and run West along the North line of said forty acres to the NW corner thereof a distance of 440 yards, thence South along the West line of said forty acres 220 yards, and thence Northeast to the NE corner of said forty acres or place of beginning;

Sec. 23, NW $\frac{1}{4}$ SW $\frac{1}{4}$, SW $\frac{1}{4}$ NW $\frac{1}{4}$;

T. 8 N., R. 9 E.,

Sec. 34, S $\frac{1}{2}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$.

The areas described aggregate 110.00 acres in Leake and Scott Counties, Mississippi.

FOR FURTHER INFORMATION CONTACT: A. Nate Felton, Bureau of Land Management, Eastern States Office, 350 South Pickett Street, Alexandria, Virginia 22304. (703) 274-0233.

G. Curtis Jones, Jr.,

State Director.

[FR Doc. 86-1590 Filed 1-23-86; 8:45 am]

BILLING CODE 4310-GJ-M

[ES-35121]

Transfer of Lands; Sawyer County, WI

AGENCY: Bureau of Land Management, Interior.

ACTION: Transfer of submarginal lands, Lac Courte Oreilles Band of the Lake Superior Chippewa Indians.

SUMMARY: 1. Pursuant to Pub. L. 94-114 (89 Stat. 577) of October 17, 1975, as amended by Pub. L. 97-434 of January 8, 1983 (96 Stat. 2280), the lands described in paragraph 3 of this notice, together with all minerals underlying this land, whether acquired or otherwise owned by the United States, are hereby declared to be held by the United States in trust for the Lac Courte Oreilles Band of the Lake Superior Chippewas for the use and benefit of the Lac Courte Oreilles Indian subject to all valid rights, reservations, rights-of-way, and easements of record. The land shall be a part of the established Lac Courte Oreilles Indian Reservation.

These lands were submarginal lands acquired under Title II of the National Industrial Recovery Act of June 18, 1933 (48 Stat. 200), and any subsequent Emergency Relief Appropriations Acts, including but not limited to section 5 of the Emergency Relief Appropriation Act of 1939 (53 Stat. 927, 930) and section 4 of the Emergency Relief Appropriation Act, fiscal year 1941 (54 Stat. 611, 617).

2. Any existing mineral leases, including oil and gas leases, which have been issued on this land will remain in force and effect in accordance with the terms and provisions of the Act under which the leases were issued. The lease files will be transferred to the Office of the Area Director, Bureau of Indian Affairs, Minneapolis, Minnesota. Future rentals for these leases will be paid to and collected by that office. Jurisdiction of these mineral leases is transferred from the Bureau of Land Management to the Bureau of Indian Affairs in trust for the Lac Courte Oreilles Band of the Lake Superior Chippewa Indians.

3. Fourth Principal Meridian, Wisconsin

T. 40 N., R. 6 W.,

Sec. 4, W $\frac{1}{2}$ NE $\frac{1}{4}$, S $\frac{1}{2}$.

T. 38 N., R. 7 W.,

Sec. 6, W $\frac{1}{2}$ W $\frac{1}{4}$ (70.77), W $\frac{1}{2}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$ (22.76), W $\frac{1}{2}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$.

T. 39 N., R. 7 W.,

Sec. 2, N $\frac{1}{2}$ SW $\frac{1}{2}$, S $\frac{1}{2}$ SW $\frac{1}{4}$;

Sec. 7, E $\frac{1}{2}$ NE $\frac{1}{4}$, SW $\frac{1}{4}$ SE $\frac{1}{4}$;

Sec. 8, Lot 4, NW $\frac{1}{4}$ NW $\frac{1}{4}$, SW $\frac{1}{4}$ SE $\frac{1}{4}$;

Sec. 13, S $\frac{1}{2}$ NW $\frac{1}{4}$;

Sec. 14, N $\frac{1}{2}$ SW $\frac{1}{4}$;

Sec. 16, NW $\frac{1}{4}$ NE $\frac{1}{4}$, NE $\frac{1}{4}$ NW $\frac{1}{4}$,

SW $\frac{1}{4}$ NW $\frac{1}{4}$;

Sec. 17, NE $\frac{1}{4}$ NE $\frac{1}{4}$, NE $\frac{1}{4}$ NW $\frac{1}{4}$, S $\frac{1}{2}$ NW $\frac{1}{4}$,

SW $\frac{1}{4}$ SE $\frac{1}{4}$;

Sec. 18, SE $\frac{1}{4}$ NW $\frac{1}{4}$, NE $\frac{1}{4}$ SW $\frac{1}{4}$, W $\frac{1}{2}$ SW $\frac{1}{4}$, S $\frac{1}{2}$ SE $\frac{1}{4}$;

Sec. 19, N $\frac{1}{2}$ NE $\frac{1}{4}$, W $\frac{1}{2}$ SW $\frac{1}{4}$, W $\frac{1}{2}$ SE $\frac{1}{4}$;

Sec. 20, NW $\frac{1}{4}$ NW $\frac{1}{4}$, E $\frac{1}{2}$ SE $\frac{1}{4}$;

Sec. 21, E $\frac{1}{2}$ NW $\frac{1}{4}$, N $\frac{1}{2}$ SW $\frac{1}{4}$;

Sec. 28, E $\frac{1}{2}$ NE $\frac{1}{4}$, SW $\frac{1}{4}$ NE $\frac{1}{4}$, NE $\frac{1}{4}$ NW $\frac{1}{4}$, W $\frac{1}{2}$ NW $\frac{1}{4}$, SW $\frac{1}{4}$;

Sec. 29, W $\frac{1}{2}$ NE $\frac{1}{4}$, NW $\frac{1}{4}$ SE $\frac{1}{4}$, S $\frac{1}{2}$ SE $\frac{1}{4}$;

Sec. 30, W $\frac{1}{2}$, W $\frac{1}{2}$ SE $\frac{1}{4}$;

Sec. 31, W $\frac{1}{2}$ SW $\frac{1}{4}$, (66.5), E $\frac{1}{2}$ NE $\frac{1}{4}$,

NE $\frac{1}{4}$ NW $\frac{1}{4}$, NE $\frac{1}{4}$ SW $\frac{1}{4}$, E $\frac{1}{2}$ SE $\frac{1}{4}$,

NW $\frac{1}{4}$ SE $\frac{1}{4}$;

Sec. 32, E $\frac{1}{2}$ NE $\frac{1}{4}$, S $\frac{1}{2}$ SW $\frac{1}{4}$, W $\frac{1}{2}$ SE $\frac{1}{4}$;

Sec. 33, SE $\frac{1}{4}$ NE $\frac{1}{4}$.

T. 40 N., R. 7 W.,

Sec. 5, W $\frac{1}{2}$ NW $\frac{1}{4}$ (51.58);

Sec. 6, E $\frac{1}{2}$ NE $\frac{1}{4}$ (52.62), W $\frac{1}{2}$ NE $\frac{1}{4}$ (52.97),

NW $\frac{1}{4}$ SE $\frac{1}{4}$;

Sec. 7, NW $\frac{1}{4}$ NW $\frac{1}{4}$ (32.46), SW $\frac{1}{4}$ SW $\frac{1}{4}$

(31.72), NE $\frac{1}{4}$ NW $\frac{1}{4}$, SW $\frac{1}{4}$ SE $\frac{1}{4}$;

Sec. 16, NW $\frac{1}{4}$ NW $\frac{1}{4}$;

Sec. 17, NW $\frac{1}{4}$ NE $\frac{1}{4}$, SW $\frac{1}{4}$ NW $\frac{1}{4}$, SW $\frac{1}{4}$,

W $\frac{1}{2}$ SE $\frac{1}{4}$;

Sec. 18, E $\frac{1}{2}$, NE $\frac{1}{4}$ NW $\frac{1}{4}$;

Sec. 19, N $\frac{1}{2}$ NE $\frac{1}{4}$;

Sec. 20, N $\frac{1}{2}$ NW $\frac{1}{4}$;

Sec. 31, SE $\frac{1}{4}$ NE $\frac{1}{4}$, E $\frac{1}{2}$ SE $\frac{1}{4}$;

Sec. 32, All;

Sec. 33, NW $\frac{1}{4}$ NW $\frac{1}{4}$, SW $\frac{1}{4}$.

T. 38 N., R. 8 W.,

Sec. 1, E $\frac{1}{2}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$, (23.35), NE $\frac{1}{4}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$;

Sec. 4, Lots 1, 2, 4, E $\frac{1}{2}$ SW $\frac{1}{4}$, N $\frac{1}{2}$ SE $\frac{1}{4}$;

Sec. 5, Lots 5, 9, SE $\frac{1}{4}$ SW $\frac{1}{4}$;

Sec. 7, E $\frac{1}{2}$ NE $\frac{1}{4}$;

Sec. 8, NW $\frac{1}{4}$ NE $\frac{1}{4}$, NE $\frac{1}{4}$ NW $\frac{1}{4}$, SE $\frac{1}{4}$ SE $\frac{1}{4}$;

Sec. 9, W $\frac{1}{2}$ NE $\frac{1}{4}$;

Sec. 17, E $\frac{1}{2}$ NE $\frac{1}{4}$;

Sec. 18, S $\frac{1}{2}$ NW $\frac{1}{4}$.

T. 39 N., R. 8 W.,

Sec. 2, NE $\frac{1}{4}$ NE $\frac{1}{4}$, S $\frac{1}{2}$ NW $\frac{1}{4}$;

Sec. 3, SE $\frac{1}{4}$ NE $\frac{1}{4}$, N $\frac{1}{2}$ NW $\frac{1}{4}$ (68.54),

NE $\frac{1}{4}$ SW $\frac{1}{4}$, SW $\frac{1}{4}$ SW $\frac{1}{4}$, E $\frac{1}{2}$ SE $\frac{1}{4}$;

Sec. 4, N $\frac{1}{2}$ NE $\frac{1}{4}$ (68.25), NE $\frac{1}{4}$ SW $\frac{1}{4}$,

NW $\frac{1}{4}$ SE $\frac{1}{4}$, SE $\frac{1}{4}$ SE $\frac{1}{4}$;

Sec. 7, W $\frac{1}{2}$ SE $\frac{1}{4}$;

Sec. 9, N $\frac{1}{2}$ NW $\frac{1}{4}$, N $\frac{1}{2}$ SW $\frac{1}{4}$;

Sec. 10, NE $\frac{1}{4}$ NE $\frac{1}{4}$, S $\frac{1}{2}$ NE $\frac{1}{4}$, N $\frac{1}{2}$ SE $\frac{1}{4}$;

Sec. 11, W $\frac{1}{2}$ NE $\frac{1}{4}$, W $\frac{1}{2}$ NW $\frac{1}{4}$;

Sec. 12, E $\frac{1}{2}$ SW $\frac{1}{4}$;

Sec. 13, NW $\frac{1}{4}$ NE $\frac{1}{4}$, N $\frac{1}{2}$ NW $\frac{1}{4}$, N $\frac{1}{2}$ SW $\frac{1}{4}$, SE $\frac{1}{4}$;

Sec. 14, S $\frac{1}{2}$ SW $\frac{1}{4}$, SW $\frac{1}{4}$ SE $\frac{1}{4}$;

Sec. 15, W $\frac{1}{2}$ SE $\frac{1}{4}$, SE $\frac{1}{4}$ SE $\frac{1}{4}$;

Sec. 20, E $\frac{1}{2}$ NW $\frac{1}{4}$;

Sec. 22, W $\frac{1}{2}$ NE $\frac{1}{4}$, N $\frac{1}{2}$ SW $\frac{1}{4}$;

Sec. 23, NW $\frac{1}{4}$ NE $\frac{1}{4}$;

Sec. 24, NE $\frac{1}{4}$ SE $\frac{1}{4}$;

Sec. 28, E $\frac{1}{2}$ NW $\frac{1}{4}$;

Sec. 29, E $\frac{1}{2}$ SE $\frac{1}{4}$;

Sec. 30, N $\frac{1}{2}$ SE $\frac{1}{4}$;

Sec. 31, NW $\frac{1}{4}$ SW $\frac{1}{4}$ (38.61), NE $\frac{1}{4}$ SW $\frac{1}{4}$;

Sec. 32, N $\frac{1}{2}$ NE $\frac{1}{4}$, NW $\frac{1}{4}$;

Sec. 33, E $\frac{1}{2}$ SW $\frac{1}{4}$, SW $\frac{1}{4}$ SW $\frac{1}{4}$;

Sec. 34, E $\frac{1}{2}$ NW $\frac{1}{4}$, S $\frac{1}{2}$ SW $\frac{1}{4}$;

Sec. 35, W $\frac{1}{2}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$ NE $\frac{1}{4}$, NE $\frac{1}{4}$ SE $\frac{1}{4}$, S $\frac{1}{2}$ SE $\frac{1}{4}$;

Sec. 36, S $\frac{1}{2}$ NW $\frac{1}{4}$, E $\frac{1}{2}$ SW $\frac{1}{4}$.

T. 40 N., R. 8 W.,

Sec. 3, SW $\frac{1}{4}$ SW $\frac{1}{4}$;

Sec. 4, W $\frac{1}{2}$ NW $\frac{1}{4}$ (55.10);

Sec. 7, Lot 2, SE $\frac{1}{4}$ NE $\frac{1}{4}$;

Sec. 8, E $\frac{1}{2}$ NW $\frac{1}{4}$, E $\frac{1}{2}$ SE $\frac{1}{4}$;

Sec. 9, NE $\frac{1}{4}$ NE $\frac{1}{4}$;

Sec. 10, NW $\frac{1}{4}$ NW $\frac{1}{4}$, S $\frac{1}{2}$ SW $\frac{1}{4}$;

- Sec. 11, W $\frac{1}{2}$ NW $\frac{1}{4}$;
 Sec. 13, N $\frac{1}{2}$ S $\frac{1}{2}$;
 Sec. 14, W $\frac{1}{2}$ SW $\frac{1}{4}$;
 Sec. 16, SE $\frac{1}{4}$;
 Sec. 22, E $\frac{1}{2}$ NW $\frac{1}{4}$, SW $\frac{1}{4}$ SW $\frac{1}{4}$;
 Sec. 23, E $\frac{1}{2}$ NE $\frac{1}{4}$, NE $\frac{1}{4}$ SE $\frac{1}{4}$;
 Sec. 24, S $\frac{1}{2}$ SW $\frac{1}{4}$;
 Sec. 25, NW $\frac{1}{4}$ NW $\frac{1}{4}$;
 Sec. 26, N $\frac{1}{2}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$ NE $\frac{1}{4}$, N $\frac{1}{2}$ NW $\frac{1}{4}$,
 N $\frac{1}{2}$ SW $\frac{1}{4}$, N $\frac{1}{2}$ SE $\frac{1}{4}$;
 Sec. 27, N $\frac{1}{2}$ NW $\frac{1}{4}$, SE $\frac{1}{4}$ NW $\frac{1}{4}$,
 NW $\frac{1}{4}$ SW $\frac{1}{4}$;
 Sec. 28, E $\frac{1}{2}$ SE $\frac{1}{4}$;
 Sec. 33, SE $\frac{1}{4}$ NE $\frac{1}{4}$;
 Sec. 34, S $\frac{1}{2}$ NW $\frac{1}{4}$, W $\frac{1}{2}$ SW $\frac{1}{4}$;
 Sec. 35, NE $\frac{1}{4}$ NE $\frac{1}{4}$, S $\frac{1}{2}$ NE $\frac{1}{4}$, N $\frac{1}{2}$ NW $\frac{1}{4}$,
 SW $\frac{1}{4}$, SE $\frac{1}{4}$ SE $\frac{1}{4}$.
- T. 38 N., R. 9 W.,
 Sec. 1, Lots 4, 5, 11, 12, S $\frac{1}{2}$ SW $\frac{1}{4}$.
- T. 39 N., R. 9 W.,
 Sec. 2, E $\frac{1}{2}$ SW $\frac{1}{4}$;
 Sec. 36, W $\frac{1}{2}$ NE $\frac{1}{4}$, NE $\frac{1}{4}$ NW $\frac{1}{4}$, NE $\frac{1}{4}$ SW $\frac{1}{4}$.

The areas described aggregate 13,184.65 acres in Sawyer County, Wisconsin.

FOR FURTHER INFORMATION CONTACT:

Alice J. Stephenson, Bureau of Land Management, Eastern States Office, 350 South Pickett Street, Alexandria, Virginia 22304. (703) 274-0121.

G. Curtis Jones, Jr.,

State Director.

[FR Doc. 85-1578 Filed 1-23-86; 8:45 am]

BILLING CODE 4310-GJ-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. TA-201-59]

Import Investigations; Apple Juice

AGENCY: International Trade Commission.

ACTION: Institution of an investigation under section 201 of the Trade Act of 1974 (19 U.S.C. 2251) and scheduling of a hearing to be held in connection with the investigation.

SUMMARY: Following receipt on December 27, 1985, of a request from the United States Trade Representative, the United States International Trade Commission instituted investigation No. TA-201-59 under section 201 of the Trade Act of 1974 to determine whether apple juice, not mixed and not containing over 1.0 percent of ethyl alcohol by volume, provided for in item 165.15 of the Tariff Schedules of the United States, 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 producing an article like or directly competitive with the imported article. The Commission will make its determination in this investigation by June 27, 1986 (see section 201(d)(2) of the act (19 U.S.C. 2251(d)(2))).

For further information concerning the conduct of this investigation, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, Part 206, Subparts A and B (19 CFR Part 206), and Part 201, Subparts A through E (19 CFR Part 201).

EFFECTIVE DATE: December 27, 1985.

FOR FURTHER INFORMATION CONTACT:

Stephen Vastagh 202-523-0283, Office of Investigations, U.S. International Trade Commission, 701 E Street, NW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-724-0002. Information may also be obtained via electronic mail by accessing the Office of Investigations' remote bulletin board system for personal computers at 202-523-0103.

SUPPLEMENTARY INFORMATION:

Participation in the investigation.—Persons wishing to participate in the investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules (19 CFR 201.11), not later than twenty-one (21) days after publication of this notice in the *Federal Register*. Any entry of appearance filed after this date will be referred to the Chairwoman, who will determine whether to accept the late entry for good cause shown by the person desiring to file the entry.

Service list.—Pursuant to § 201.11(d) of the Commission's rules (19 CFR 201.11(d)), the Secretary will prepare a service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance. In accordance with § 201.16(c) of the rules (19 CFR 201.16(c)), each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by the service list), and a certificate of service must accompany the document. The Secretary will not accept a document for filing without a certificate of service.

Hearing.—The Commission will hold in connection with this investigation beginning at 10:00 a.m. on April 17, 1986, at the U.S. International Trade Commission Building, 701 E Street NW., Washington, DC. 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 April 8, 1986. All persons desiring to appear at the hearing and make oral presentations, with the exception of public officials and persons

not represented by counsel, should file prehearing briefs and attend a prehearing conference to be held at 9:30 a.m. on April 8, 1986, in room 117 of the U.S. International Trade Commission Building. The deadline for filing prehearing briefs is April 11, 1986. Posthearing briefs must be submitted not later than the close of business on April 24, 1986. Confidential material should be filed in accordance with the procedures described below.

Parties are encouraged to limit their testimony at the hearing 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. Any written materials submitted at the hearing must be filed in accordance with the procedures described below and any confidential materials must be submitted at least three (3) working days prior to the hearing (see § 201.6(b)(2) of the Commission's rules (19 CFR 201.6(b)(2))).

Parties are requested to use the following units of measure when presenting data and charts in briefs, testimony, and other submissions: (1) Thousands, millions, or billions of pounds for quantities of apples; (2) cents per pound for prices of apples, whether for fresh market or for processing; (3) thousands or millions of gallons of single strength equivalent for quantities of concentrate or fresh juice; and (4) dollars and cents per single strength gallon for prices of juice, whether concentrate of freshly squeezed. The uniform use of such units will make the data in all submissions comparable. Convert all concentrate to single strength equivalent using conversion factors published in relevant publication of the U.S. Department of Agriculture.

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 April 24, 1986. A signed original and fourteen (14) copies of each submission must be filed with the Secretary to the Commission in accordance with § 201.8 of the Commission's rules (19 CFR 201.8). 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).

Remedy.—In the event that the Commission makes an affirmative injury determination in this investigation, remedy briefs will be due to the Secretary no later than the close of business on May 28, 1986, and must conform with the requirements of § 201.6 of the Commission's rules. Parties are reminded that no separate hearing on the issue of remedy will be held. Those parties wishing to present oral arguments on the issue of remedy may do so at the hearing scheduled for April 17, 1986.

Authority: This investigation is being conducted under the authority of section 201 of the Trade Act of 1974. This notice is published pursuant to section 201.10 of the Commission's rules (19 CFR 201.10).

Issued: January 17, 1986.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 86-1500 Filed 1-23-86; 8:45 am]

BILLING CODE 7020-02-M

[Investigations Nos. 731-TA-301 Through 303 (Preliminary)]

Certain Butt-Weld Pipe Fittings From Brazil, Japan, and Taiwan

AGENCY: United States International Trade Commission.

ACTION: Institution of preliminary antidumping investigations and scheduling of a conference to be held in connection with the investigation.

SUMMARY: The Commission hereby gives notice of the institution of preliminary antidumping investigations Nos. 731-TA-301 through 303 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Brazil, Japan, and Taiwan of carbon steel butt-weld type pipe and tube fittings, under 14 inches (inside diameter), provided for in item 610.88 of the Tariff Schedules of the United States, which are alleged to be sold in the United States at less than fair value. As provided in section 733(a), the Commission must complete preliminary

antidumping investigations in 45 days, or in this case by February 27, 1986.

For further information concerning the conduct of these investigations and rules of general application, consult the Commission's Rules of Practice and Procedure, Part 207, subparts A and B (19 CFR Part 207), and Part 201, subparts A through E (19 CFR Part 201).

EFFECTIVE DATE: January 16, 1986.

FOR FURTHER INFORMATION CONTACT:

Brian Walters (202-523-0104), Office of Investigations, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contracting the Commission's TDD terminal on 202-724-0002.

SUPPLEMENTARY INFORMATION:

Background.—These investigations are being instituted in response to a petition filed by the U.S. Butt-Weld Pipe Fittings Committee on January 13, 1986, regarding allegedly less than fair value imports from Brazil and petitions filed on January 16, 1986, regarding allegedly less than fair value imports from Japan and Taiwan.

Participation in the investigation.—Persons wishing to participate in these investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules (19 CFR § 201.11), not later than seven (7) days after publication of this notice in the Federal Register. Any entry of appearance filed after this date will be referred to the Chairwoman, who will determine whether to accept the late entry for good cause shown by the person desiring to file the entry.

Service list.—Pursuant to § 201.11(d) of the Commission's rules (19 CFR 201.11(d)), the Secretary will prepare a service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearance. In accordance with §§ 201.16(c) and 207.3 of the rules (19 CFR 201.16(c) and 207.3), each document filed by a party to these investigations must be served on all other parties to these investigations (as identified by the service list), and a certificate of service must accompany the document. The Secretary will not accept a document for filing without a certificate of service.

Conference.—The Director of Operations of the Commission has scheduled a conference in connection with these investigations for 10:00 a.m. on February 6, 1986, at the U.S. International Trade Commission

Building, 701 E Street NW., Washington, DC. Parties wishing to participate in the conference should contact Brian Walters (202-523-0104) not later than February 3, 1986, to arrange for their appearance. Parties in support of the imposition of antidumping duties in these investigations and Parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference.

Written submissions.—Any person may submit to the Commission on or before February 10, 1986, a written statement of information pertinent to the subject of these investigations, as provided in § 207.15 of the Commission's rules (19 CFR 207.15). A signed original and fourteen (14) copies of each submission must be filed with the Secretary to the Commission in accordance with § 201.8 of the rules (19 CFR 201.8). All written submissions except for confidential business data will be available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary to the Commission.

Any business information for which confidential treatment is desired must be submitted separately. The envelope and all pages of such submissions must be clearly labeled "Confidential Business Information." Confidential submissions and requests for confidential treatment must conform with the requirements of § 201.6 of the Commission's rules (19 CFR 201.6).

Authority: These investigations are being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to section 207.12 of the Commission's rules (19 CFR 207.12).

By order of the Commission.

Issued: January 21, 1986.

Kenneth R. Mason,

Secretary.

[FR Doc. 86-1564 Filed 1-23-86; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-228]

Import Investigations; Certain Fans With Brushless DC Motors

AGENCY: International Trade Commission.

ACTION: Review and affirmance of the presiding administrative law judge's initial determination granting a joint motion for the issuance of a consent order with respect to complainant's motion for temporary relief.

SUMMARY: On November 19, 1985, all parties to the investigation moved for

the entry of a consent order with respect to complainant Rotron Incorporated's motion for temporary relief. The presiding administrative law judge (ALJ) issued an initial determination (ID) on November 25, 1985, granting the joint motion that the Commission issue a consent order. The Commission determined to review and affirm the ID.

FOR FURTHER INFORMATION CONTACT:

Kristian E. Anderson, Esq., Office of the General Counsel, U.S. International Trade Commission, Washington, D.C. 20436, telephone 202-523-0074.

SUPPLEMENTARY INFORMATION:

Background—On September 4, 1984, complainant Rotron Incorporated (Rotron) filed a complaint with the Commission alleging that respondents Matsushita Electric Industrial Company, Ltd. (MEI) and Matsushita Electric Corporation of America (MECA) were violating section 337 of the Tariff Act of 1930 (19 U.S.C. 1337). Specifically, complainant Rotron alleged that respondents were infringing several of the claims of a U.S. patent owned by it. The Commission instituted the present investigation on October 9, 1985.

Complainant Rotron accompanied its complaint with a motion for temporary relief and the ALJ scheduled a hearing on temporary relief for December 2, 1985. Pursuant to an agreement, on November 19, 1985, all parties to the investigation moved for the entry of a consent order with respect to complainant Rotron's motion for temporary relief. Under the terms of the agreement, respondent MEI will voluntarily discontinue exporting the fans under investigation from Japan to the United States between January 20, 1986, and the completion of the Commission's present investigation. In exchange, complainant Rotron agreed to withdraw its motion for temporary relief.

Authority—This action is taken under the authority of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337).

Public Inspection—Copies of the Commission's Action and Order, the consent order, the ALJ's ID, and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436, telephone 202-523-0161. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-724-0002.

Issued: January 14, 1986.

By Order of the Commission.
Kenneth R. Mason,
Secretary.
[FR Doc. 86-1491 Filed 1-23-86; 8:45 am]
BILLING CODE 7020-02-M

[Investigation No. 701-TA-257 (Final)]

Import Investigation; Certain Fresh Atlantic Groundfish From Canada

AGENCY: International Trade Commission.

ACTION: Institution of a final countervailing duty investigation and scheduling of a hearing to be held in connection with the investigation.

SUMMARY: The Commission hereby given notice of the institution of final countervailing duty investigation No. 701-TA-257 (Final) under section 705(b) of the Tariff Act of 1930 (19 U.S.C. 1671d(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 from Canada of fresh and chilled cod, haddock, pollock, hake, and flounders and other flatfish (except halibut), whether whole or processed by removal of heads, viscera, fins, or any combination thereof, but not otherwise processed, provided for in items 110.15 and 110.35 of the Tariff Schedules of the United States (TSUS), and of otherwise processed fresh and chilled cod, haddock, pollock, hake, and flounders and other flatfish (except halibut), provided for in items 110.50, 110.55, and 110.70 of the TSUS, which have been found by the Department of Commerce, in a preliminary determination, to be subsidized by the Government of Canada. Commerce will make its final subsidy determination in this investigation on or before March 18, 1986, and the Commission will make its final injury determination by May 8, 1986 (see sections 705(a) and 705(b) of the act (19 U.S.C. 1671d(a) and 1671d(b))).

For further information concerning the conduct of this 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), and Part 201, Subparts A through E (19 CFR Part 201).

EFFECTIVE DATE: January 9, 1986.

FOR FURTHER INFORMATION CONTACT: David Coombs (202-523-1376), Office of Investigations, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436. Hearing-impaired individuals are advised that

information on this matter can be obtained by contacting the Commission's TDD terminal on 202-724-0002.

SUPPLEMENTARY INFORMATION:

Background—This investigation is being instituted as a result of an affirmative preliminary determination by the Department of Commerce that certain benefits which constitute subsidies within the meaning of section 701 of the act (19 U.S.C. 1671) are being provided to manufacturers, producers, or exporters in Canada of certain fresh Atlantic groundfish. The investigation was requested in a petition filed on August 5, 1985 by the North Atlantic Fisheries Task Force, Gloucester, Massachusetts. In response to that petition the Commission conducted a preliminary countervailing duty investigation and, on the basis of information developed during the course of that investigation, determined that there was a reasonable indication that an industry in the United States was materially injured by reason of imports of the subject merchandise (50 FR 38904, Sept. 19, 1985).

Participation in the investigation—Persons wishing to participate in this investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules (19 CFR 201.11), not later than twenty-one (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 Chairwoman, who will determine whether to accept the late entry for good cause shown by the person desiring to file the entry.

Service list—Pursuant to § 201.11(d) of the Commission's rules (19 CFR 201.11(d)), the Secretary will prepare a service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance. In accordance with §§ 201.16(c) and 207.3 of the rules (19 CFR 201.16(c) and 207.3), each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by the service list), and a certificate of service must accompany the document. The Secretary will not accept a document for filing without a certificate of service.

Staff report—A public version of the prehearing staff report in this investigation will be placed in the public record on March 14, 1986, pursuant to § 207.21 of the Commission's rules (19 CFR 207.21).

Hearing.—The Commission will hold a hearing in connection with this investigation beginning at 10:00 a.m. on April 1, 1986, at the U.S. International Trade Commission Building, 701 E Street NW., Washington, DC. 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 March 18, 1986. 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 9:30 a.m. on March 20, 1986, in room 117 of the U.S. International Trade Commission Building. The deadline for filing prehearing briefs is March 25, 1986.

Testimony at the public hearing is governed by § 207.23 of the Commission's rules (19 CFR 207.23). 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. Any written materials submitted at the hearing must be filed in accordance with the procedures described below and any confidential materials must be submitted at least three (3) working days prior to the hearing (see § 201.6(b)(2) of the Commission's rules (19 CFR 201.6(b)(2))).

Written submissions.—All legal arguments, economic analyses, and factual materials relevant to the public hearing should be included in prehearing briefs in accordance with § 207.22 of the Commission's rules (19 CFR 207.22). Posthearing briefs must conform with the provisions of § 207.24 (19 CFR 207.24) and must be submitted not later than the close of business on April 8, 1986. 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 April 8, 1986.

A signed original and fourteen (14) copies of each submission must be filed with the Secretary to the Commission in accordance with § 201.8 of the Commission's rules (19 CFR 201.8). All written submissions except for confidential business data will be available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary to the Commission.

Any business information for which confidential treatment is desired must be submitted separately. The envelope and all pages of such submissions must be clearly labeled "Confidential Business Information." Confidential submissions and requests for confidential treatment must conform

with the requirements of § 201.6 of the Commission's rules (19 CFR 201.6).

Authority: This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.20 of the Commission's rules (19 CFR 207.20).

Issued: January 17, 1986.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 86-1498 Filed 1-23-86; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-232]

Certain Glass Firescreens for Fireplaces; Initial Determination Terminating Respondents on the Basis of Settlement Agreement

AGENCY: International Trade Commission.

ACTION: Notice is hereby given that the Commission has received an initial determination from the presiding officer in the above-captioned investigation terminating the following respondents on the basis of a settlement agreement: Oliver-MacLeod Ltd., and Thomas Industries, Inc.

SUPPLEMENTARY INFORMATION: This investigation is being conducted pursuant to section 337 of the Tariff Act of 1930 (19 U.S.C. § 1337). Under the Commission's rules, the presiding officer's initial determination will become the determination of the Commission thirty (30) days after the date of its service upon the parties, unless the Commission orders review of the initial determination. The initial determination in this matter was served upon the parties on January 10, 1986.

Copies of the initial determination, the settlement agreement, and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436, telephone 202-523-0161. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-724-0002.

Written Comments: Interested persons may file written comments with the Commission concerning termination of the aforementioned respondents. The original and 14 copies of all such comments must be filed with the Secretary to the Commission, 701 E Street NW., Washington, DC 20436, no

later than 10 days after publication of this notice in the **Federal Register**. Any person desiring to submit a document (or portion thereof) to the Commission in confidence must request confidential treatment. Such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why confidential treatment should be granted. The Commission will either accept the submission in confidence or return it.

FOR FURTHER INFORMATION CONTACT: Ruby J. Dionne, Office of the Secretary, U.S. International Trade Commission, telephone 202-523-0176.

Issued: January 15, 1986.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 86-1494 Filed 1-23-86; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-201]

Certain Products With Gremlins Character Depictions; Commission Decision To Reverse a Portion of Initial Determination; Termination of Investigation on the Basis of no Violation

AGENCY: International Trade Commission.

ACTION: Notice is hereby given that the Commission has determined to reverse that part of the presiding administrative law judge's initial determination (ID) finding that complainant's licensing program can be a domestic industry under section 337, and to terminate the investigation on the basis that there is of no violation of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337).

SUMMARY: The Commission has determined to reverse that part of an ID that found complainant's licensing program to be a domestic industry under section 337. The investigation is therefore terminated on the basis that there is no violation of section 337.

FOR FURTHER INFORMATION CONTACT: Tim Yaworski, Esq., Office of the General Counsel, telephone 202-523-0311. Hearing impaired individuals may obtain information on this matter by contacting the Commission's TDD terminal at 202-724-0002.

SUPPLEMENTARY INFORMATION: On September 12, the presiding administrative law judge issued an ID in the above-captioned investigation. The ID found that (1) certain imported products infringe complainant's Warner

Bros., Inc.'s copyrights; (2) there are domestic industries, including one consisting of complainant's licensing program for the Gremlins copyrights; (3) the domestic licensing industry is efficiently and economically operated; and (4) respondents' unfair practices have the tendency to substantially injure the domestic licensing industry, but no other domestic industry.

On October 30, 1985, the Commission determined to review those portions of the ID relating to industry and injury.

Notice of this investigation was published in the *Federal Register* of August 30, 1984 (49 FR 34422-23.)

Copies of the public version of the Action and Order, Commission opinion, and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436, telephone 202-523-0161.

Issued: January 16, 1986.

By order of the Commission.

Kenneth R. Mason,

Secretary.

FR Doc. 86-1495 Filed 1-23-86; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 731-TA-247 (Final)]

Import Investigation; Low-Fuming Brazing Copper Wire and Rod From South Africa

Determination

On the basis of the record¹ developed in the subject investigation, the Commission determines,² pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)), that an industry in the United States is materially injured by reason of imports from South Africa of low-fuming brazing copper wire and rod, provided for in items 612.62, 612.72, and 653.15 of the Tariff Schedules of the United States, which have been found by the Department of Commerce to be sold in the United States at less than fair value (LTFV).

Background

The Commission instituted this investigation following a preliminary determination by the Department of

¹ The record is defined in § 207.2(i) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(i)).

² Vice Chairman Liebler and Commissioner Lodwick dissenting. Commissioner Brunsdale did not participate.

Commerce on September 23, 1985, that imports of low-fuming brazing copper wire and rod from South Africa were being sold at LTFV within the meaning of section 731 of the Act (19 U.S.C. 1673). Notice of the institution of the Commission's investigation 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, DC, and by publishing the notice in the *Federal Register* of October 9, 1985 (50 FR 41231). The hearing was held in Washington DC, on December 4, 1985, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on January 17, 1986. The views of the Commission are contained in USITC Publication 1790 (January 1986), entitled "Low-Fuming Brazing Copper Wire and Rod From South Africa: Determination of the Commission in Investigation No. 731-TA-247 (Final) Under the Tariff Act of 1930, Together With the Information Obtained in the Investigation."

Issued: January 16, 1986.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 86-1496 Filed 1-23-86; 8:45 am]

BILLING CODE 7020-02-M

[Investigations Nos. 701-TA-255 (Final) and 731-TA-276 and 277 (Final)]

Import Investigation; Oil Country Tubular Goods From Canada and Taiwan

AGENCY: United States International Trade Commission.

ACTION: Institution of a final countervailing duty investigation and final antidumping investigations and scheduling of a hearing to be held in connection with the investigations.

SUMMARY: The Commission hereby gives notice of the institution of final countervailing duty investigation No. 701-TA-255 (Final) under section 705(b) of the Tariff Act of 1930 (19 U.S.C. 1671d(b)) and of final antidumping investigations Nos. 731-TA-276 and 277 under section 735(b) of the Tariff Act of 1930 (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 from Canada of oil country tubular goods,¹ provided for in items 610.32, 601.37, 610.39, 610.40, 610.42, 610.43, 610.49, and 610.52 of the Tariff Schedules of the United States, which have been found by the Department of Commerce, in a preliminary determination, to be subsidized by the Government of Canada, and of oil country tubular goods from Canada and Taiwan which have been found by the Department of Commerce, in a preliminary determination, to be sold in the United States at less than fair value (LTFV). Unless these investigations are extended, Commerce will make its final subsidy determination by March 4, 1986, and its final dumping determinations by March 17, 1986, and the Commission will make its final injury determinations by April 28, 1986 (see sections 705(a) and 705(b) of the act (19 U.S.C. 1671d(a) and 1671d(b)) and sections 735(a) and 735(b) of the act (19 U.S.C. 2673d(a) and 1673d(b))).

For further information concerning the conduct of these investigations, 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), and part 201, subparts A through E (19 CFR Part 201).

EFFECTIVE DATE: December 30, 1985.

FOR FURTHER INFORMATION CONTACT:

Rebecca Woodings (202-523-0282), Office of Investigations, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-724-0002.

SUPPLEMENTARY INFORMATION:

Background.—These investigations are being instituted as a result of affirmative preliminary determinations by the Department of Commerce that certain benefits which constitute subsidies within the meaning of section 701 of the act (19 U.S.C. 1671) are being provided to manufacturers, producers, or exporters in Canada of oil country tubular goods and that imports of oil country tubular goods from Canada and Taiwan are being sold in the United

¹ For purposes of these investigations, "oil country tubular goods" includes drill pipe casing, and tubing for drilling oil or gas wells, of carbon or alloy steel, whether such articles are welded or seamless, whether finished or unfinished, and whether or not meeting American Petroleum Institute (API) specifications.

States at less than fair value within the meaning of section 731 of the act (19 U.S.C. 1673). The investigations were requested in a petition filed on July 22, 1985, by the Lone Star Steel Company, Dallas, TX and CF&I Steel Corporation, Pueblo, CO. In response to that petition the Commission conducted preliminary countervailing duty and antidumping investigations and, on the basis of information developed during the course of those investigations, determined that there was a reasonable indication that an industry in the United States was materially injured by reason of imports of the subject merchandise (50 FR 37066, September 11, 1985).

Participation in the investigations.—Persons wishing to participate in these investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules (19 CFR 201.11), not later than twenty-one (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 Chairwoman, who will determine whether to accept the late entry for good cause shown by the person desiring to file the entry.

Service list.—Pursuant to § 201.11(d) of the Commission's rules (19 CFR 201.11(d)), the Secretary will prepare a service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearance. In accordance with §§ 201.16(c) and 207.3 of the rules (29 CFR 201.16(c) and 207.3), each document filed by a party to the investigations must be served on all other parties to the investigations (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.

Staff report.—A public version of the prehearing staff report in these investigations will be placed in the public record on March 14, 1986, pursuant to § 207.21 of the Commission's rules (19 CFR 207.21).

Hearing.—The Commission will hold a hearing in connection with these investigations beginning at 10:00 a.m. on March 31, 1986, at the U.S. International Trade Commission Building, 701 E Street NW., Washington, DC. 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 March 14, 1986. 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

9:30 a.m. on March 19, 1986, in room 117 of the U.S. International Trade Commission Building. The deadline for filing prehearing briefs is March 25, 1986.

Testimony at the public hearing is governed by § 207.23 of the Commission's rules (19 CFR 207.23). 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. Any written materials submitted at the hearing must be filed in accordance with the procedures described below and any confidential materials must be submitted at least three (3) working days prior to the hearing (see § 201.6(b)(2) of the Commission's rules (19 CFR 201.6(b)(2))).

Written submissions.—All legal arguments, economic analyses, and factual materials relevant to the public hearing should be included in prehearing briefs in accordance with § 207.22 of the Commission's rules (19 CFR 207.22). Posthearing brief must conform with the provisions of § 207.24 (19 CFR 207.24) and must be submitted not later than the close of business on April 7, 1986. In addition, any person who has not entered an appearance as a party to the investigations may submit a written statement of information pertinent to the subject of the investigations on or before April 7, 1986.

A signed original and fourteen (14) copies of each submission must be filed with the Secretary to the Commission in accordance with § 201.8 of the Commission's rules (19 CFR 201.8). All written submissions except for confidential business data will be available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary to the Commission.

Any business information for which confidential treatment is desired must be submitted separately. The envelope and all pages of such submissions must be clearly labeled "Confidential Business Information." Confidential submissions and requests for confidential treatment must conform with the requirements of § 201.6 of the Commission's rules (19 CFR 201.6).

Issued: January 14, 1986.

By order of the Commission.

Kenneth R. Mason,
Secretary.

[FR Doc. 86-1492 Filed 1-23-86; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 731-TA-239 (Final)]

Import Investigation; Rock Salt From Canada

Determination

On the basis of the record¹ developed in the subject investigation, the Commission determines, pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(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, by reason of imports from Canada of rock salt, provided for in items 420.94 and 420.96 of the Tariff Schedules of the United States, which have been found by the Department of Commerce to be sold in the United States at less than fair value (LTFV).

Background

The Commission instituted this investigation effective July 15, 1985, following a preliminary determination by the Department of Commerce that imports of rock salt from Canada were being sold at LTFV within the meaning of section 731 of the Act (19 U.S.C. 1673). Notice of the institution of the Commission's investigation 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, DC, and by publishing the notice in the *Federal Register* of August 7, 1985 (50 FR 31933). The hearing was held in Washington, DC, on December 5, 1985, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on January 10, 1986. The views of the Commission are contained in USITC Publication 1798 (January 1986), entitled "Rock Salt from Canada: Determination of the Commission in Investigation No. 731-TA-239 (Final) Under the Tariff Act of 1930, Together With the Information Obtained in the Investigation."

Issued: January 10, 1986.

By order of the Commission.

Kenneth R. Mason,
Secretary.

[FR Doc. 86-1490 Filed 1-23-86; 8:45 am]

BILLING CODE 7020-02-M

¹ The record is defined in 207.2(i) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(i)).

[332-222]

Import Investigation; U.S. Jewelry Industry; Competitive Assessment**AGENCY:** United States International Trade Commission.**ACTION:** Institution of investigation.

SUMMARY: At the request of the Committee on Finance, United States Senate, the Commission has instituted investigation No. 332-222 under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)), for the purpose of assessing the conditions of competition affecting U.S. producers of jewelry.

EFFECTIVE DATE: January 8, 1986.**FOR FURTHER INFORMATION CONTACT:**

Brian E. Garbecki (202-724-1731) or Mark Estes (202-724-0977), General Manufactures Division, U.S. International Trade Commission, Washington, D.C. 20436.

SUPPLEMENTAL: The Commission investigation will examine the U.S. jewelry industry, analyze key economic forces in the U.S. jewelry market and assess the factors of competition in the U.S. market between domestic and foreign products. There will be two consecutive reports issued. The first report will cover the costume jewelry segment of the U.S. industry and is to be transmitted to the Committee on Finance not later than October 6, 1986. The second report will cover the precious metal jewelry segment of the U.S. jewelry industry and is to be transmitted to the Committee on Finance not later than September 8, 1987.

The request specified that the Commission's reports should include, to the extent possible; (1) an analysis of the key economic factors in the U.S. market including U.S. production, trade, consumption inventories and other relevant factors; (2) an analysis of the conditions of competition in the U.S. market between domestic and imported products including factors such as price, quality, design and marketing techniques; (3) an analysis of the levels and trends in employment of U.S. jewelry industry; and (4) a discussion of U.S. and foreign government standards and regulations as to the country origin and precious metal content marking of jewelry including customs procedures for enforcing such standards and regulations, as available.

Written submissions: Interested persons are invited to submit written statements concerning the investigation. Written statements concerning the costume jewelry report should be received by May 9, 1986, and those concerning the precious metal jewelry

report should be received by February 27, 1987. Commercial or financial information which a submitter 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. All submissions should be addressed to the Secretary at the Commission's Office in Washington, D.C.

Hearing-impaired individuals are advised that information on this matter can be obtained by contacting our TDD terminal on (202) 724-0002.

Issued: January 15, 1986.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 86-1493 Filed 1-23-86; 8:45 am]

BILLING CODE 7020-02-M

[Investigations Nos. 731-TA-271 through 274 (Final)]**Import Investigation; Certain Welded Carbon Steel Pipes and Tubes From India, Taiwan, Turkey, and Yugoslavia****AGENCY:** United States International Trade Commission.**ACTION:** Institution of final antidumping investigations and scheduling of a hearing to be held in connection with the investigations.

SUMMARY: The Commission hereby gives notice of the institution of final antidumping investigations Nos. 731-TA-271 through 274 (Final) under section 735(b) of the Tariff Act of 1930 (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 the following welded carbon steel pipes and tubes, which have been found by the Department of Commerce, in preliminary determinations, to be sold in the United States at less than fair value (LTFV):

Standard pipes and tubes¹ from India (inv. No. 731-TA-271 (Final));

¹ For purposes of these investigations, the term "standard pipes and tubes" covers welded carbon steel pipes and tubes of circular cross section, 0.375

Line pipes and tubes² from Taiwan (inv. No. 731-TA-272 (Final));

Standard and line pipes and tubes from Turkey (inv. No. 731-TA-273 (Final)); and Standard pipes and tubes from Yugoslavia (inv. No. 731-TA-274 (Final)).

Unless the investigations are extended, Commerce will make its final LTFV determinations on or before March 10, 1986, and the Commission will make its final injury determinations by April 29, 1986, for the investigation concerning pipes and tubes from Taiwan; April 30, 1986, for the investigations concerning pipes and tubes from India and Yugoslavia; and May 5, 1986, for the investigation concerning the products from Turkey (see sections 735(a) and 735(b) of the act (19 U.S.C. 1673d(a) and 1673d(b))).

For further information concerning the conduct of these investigations, 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), and part 201, subparts A through E (19 CFR part 201).

EFFECTIVE DATES: The effective date for the investigation concerning pipes and tubes from Taiwan is December 30, 1985. The effective dates for the investigations concerning pipes and tubes from India and Yugoslavia is December 31, 1985, and the effective date for the investigation concerning the products from Turkey is January 3, 1986.

FOR FURTHER INFORMATION CONTACT:

Abigail Eltzroth (202-523-0289), Office of Investigations, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-724-0002. Information may also be obtained via electronic mail by accessing the Office of Investigations' remote bulletin board system for personal computers at 202-523-0103.

SUPPLEMENTARY INFORMATION:

Background.—These investigations are being instituted as a result of affirmative preliminary determinations by the Department of Commerce that

inch or more but not over 16 inches in outside diameter, provided for in items 610.3231, 610.3234, 610.3241, 610.3242, 610.3243, 610.3252, 610.3254, 610.3256, 610.3258, and 610.4925 of the Tariff Schedules of the United States Annotated (TSUSA).

² For purposes of these investigations, the term "line pipes and tubes" covers welded carbon steel pipes and tubes of circular cross section, with walls not thinner than 0.065 inch, 0.375 inch or more but not over 16 inches in outside diameter, conforming to API specifications for line pipe, provided for in items 610.3208 and 610.3209 of the TSUSA.

imports of certain welded carbon steel pipes and tubes from India, Taiwan, Turkey, and Yugoslavia are being sold in the United States at less than fair value within the meaning of section 731 of the act (19 U.S.C. 1673). The investigations were requested in petitions filed on July 16, 1985 by counsel for the Committee of Pipe and Tube Imports. In response to the petitions the Commission conducted preliminary antidumping investigations and, on the basis of information developed during the course of those investigations, determined that there was a reasonable indication that an industry in the United States was materially injured by reason of imports of the subject merchandise (50 FR 37068, September 11, 1985).

Participation in the investigations.—Persons wishing to participate in the investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules (19 CFR 201.11), not later than twenty-one (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 Chairwoman, who will determine whether to accept the late entry for good cause shown by the person desiring to file the entry.

Service list.—Pursuant to § 201.11(d) of the Commission's rules (19 CFR 201.11(d)), the Secretary will prepare a service list containing the names and addresses of all persons, or their representatives, who are parties to the investigation upon the expiration of the period for filing entries of appearance. In accordance with §§ 201.16(c) and 207.3 of the rules (19 CFR 201.16(c) and 207.3), each document filed by a party to the investigations must be served on all other parties to the investigations (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.

Staff report.—A public version of the prehearing staff report in these investigations will be placed in the public record on March 3, 1986, pursuant to § 207.21 of the Commission's rules (19 CFR 207.21).

Hearing.—The Commission will hold a hearing in connection with these investigations beginning at 10:00 a.m. on March 13, 1986, at the U.S. International Trade Commission Building, 701 E Street NW., Washington, DC. 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 March 3, 1986. 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 9:30 a.m. on March 6, 1986, in room 117 of the U.S. International Trade Commission Building. The deadline for filing prehearing briefs is March 10, 1986.

Testimony at the public hearing is governed by § 207.33 of the Commission's rules (19 CFR 207.33). 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. Any written materials submitted at the hearing must be filed in accordance with the procedures described below and any confidential materials must be submitted at least three (3) working days prior to the hearing (see § 201.6(b)(2) of the Commission's rules (19 CFR 201.6(b)(2))).

Written submissions.—All legal arguments, economic analyses, and factual materials relevant to the public hearing should be included in prehearing briefs in accordance with § 207.22 of the Commission's rules (19 CFR 207.22). Posthearing briefs must conform with the provisions of § 207.24 (19 CFR 207.24) and must be submitted not later than the close of business on March 20, 1986. In addition, any person who has not entered an appearance as a party to the investigations may submit a written statement of information pertinent to the subject of the investigations on or before March 20, 1986.

A signed original and fourteen (14) copies of each submission must be filed with the Secretary to the Commission in accordance with § 201.8 of the Commission's rules (19 CFR 201.8). All written submissions except for confidential business data will be available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary to the Commission.

Any business information for which confidential treatment is desired must be submitted separately. The envelope and all pages of such submissions must be clearly labeled "Confidential Business Information." Confidential submissions and requests for confidential treatment must conform with the requirements of § 201.6 of the Commission's rules (19 CFR 201.6).

Authority: These investigations are being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.20 of the Commission's rules (19 CFR 207.20).

Issued: January 17, 1986.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 86-1493 Filed 1-23-86; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 731-TA-211 (Final)]

Import Investigation; Certain Welded Carbon Steel Pipes and Tubes From Taiwan

Determination

On the basis of the record¹ developed in the subject investigation, the Commission determines,² pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(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, by reason of imports from Taiwan of welded carbon steel pipes and tubes of rectangular (including square) cross section, having a wall thickness of less than 0.156 inch, provided for in item 610.49 of the Tariff Schedules of the United States, which have been found by the Department of Commerce to be sold in the United States at less than fair value (LTFV).

Background

The Commission instituted this investigation effective July 22, 1985, following a preliminary determination by the Department of Commerce that imports of certain welded carbon steel pipes and tubes from Taiwan were being sold at LTFV within the meaning of section 731 of the Act (19 U.S.C. 1673). Notice of the institution of the Commission's investigation 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, DC, and by publishing the notice in the *Federal Register* of August 7, 1985 (50 FR 31930). The hearing was held in Washington, DC, on December 17, 1985, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on January 17, 1986. The views of the Commission are contained in USITC Publication 1799 (January 1986), entitled "Certain Welded Carbon Steel Pipes and Tubes From

¹The record is defined in section 207.2(i) of the Commission's rules of practice and procedure (19 CFR 207.2(i)).

²Commissioner Brunsdale abstained from voting.

Taiwan: Determination of the Commission in Investigation No. 731-TA-211 (Final) Under the Tariff Act of 1930, Together With the Information Obtained in the Investigation."

Issued: January 17, 1986.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 86-1497 Filed 1-23-86; 8:45 am]

BILLING CODE 7020-02-M

INTERSTATE COMMERCE COMMISSION

Motor Carriers; Intent To Engage in Compensated Intercorporate Hauling Operations

January 21, 1986.

This is to provide notice as required by 49 U.S.C. 10524(b)(1) that the named corporations intend to provide or use compensated intercorporate hauling operations as authorized in 49 U.S.C. 10524(b).

1. Parent corporation and addresses of Principal office American Bakeries Company 633 3rd Avenue, New York, NY 10017.

2. Wholly owned subsidiary which will participate in the operations and state of corporation.

Cotton Brothers Baking Company Inc., Incorporated in Mississippi.

(1) Parent Corp.: Independent Explosives Co. of Penna. Suite 500, United Penn Bank Bldg., 400 Spruce St., Scranton, Pa. 18503.

(2) Wholly owned subsidiary: IR Inc., Suite 500, United Penn Bank Bldg., 400 Spruce St., Scranton, Pa. 18503.

Both the parent and subsidiary are incorporated in Pennsylvania.

1. The name of the parent corporation is D.B. Kenney Fisheries Limited. Its principal office is located at: Box 1210, Westport, Nova Scotia, Canada BOV 1H0

2. The wholly-owned subsidiary which will participate in the operation is D.B. Kenney Transport Incorporated, a corporation incorporated under the laws of the Province of Nova Scotia, Canada.

1. Parent corporation and address of principal office: The Pillsbury Company, Pillsbury Center—3830, 200 South Sixth Street, Minneapolis, Minnesota 55402 (Delaware Corporation)

2. Wholly-owned subsidiaries which will participate in the operations, and address of their respective principal offices:

Burger King Corporation, 7360 North Kendall Drive, Miami, Florida 33156, (Florida Corporation)

Godfather's Pizza, Inc., 9140 West Dodge Road, Omaha, Nebraska 68114 (Nebraska Corporation)

Green Giant Company, Pillsbury Center—3726, 200 South Sixth Street, Minneapolis, Minnesota 55402 (Delaware Corporation)

S&A Restaurant Corp., 6606 LBJ Freeway, Dallas, Texas 75240 (Delaware Corporation)

TPC Transportation Company, Pillsbury Center—3430, 200 South Sixth Street Minneapolis, Minnesota 55402 (Delaware Corporation)

1. The name of the parent corporation is North Ocean Enterprises Limited. Its principal office is located at: Souris; Prince Edward Island, Canada C0A 2B0

2. The wholly-owned subsidiary which will participate in the operation is North Ocean Enterprises Transport Incorporated, a corporation incorporated under the laws of the Province of Nova Scotia, Canada.

James H. Bayne,

Secretary.

[FR Doc. 1543 Filed 1-23-86; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 30697]

Hillsdale County Railway Co., Inc.; Purchase and Issuance of Securities Exemption

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Interstate Commerce Commission exempts from the requirements of 49 U.S.C. 11343 the acquisition and operation by the Hillsdale County Railroad Company (HCRC) of the N&W Gary-East District branch line between milepost 98.5 near Pergo, OH, and milepost 122.53 just west of Ashley-Hudson, IN, a distance of 24.03 miles, subject to employee protective conditions and dismisses for want of jurisdiction the request by HCRC for exemption from the requirements of 49 U.S.C. 11301 to issue a note in the amount of \$310,500.

DATES: This exemption will be effective February 24, 1986. Petitions to stay must be filed by February 3, 1986, and petitions for reconsideration must be filed by February 13, 1986.

ADDRESSES: Send pleading referring to Finance Docket No. 30697 to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423

(2) Petitioners' representative: Angelica D. Lloyd, General Attorney, 204 South Jefferson St., Roanoke, VA 24042.

FOR FURTHER INFORMATION CONTACT:

Louis E. Gitomer, (202) 275-7245.

SUPPLEMENTARY INFORMATION:

Additional information is contained in the Commission's decision. To purchase a copy of the full decision write to T.S. infoSystems, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call 289-4357 (DC Metropolitan area) or toll free (800) 424-5403.

Decided: December 19, 1985.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Taylor, Sterrett, Andre, Lamboley, and Strenio. Commissioner Lamboley concurred with a separate expression. Commissioner Taylor dissented in part with a separate expression. Vice Chairman Simmons did not participate in the disposition of this proceeding.

James H. Bayne,

Secretary.

[FR Doc. 86-1544 Filed 1-23-86; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Office of Juvenile Justice and Delinquency Prevention

Missing Children; Official Use of Penalty Mail To Aid in the Location and Recovery; Public Hearing

AGENCY: Office of Juvenile Justice and Delinquency Prevention.

ACTION: Notice of public hearing.

SUMMARY: The Office of Juvenile Justice and Delinquency Prevention announces a public hearing on the use of penalty mail to aid in the location and recovery of missing children.

DATE: The hearing will be held Monday, February 3, 1986, at 9:00 a.m.

ADDRESS: The hearing will be held in Conference Room B, Main Justice Building, 10th and Constitution Avenue, NW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Michelle Easton, Missing Children's Program Coordinator, Office of Juvenile Justice and Delinquency Prevention, 633 Indiana Avenue, NW., Room 1110, Washington, D.C. 20531, telephone: (202) 724-7655.

SUPPLEMENTARY INFORMATION: On November 8, 1985, the Department of Justice, Office of Juvenile Justice and Delinquency Prevention (OJJDP), published preliminary guidelines for the implementation of S. 1195 by Federal departments and independent establishments in the Federal Register (50 FR 46622). S. 1195 authorizes Federal departments and independent

establishments (agencies), and the Congress, to use official mail to aid in the location and recovery of missing children.

These preliminary guidelines, required by 39 U.S.C. 3220(a)(1), are intended to inform agencies of available options for the use of missing children information on or in penalty mail envelopes and mailers. The guidelines include information on U.S. Postal Service restrictions on the placement of information on envelopes, "shelf-life" restrictions on the use of missing children information, and other factors, unique to agency structure and practice, which may impact the form and manner of the use of such information.

The guidelines provide that agencies can receive camera-ready photographic and biographical information on missing children through the National Center for Missing and Exploited Children. Agencies are encouraged to give priority to the use of missing children information in mail addressed to members of the public and to inter- and intra-agency publications that will be widely disseminated and viewed by agency employees.

In addition, the guidelines request that implementing regulations promulgated by Federal departments and establishments identify a single agency-wide point of contact and additional points of contact for any subunits promulgating individual regulations. A brief plan to maximize the use of missing children information is also requested, with supporting information including use and cost estimates. A report on each implementing agency's experience and recommendations for future action is requested to be submitted to OJJDP by June 30, 1987. These reports will assist OJJDP in providing its report and recommendations to Congress for consideration in determining whether to extend the law beyond its February 8, 1988 expiration date.

Many agencies are in the process of drafting their regulations to implement the guidelines. In order to advise and assist agencies in this process, to answer questions, and to receive input on how agencies' use of missing children information can be maximized in the most cost-effective manner, OJJDP will hold a public hearing on February 3, 1986. Participation is invited from public and private agencies, both governmental and nongovernmental, who may have ideas, suggestions, questions or concerns to offer. Written comments and suggestions are also welcome. Written comments and suggestions should be received, at the contact address above, by February 7, 1986.

Following the hearing, additional agency guidance and information that may be of assistance to Federal agencies in the implementation of S. 1195 will be published in the Federal Register and directed to agency contact persons. Agency mail management personnel and individuals responsible for writing or implementing agency regulations, are particularly invited to attend the hearing.

Dated: January 17, 1986.

Michelle Easton,

Missing Children's Program Coordinator,

[FR Doc. 86-1521 Filed 1-23-86; 8:45 am]

BILLING CODE 4410-18-M

DEPARTMENT OF LABOR

Office of Administrative Law Judges; Georgia Department of Labor v. Labor Department; Employment Service and Unemployment Insurance Grants

In the matter of Georgia Department of Labor, Appellant, vs. U.S. Department of Labor, respondent (Case No. 86-ESA-1).

In the matter of Georgia Department of Labor, appellant, vs. U.S. Department of Labor, respondent (Case No. 86-UIA-1).

Please take notice that upon the Appellant's appeals from Respondent's Final Determinations disallowing payments of \$14,446.00 in Employment Service grants to Merlin Suggs and \$5,464.00 in Unemployment Insurance grants to Nancy Brown, a joint hearing will be held on March 10, 1986 in the Federal Trade Commission courtroom, Suite 1010, No. 1718 Peachtree Street NW., Atlanta, Georgia, commencing at 2:00 p.m.

Pursuant to 29 CFR 658.707 and 658.708, all interested parties are hereby invited to attend and to present evidence at the hearing; and the parties hereto are hereby advised that:

- (1) They may be represented at the hearing;
- (2) They may present oral and documentary evidence at the hearing;
- (3) They may cross-examine opposing witnesses at the hearing; and
- (4) They may request rescheduling of the hearing if the time, place, or date set are inconvenient.

Any request for re-scheduling must be in writing addressed to the undersigned at 1111-20th Street NW., Washington, D.C. 20036 and must be received at least ten (10) days before the hearing.

Robert J. Feldman,

Administrative Law Judge.

Dated: January 17, 1986, Washington DC.

[FR Doc. 86-1593 Filed 1-23-86; 8:45 am]

BILLING CODE 4510-20-M

Office of the Secretary

Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget (OMB)

Background

The Department of Labor, in carrying out its responsibilities under the Paperwork Reduction Act (44 U.S.C. Chapter 35), considers comments on the reporting and recordkeeping requirements that will affect the public.

List of Recordkeeping/Reporting Requirements Under Review

On each Tuesday and/or Friday, as necessary, the Department of Labor will publish a list of the agency recordkeeping/reporting requirements under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extension, or reinstatements. The Departmental Clearance Officer will, upon request, be able to advise members of the public of the nature of the particular submission they are interested in.

Each entry may contain the following information:

The Agency of the Department issuing this recordkeeping/ reporting requirement.

The title of the recordkeeping/ reporting requirement.

The OMB and Agency identification numbers, if applicable.

How often the recordkeeping/ reporting requirement is needed.

Who will be required to or asked to report or keep records.

Whether small businesses or organizations are affected.

An estimate of the total number of hours needed to comply with the recordkeeping/ reporting requirements.

The number of forms in the request for approval, if applicable.

An abstract describing the need for and uses of the information collection.

Comments and questions

Copies of the recordkeeping/reporting requirements may be obtained by calling the Departmental Clearance Officer, Paul E. Larson, Telephone 202 523-6331. Comments and questions about the items on this list should be directed to Mr. Larson, Office of Information Management, U.S. Department of Labor, 200 Constitution Avenue NW., Room N-1301, Washington, DC 20210. Comments should also be sent to the OMB reviewer, Nancy Wentzler, Telephone 202 395-6880, Office of Information and

Regulatory Affairs, Office of Management and Budget, Room 3208, Washington, DC 20503.

Any member of the public who wants to comment on a recordkeeping/reporting requirement which has been submitted to OMB should advise Mr. Larson of this intent at the earliest possible date.

New

Employment and Training Administration

State-by-State breakdown of total JTPA Title III Formula Funds and Obligations in PY 1985

ETA RC 86

One-time use

State or local governments

57 respondents; 57 hours; no forms.

The information is requested by the Senate Committee on Appropriations and will be used to respond to their needs. State-by-State breakdown of total JTPA Title III formula funds and obligations in PY 1985 is requested.

Signed at Washington, DC, this 16th day of January, 1986.

Paul E. Larson,

Departmental Clearance Officer.

[FR Doc. 86-1516 Filed 1-23-86; 8:45 am]

BILLING CODE 4510-30-M

Employment and Training Administration

[TA-W-16,111]

Westinghouse Electric Corp., Concordville, PA; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18 an application for administrative reconsideration was filed with the Director of the Office of Trade Adjustment Assistance for workers at the Westinghouse Electric Corporation, Concordville, Pennsylvania. The review indicated that the application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA-W-16,111; Westinghouse Electric Corporation, Concordville, Pennsylvania (January 16, 1986)

Signed at Washington, D.C., this 16th day of January 1986.

Glenn M. Zech,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 86-1517 Filed 1-23-86; 8:45 am]

BILLING CODE 4510-30-M

Discontinuance of Trade Readjustment Allowances (TRA) Payments for Weeks Subsequent to December 19, 1985

Statutory authority expired on December 19, 1985 for paying trade readjustment allowances (TRA) to workers certified as eligible for trade adjustment assistance. State employment security agencies, which serve as agents of the Secretary of Labor for administering the adjustment assistance provisions of the Trade Act of 1974, have been advised to continue to take and pay TRA claims for weeks including and prior to the week of December 19, 1985. States have also been advised to accept TRA claims from eligible workers for weeks subsequent to December 19, 1985 but to hold such claims in suspense for the present.

Pub. L. 99-190, the Third Continuing Resolution for F.Y. year 1986, provides authorization and funds for continuing reemployment services under sections 236, 237, and 238 of the Trade Act through September 30, 1986. These sections cover worker training, job search and relocation activities. State employment security agencies have been instructed to continue to provide these reemployment services to eligible workers. For further information contact Mr. Glenn Zech, Deputy Director, Office of Trade Adjustment Assistance, Room 6434, 601 D Street, Washington, D.C. 20213 at telephone number (202) 376-2646.

Signed at Washington, DC, this 14th day of January 1986.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 86-1518 Filed 1-23-86; 8:45 am]

BILLING CODE 4510-30-M

Revised Schedule of Remuneration for the UCX Program

Under section 8521(a)(2) of title 5 of the United States Code, the Secretary of Labor is required to issue from time to time a Schedule of Remuneration specifying the pay and allowances for each pay grade of members of the military services. The schedules are used to calculate the base period wages and benefits payable under the program of Unemployment Compensation for Ex-Servicemembers (UCX Program).

The revised schedule published with this Notice reflects increases in military pay and allowances which were effective in October 1985. The revised

schedule was issued on December 31, 1985, in Unemployment Insurance Program Letter No. 7-86, and is effective with respect to UCX first claims filed on or after January 5, 1986.

Accordingly, the following new Schedule of Remuneration, issued pursuant to 5 U.S.C 8521(a)(2) and 20 CFR 614.12, applies to "First Claims" for UCX which are effective on and after January 5, 1986.

Pay grade	Monthly rate
(1) Commissioned Officers:	
O-10	\$7,086
O-9	7,086
O-8	7,086
O-7	6,408
O-6	5,393
O-5	4,449
O-4	3,715
O-3	3,040
O-2	2,379
O-1	1,842
(2) Warrant Officers:	
W-4	3,417
W-3	2,841
W-2	2,455
W-1	1,970
(3) Enlisted Personnel:	
E-9	3,147
E-8	2,629
E-7	2,248
E-6	1,909
E-5	1,607
E-4	1,353
E-3	1,196
E-2	1,103
E-1	964

The publication of this new Schedule of Remuneration does not revoke any prior schedule or change the period of time any prior schedule was in effect.

Signed at Washington, DC, on January 16, 1986.

Roger D. Semerad,

Assistant Secretary of Labor.

[FR Doc. 86-1515 Filed 1-23-86; 8:45 am]

BILLING CODE 4510-30-M

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar

character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the *Federal Register*, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest

in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S-3504, Washington, DC 20210.

Modifications to General Wage Determination Decisions

The numbers of the decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume, State, and page number(s). Dates of publication in the *Federal Register* are in parentheses following the decisions being modified.

Volume I

Florida:	
FL86-11 (Jan. 3, 1986).....	p. 129.
Georgia:	
GA86-22 (Jan. 3, 1986).....	p. 252.
Maryland:	
MD86-1 (Jan. 3, 1986).....	p. 386.
New York:	
NY86-13 (Jan. 3, 1986).....	pp. 752-758.
New York:	
NY86-17 (Jan. 3, 1986).....	p. 776.
Virginia:	
VA86-15 (Jan. 3, 1986).....	p. 1089.

Volume II

Kansas:	
KS86-8 (Jan. 3, 1986).....	pp. 335-337, pp.339-340.
Kansas:	
KS86-5 (Jan. 3, 1986).....	pp. 342-343, p. 345.
Louisiana:	
LA86-5 (Jan. 3, 1986).....	pp. 360-361.
Minnesota:	
MN86-5 (Jan. 3, 1986).....	p. 496.
Missouri:	
MO86-1 (Jan. 3, 1986).....	pp. 540-546.
Missouri:	
MO86-2 (Jan. 3, 1986).....	pp. 559-562.
Missouri:	
MO86-9 (Jan. 3, 1986).....	p. 599.
New Mexico:	
NM86-1 (Jan. 3, 1986).....	p. 639.
Oklahoma:	
OK86-13 (Jan. 3, 1986).....	pp. 820, 825.
Oklahoma:	
OK86-14 (Jan. 3, 1986).....	p. 831, pp. 835-836.
Texas:	
TX86-3 (Jan. 3, 1986).....	p. 849.
Listing by Location (Index).....	p. xliii.

Volume III

None.

Corrections

On January 3, 1986, notice of superseded general wage determination decisions was published in the *Federal Register*. Certain decisions being superseded were incorrectly identified. The correct numbers of the decisions being superseded and their dates of publication in the *Federal Register* are listed by State. Supersedeas decision numbers are in parentheses following the number of the superseded decision.

North Carolina:	
NC81-1138 (NC86-13).....	Dec. 30, 1980.
South Carolina:	
SC81-1253 (NC86-16).....	June 26, 1981.

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts". This publication is available at each of the 80 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783-3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. The subscription cost is \$277 per volume. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC, this 17th day of January 1986.

James L. Valin,
Assistant Administrator.

[FR Doc. 86-1460 Filed 1-23-86; 8:45 am]

BILLING CODE 4510-27-M

Mine Safety and Health Administration

[Docket No. M-85-196-C]

Gamble Mining Co., Inc.; Petition for Modification of Application of Mandatory Safety Standard

Gamble Mining Company, Inc., Drawer 1160, Grundy, Virginia 24614 has filed a petition to modify the application of 30 CFR 75.1710 (cabs and canopies) to its No. 1 Mine (I.D. No. 44-06201) located in Buchanan County, Virginia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that cabs or canopies be installed on the mine's electric face equipment.
2. The average mining height is 43 inches and the average frame height of the equipment is 35 inches. With cabs or canopies added, the frame height increases to 41 inches.
3. Lowering cabs or canopies closer to the frame would limit the operator's visibility and seating position.
4. Cabs or canopies could strike and dislodge roof bolts creating roof fall hazards and could possibly strike and damage the electrical cables that are hung and cause an electrocution hazard.
5. For these reasons, petitioner requests a modification of the Standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before February 24, 1986. Copies of the petition are available for inspection at that address.

Dated: January 16, 1986.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 86-1505 Filed 1-23-86; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-85-27-M]

Hecla Mining Co.; Petition for Modification of Application of Mandatory Safety Standard

Hecla Mining Company, P.O. Box 320, Wallace, Idaho 83873 has filed a petition

to modify the application of 30 CFR 57.11037 (ladderway openings) to its Lucky Friday Mine (I.D. No. 10-00088) located in Shoshone County, Idaho. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that ladderways have a minimum unobstructed cross-sectional opening of 24 inches by 24 inches measured from the face of the ladder.
2. Petitioner requests that the unobstructed cross-sectional opening measured from the face of the ladder be 18" by 20" in all manways located underground.
3. Due to extreme ground pressures, the raise area and hexagonal crib manways are subject to significant horizontal stresses which reduce the manway openings. Larger openings would require longer leg lengths for the hex cribbing which would increase the uniformly distributed load exerted on the crib legs, causing the crib to fail due to horizontal shear. In addition, larger hex cribs would require longer raise caps, increasing the likelihood of cap failure due to underground stresses.
4. Petitioner states that lengthening the legs of the hexagonal crib and the raise caps would cause a diminution and deterioration of the structural integrity of the hexagonal crib and raise caps, resulting in a diminution of safety for the miners who work in these areas daily.
5. For these reasons petitioners request a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before February 24, 1986. Copies of the petition are available for inspection at that address.

Dated: January 16, 1986.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 86-1506 Filed 1-23-86; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-85-192-C]

Island Creek Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Island Creek Coal Company, 2355 Harrodsburg Road, P.O. Box 11430, Lexington, Kentucky 40575 has filed a petition to modify the application of 30 CFR 75.305 (weekly examinations for hazardous conditions) to its VP-3 Mine (I.D. No. 44-01520) located in Buchanan County, Virginia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statement follows:

1. The petition concerns the requirement that return air courses be examined in their entirety on a weekly basis.
2. In a portion of the tail entries of the 7th development north of the VP-3 Mine, the roof has deteriorated to the extent that persons making the examinations would be exposed to hazardous conditions.
3. As an alternate method, petitioner proposes that a certified person conduct examinations for methane and other hazardous conditions at the tail of the longwall unit and at the regulatory at the mouth of the longwall tail entries at a location approximately 50 feet inby.
4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before February 24, 1986. Copies of the petition are available for inspection at that address.

Dated: January 16, 1986.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 86-1507 Filed 1-23-86; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-85-189-C]

Kerr-McGee Coal Corp.; Petition for Modification of Application of Mandatory Safety Standard

Kerr-McGee Coal Corporation, P.O. Box 727, Harrisburg, Illinois 62946 has

filed a petition to modify the application of 30 CFR 75.902 (low- and medium-voltage ground check monitor circuits) to its Galatia Mine 56-1 (I.D. No 11-02752) located in Saline County, Illinois. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that low and medium voltage resistance ground systems include a fail-safe ground check circuit to monitor continuously the grounding circuit to assure continuity. The ground check circuit shall cause the circuit breaker to open when either the ground or pilot wire is broken.
2. As an alternate method petitioner is constructing underground shops and plans to distribute power through the use of standard panel boxes as would be used in a surface application. The shops are to be constructed with concrete floors and chain-link mats on the ribs and overheads. All of the electrical equipment will be installed and connected to the main panel boxes, through the use of rigid conduit. Conduit will be supported by steel framework in the crane area and by "uni-strut" secured to the overhead by conventional roof bolts. Power will be distributed to the panels from a mine duty power center. The cables from the power center to the panels will be MSHA-approved and protected at the power center with MSHA-approved ground monitors, ground fault, under voltage release, thermal overload and magnetic overload protection.
3. For these reasons petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before February 24, 1986. Copies of the petition are available for inspection at that address.

Dated: January 16, 1986.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 86-1508 Filed 1-23-86; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. MM-85-185-C]

Laurel Ridge Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Laurel Ridge Coal Company, Box 190, Ashcamp, Kentucky 41512 has filed a petition to modify the application of 30 CFR 75.503 (permissible electric face equipment; maintenance) to its No. 17 Mine (I.D. No. 15-10707) located in Pike County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the use of a locked padlock to secure battery plugs to machine-mounted battery receptacles on permissible, mobile, battery-powered machines.
2. As an alternate method, petitioner proposes to use metal snap locks which will be welded to the frames of the haulage equipment by using a chain in lieu of padlocks.
3. Petitioner states that the metal snap locks will provide the same degree of safety as locked padlocks. For this reason, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before February 24, 1986. Copies of the petition are available for inspection at that address.

Dated: January 16, 1986.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 86-1509 Filed 1-23-86; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-85-143-C]

Little Buck Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Little Buck Coal Company, R.D. 4, Box 400, Pine Grove, Pennsylvania 17963 has filed a petition to modify the application of 30 CFR 75.301 (air quality, quantity, and velocity) to its Little Buck Slope (I.D. No. 36-07547) located in Schuylkill County, Pennsylvania. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that the minimum quantity of air reaching the last open crosscut in any pair or set of rooms be 9,000 cubic feet a minute, and the minimum quantity of air reaching the intake end of a pillar line be 9,000 cubic feet a minute. The minimum quantity of air in any coal mine reaching each working face will be 3,000 cubic feet a minute.
2. Air sample analysis history reveals that harmful quantities of methane are nonexistent in the mine, which also has no history of an ignition, explosion, mine fire or harmful quantities of carbon dioxide and other noxious or poisonous gases.
3. Mine dust sampling programs have revealed extremely low concentrations of respirable dust.
4. Extremely high velocities in small cross sectional areas of airways and manways required in friable Anthracite veins for control purposes, particularly in steeply pitching mines, present a very dangerous flying object hazard to the miners and cause extremely uncomfortable damp and cold conditions in the mine.
5. As an alternate method, petitioner proposes that:
 - a. The minimum quantity of air reaching each working face be 1,500 cubic feet per minute;
 - b. The minimum quantity of air reaching the last open crosscut in any pair or set of developing entries be 5,000 cubic feet per minute; and
 - c. The minimum quantity of air reaching the intake end of a pillar line be 5,000 cubic feet per minute, and/or whatever additional quantity of air that may be required in any of these areas to maintain a safe and healthful mine atmosphere.
6. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that the minimum quantity of air reaching the last open crosscut in any pair or set of rooms be 9,000 cubic feet a minute, and the minimum quantity of air reaching the intake end of a pillar line be 9,000 cubic feet a minute. The minimum quantity of air in any coal mine reaching each working face will be 3,000 cubic feet a minute.
2. Air sample analysis history reveals that harmful quantities of methane are nonexistent in the mine, which also has no history of an ignition, explosion, mine fire or harmful quantities of carbon dioxide and other noxious or poisonous gases.
3. Mine dust sampling programs have revealed extremely low concentrations of respirable dust.
4. Extremely high velocities in small cross sectional areas of airways and manways required in friable Anthracite veins for control purposes, particularly in steeply pitching mines, present a very dangerous flying object hazard to the miners and cause extremely uncomfortable damp and cold conditions in the mine.
5. As an alternate method, petitioner proposes that:
 - a. The minimum quantity of air reaching each working face be 1,500 cubic feet per minute;
 - b. The minimum quantity of air reaching the last open crosscut in any pair or set of developing entries be 5,000 cubic feet per minute; and
 - c. The minimum quantity of air reaching the intake end of a pillar line be 5,000 cubic feet per minute, and/or whatever additional quantity of air that may be required in any of these areas to maintain a safe and healthful mine atmosphere.
6. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before February 24, 1986. Copies of the petition are available for inspection at that address.

Dated: January 16, 1986.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 86-1510 Filed 1-23-86; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-85-186-C]

Midland Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Midland Coal Company, P.O. Box 159, Farmington, Illinois 61531 has filed a petition to modify the application of 30 CFR 77.216-3(a) (water, sediment, or slurry impoundments and impounding structures; inspection requirements; correction of hazards; program requirements) to its Elm Mine (I.D. No. 11-00067) located in Peoria County, Illinois and its Mecco Mine (I.D. No. 1100603) located in Knox County, Illinois. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that all water, sediment, or slurry impoundments be examined at intervals not exceeding seven days, and all instruments monitored at intervals not exceeding seven days.
2. As an alternate method petitioner proposes to examine the impoundments on a semi-annual basis and following major precipitation events.
3. The mines are located in remote, rural areas with no downstream developments and low hazard potential. The Mecco Mine has been abandoned, with no miners working there since 1983. After reclamation is completed, the Elm Mine will also be closed. No hazard will exist to miners due to their absence from the vicinity of the impoundments.
4. For these reasons petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before February 24, 1986. Copies of the petition are available for inspection at that address.

Dated: January 16, 1986.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 86-1511 Filed 1-23-86; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-85-194-C]

New Lincoln Coal Co., Inc.; Petition for Modification of Application of Mandatory Safety Standard

New Lincoln Coal Company, Inc. 837 E. Grand Avenue, Tower City, Pennsylvania 17980 has filed a petition to modify the application of 30 CFR 75.301 (air quality, quantity, and velocity) to its No. 1 Lykens Slope (I.D. No. 36-0.7629) located in Schuylkill County, Pennsylvania. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statement follows:

1. The petition concerns the requirement that the minimum quantity of air reaching the last open crosscut in any pair or set of developing entries and the last open crosscut in any pair or set of developing entries and the last open crosscut in any pair or set of room be 9,000 cubic feet a minute, and the minimum quantity of air reaching the intake end of a pillar line be 9,000 cubic feet a minute; and that the minimum quantity of air reaching each working face be 3,000 cubic feet a minute.
2. Air sample analysis history reveals that harmful quantities of methane are nonexistent in the mine, which also has no history of an ignition, explosion, mine fire or harmful quantities of carbon dioxide and other noxious or poisonous gases.
3. Mine dust sampling programs have revealed extremely low concentrations of respirable dust.
4. Extremely high velocities in small cross sectional areas of airways and manways required in friable Anthracite veins for control purposes, particularly in steeply pitching mines, present a very dangerous flying object hazard to the miners and cause extremely uncomfortable damp and cold conditions in the mine.
5. As an alternate method, petitioner proposes that:
 - a. The minimum quantity of air reaching each working face be 1,500 cubic feet per minute;
 - b. The minimum quantity of air reaching the last open crosscut in any pair or set of developing entries be 5,000 cubic feet per minute; and
 - c. The minimum quantity of air reaching the intake end of a pillar line

be 5,000 cubic feet per minute, and/or whatever additional quantity of air that may be required in any of these areas to maintain a safe and healthful mine atmosphere.

6. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before February 24, 1986. Copies of the petition are available for inspection at that address.

Dated: January 16, 1986.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 86-1512 Filed 1-23-86; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-85-26-M]

Umetco Minerals Corp.; Petition for Modification of Application of Mandatory Safety Standard

Umetco Minerals Corporation, P.O. Box 669, Blanding, Utah 84511 has filed a petition to modify the application of 30 CFR 57.9022 (berms or guards) to its White Mesa Mill (I.D. No. 42-01429) located in San Juan County, Utah. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that berms or guards be provided on the outer bank of elevated roadways.
2. The roads of primary concern are on top of dikes which separate the sub-grade tailings pond cells. The pond cells are lined, with the liners extending over the dikes and under the roadways, which precludes the possibility of installing guardrails.
3. As an alternate method, petitioner proposes to enforce a maximum speed limit of 15 mph on these roads. Inspectors would be required to carry a two-way radio for communications when traveling alone. When road conditions are slick or muddy, travel on the dike roads would be limited to that which is absolutely necessary, and

depending on conditions, four-wheel-drive vehicles or chains may be required.

4. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before February 24, 1986. Copies of the petition are available for inspection at that address.

Dated: January 16, 1986.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 86-1513 Filed 1-23-86; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-85-21-M]

Valdez Creek Mining Co., Inc.; Petition for Modification of Application of Mandatory Safety Standard

Valdez Creek Mining Company, Inc., 610 East 4th Avenue Anchorage, Alaska 99501-2213 has filed a petition to modify the application of 30 CFR 56.9087 (audible warning devices and back-up alarms) to its Denali Mine (I.D. No. 50-01315) located in Cook Inlet County, Alaska. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows.

1. The petition concerns the requirement that heavy duty mobile equipment be provided with audible warning devices. When the operator of such equipment has an obstructed view to the rear, the equipment shall have either an automatic reverse signal alarm which is audible above the surrounding noise level or an observer to signal when it is safe to back up.

2. Petitioner states that the mining consists of the removal of old stream gravels which occur in very narrow types of deposits. When working in very restricted areas, several back-up beepers tend to confuse things, rather than make the work area safer. The constant beeping becomes a normal routine and tends to be ignored.

3. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before February 24, 1986. Copies of the petition are available for inspection at that address.

Dated: January 16, 1986.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 86-1514 Filed 1-23-86; 8:45 am]

BILLING CODE 4510-43-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 86-07]

NASA Advisory Council; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council.

DATE AND TIME: February 10, 1986, 8:30 a.m. to 5:30 p.m., and February 11, 1986, 8:30 a.m. to 12 noon.

ADDRESS: Jet Propulsion Laboratory (JPL), Room 101, Building 180, 4800 Oak Grove Drive, Pasadena, CA 91109.

FOR FURTHER INFORMATION CONTACT: Mr. Nathaniel B. Cohen, Code LB, National Aeronautics and Space Administration, Washington, DC 20546 (202/453-8335).

SUPPLEMENTARY INFORMATION: The NASA Advisory Council was established as an interdisciplinary group to advise senior management on the full range of NASA's programs, policies, and plans. The Council is chaired by Mr. Daniel J. Fink and is composed of 24 members. Standing committees containing additional members report to the Council and provide advice in the substantive areas of aeronautics, life sciences, space applications, space and earth science, space systems and technology, and history, as they relate to NASA's activities.

This meeting will be closed to the public from 8:30 a.m. to 9:15 a.m. on February 11 for a discussion of the qualifications of candidates for

membership. Such a discussion would invade the privacy of the candidates and other individuals involved. Since this session will be concerned with matters listed in 5 U.S.C. 552b(c)(6), it has been determined that the meeting be closed to the public for this period of time. The remainder of the meeting will be open to the public up to the seating capacity of the room, which is approximately 80 persons including Council members and other participants. Visitors will be requested to sign a visitor's register.

Type of meeting: Open—except for a closed session as noted in the agenda below.

Agenda

February 10, 1986

8:30 a.m.—Introductory Remarks.

8:45 a.m.—FY 1987 President's Budget.

10 a.m.—Review of Life Science Program.

1 p.m.—Review of Spacelab 2 Physical Science Results.

2:30 p.m.—Review of Results of Voyager Uranus Encounter.

4 p.m.—JPL Briefing on Future Technology.

5:30 p.m.—Adjourn.

February 11, 1986

8:30 a.m.—Closed Session on Membership.

9:15 a.m.—NASA Ames Research Center Briefing on Future Technology.

10:45 a.m.—Review of Transatmospheric Vehicle Program.

12 noon—Adjourn.

Dated: January 17, 1986.

Richard L. Daniels,

Deputy Director, Logistics Management and Information Programs Division, Office of Management.

[FR Doc. 86-1486 Filed 1-23-86; 8:45 am]

BILLING CODE 7510-01-M

NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

Design Arts Advisory Committee; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Design Arts Advisory Panel (Overview Executive Committee) to the National Council on the Arts will be held on February 13, 1986, from 9:00 am-5:30 pm, Room 526 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW, Washington, DC 20506.

This meeting will be open to the public on a space available basis. The

topic for discussion will be guidelines and other policy issues.

If you need accommodations due to a disability, please contact the Office for Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682-5532, TTY 202/682-5496 at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682-5433.

Dated: January 17, 1986.

John H. Clark,

Director, Office of Council and Panel Operations, National Endowment for the Arts.
[FR Doc. 86-1484 Filed 1-23-86; 8:45 am]
BILLING CODE 7537-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-285]

Omaha Public Power District (Fort Calhoun Station, Unit No. 1); Exemption

I

Omaha Public Power District (the licensee) is the holder of Facility Operating License No. DPR-40 that authorizes operation of the Fort Calhoun Station, Unit No. 1 (the facility) at a steady state reactor power level not in excess of 1500 megawatts thermal. The facility is a pressurized water reactor (PWR) located at the licensee's site in Washington County, Nebraska. The license provides, among other things, that the facility is subject to all rules, regulations and orders of the Commission now or hereafter in effect.

II

10 CFR 50.54(o) states that primary reactor containments shall be subject to the requirements set forth in Appendix J to this part. Appendix J to 10 CFR Part 50, "Primary Reactor Containment Leakage Testing for Water-Cooled Power Reactors," sets forth the detailed requirements for containment leakage testing. These test requirements provide for preoperational and periodic verification by tests of the leak-tight integrity of the primary reactor containment and systems and components which penetrate containment of water-cooled power reactors, and establish the acceptance criteria for such tests.

Section III of Appendix J addressed the specific leakage testing requirements.

III

Exemption requests were submitted by the licensee by letter dated January 26, 1983.

IV

Personnel Air Lock Leakage Testing

The licensee's proposed leak testing of the containment personnel air lock (PAL) is in compliance with the requirements of Appendix J to 10 CFR Part 50, with one exception. The licensee has requested an exemption from paragraph III.D.2(b)(ii) of Appendix J, which states:

Air locks opened during periods when containment integrity is not required by the plant's Technical Specifications shall be tested at the end of such periods at not less than Pa.

Whenever the plant is in cold shutdown, containment integrity is not required. However, if an air lock is opened during cold shutdown, paragraph III.D.2(b)(ii) requires that an overall air lock leakage test at not less than Pa be conducted prior to plant heatup and startup. The existing PAL doors are so designed that a full pressure, i.e., Pa (60 psig), test can only be performed after strong backs (structural bracing) have been installed on the inner door. Strong backs are needed since the pressure exerted on the inner door during the test is in a direction opposite to that of the accident pressure direction. The strong backs are extremely difficult to install and the outer door must be opened to remove the strong backs. As a result, about 18-24 hours are required to complete a full pressure test of an air lock.

Alternatively, the licensee proposes to leak test the door seals at 5 psig prior to returning to a plant operating condition requiring containment integrity, and conduct a full pressure test on the PAL assembly within 2 weeks. The licensee contends this proposal will provide adequate assurance of air lock integrity without imposing undue delays on return to power operations.

If the periodic 6-month test of paragraph III.D.2(b)(i) and the test required by paragraph III.D.2(b)(iii) are current, there should be no reason to expect an air lock to leak excessively just because it has been opened during cold shutdown or refueling.

Containment integrity, which is required during hot shutdown, hot standby, startup, and power operations, will not be violated when the full pressure test is conducted during these

modes. One of the requirements for containment integrity is for at least one door in the personnel air lock to be properly closed and sealed. Both doors open inward toward containment. The outer door will be opened prior to the test to permit the strong backs to be placed on the inner door. The closed inner door keeps the integrity of the containment. The outer door is then closed and the test is performed. Since strong backs are on the inner door, the integrity of the containment is not violated during the test. Once the test is completed, the outer door is opened, the strong backs on the inner door are removed, and the outer door is subsequently closed. Once this has been completed, the inner door still maintains containment integrity.

Accordingly, the staff concludes that the licensee's proposed approach, consisting of delaying by up to 2 weeks the full pressure (Pa) test required by paragraph III.D.2(b)(ii) and performing a reduced pressure (5 psig) door seal test prior to achieving a condition requiring containment integrity, is acceptable.

Therefore, an exemption from paragraph III.D.2(b)(ii) of Appendix J to 10 CFR Part 50 is granted.

Type C Testing of Penetration M-3 Isolation Valve

The licensee has requested an exemption from the requirements of Appendix J in regard to performing Type C leakage tests on the isolation valve in the Charging Pump Discharge Line (penetration M-3). The justification for not testing this valve is that the pressure (2100 psig) seen by the valve in the direction of flow toward containment is greater than the maximum containment accident pressure (60 psig). All of the charging pumps remain operational or are automatically started and the subject isolation valve remains open upon receipt of a Safety Injection Actuation Signal (SIAS). Thus, the charging pump flow provides a steal barrier against escape of the containment atmosphere. Maintaining this barrier during a loss of coolant accident is assured since, upon receipt of a SIAS, the charging pumps are automatically aligned to the boric acid storage tanks. The volume held by these tanks provides a source of supply to the pumps for approximately 80 minutes and, as demonstrated in the facility's Updated Safety Analysis Report, Section 14.16, the containment pressure would be reduced back to near atmospheric levels (approximately 2 psig) within 50 minutes. Even after the tanks are empty, there will exist a 14-ft water head on the suction side of the

charging pumps. This head of water will exert a pressure of approximately 6 psig to provide a seal against air leakage for the remainder of the accident.

The staff finds that an exemption from the Type C testing requirements of Appendix J is not needed for the containment isolation valve associated with penetration M-3, since the valve is not included in the valve categories of paragraph II.H of Appendix J, which are required to be Type C tested.

Furthermore, the staff has determined that penetration M-3 does not constitute a potential containment atmospheric leak path, for the reasons stated above. Therefore, the licensee may exclude the subject valve from the Type C test program.

V

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12(a), the exemption is authorized by law and will not endanger life or property or the common defense and security and are otherwise in the public interest and hereby grants an exemption from the requirements of Section III of Appendix J to 10 CFR Part 50 to the extent discussed in Section IV above.

Pursuant to 10 CFR 51.32, the Commission has determined that the issuance of the Exemption will have no significant impact on the environment (50 FR 33434).

This exemption is effective upon issuance.

Dated at Bethesda, Maryland, this 10th day of January, 1986.

For the Nuclear Regulatory Commission.

Frank J. Miraglia,

Director, Division of PWR Licensing-B,
Office of Nuclear Reactor Regulation.

[FR Doc. 86-1579 Filed 1-23-86; 8:45 am]

BILLING CODE 7590-01-M

PACIFIC NORTHWEST ELECTRIC POWER AND CONSERVATION PLANNING COUNCIL

Hydropower Assessment Steering Committee; Meeting

AGENCY: The Pacific Northwest Electric Power and Conservation Planning Council (Northwest Power Planning Council).

ACTION: Notice of meeting.

Status: Open.

SUMMARY: The Northwest Power Planning Council hereby announces a forthcoming meeting of its Hydropower Assessment Steering Committee to be held pursuant to the Federal Advisory Committee Act, 5 U.S.C. Appendix I, 1-4. Activities will include:

- Hydro assessment: rivers study, anadromous fish, production objectives, protected areas, site ranking, supply curve.

- Cumulative impacts (Argonne).
- FERC update.
- Other.
- Public comment.

DATE: February 4, 1986, 9:30 a.m.

ADDRESS: The meeting will be held in the Council's meeting room, 850 S. W. Broadway, Suite 1100, Portland, Oregon.

FOR FURTHER INFORMATION CONTACT: Peter Paquet, 503-222-5161.

Edward Sheets,

Executive Director.

[FR Doc. 86-1574 Filed 1-23-86; 8:45 am]

BILLING CODE 0000-00-M

POSTAL RATE COMMISSION

Notice of Visits to Facilities

January 17, 1986.

Notice is hereby given that Commission staff members and members of the Office of the Consumer Advocate will visit the U.S. Postal Service Bulk Mail Center in Largo, Maryland on January 24, 1986, to obtain general knowledge and understanding of mail operations. A report of the visit will be on file in the Commission's Docket Room.

Charles L. Clapp,

Secretary.

[FR Doc. 86-1476 Filed 1-23-86; 8:45 am]

BILLING CODE 7715-01-M

RAILROAD RETIREMENT BOARD

Agency Information Collection Activities Under OMB Review

AGENCY: Railroad Retirement Board.

ACTION: In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Board has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

Summary of Proposal(s)

- (1) Collection title: Employee Noncovered Service Pension Questionnaire.
- (2) Form(s) submitted: G-209.
- (3) Type of request: New collection.
- (4) Frequency of use: On occasion.
- (5) Respondents: Individuals or households.
- (6) Annual responses: 15,000.
- (7) Annual reporting hours: 316.
- (8) Collection description: Under Pub. L. 98-21, the Tier 1 portion of an

employee annuity may be subjected to a reduction for benefits received based on work not covered under the Social Security Act or Railroad Retirement Act. The questionnaire obtains the information needed to determine if the reduction applies and the amount of such reduction.

Additional Information or Comments: Copies of the proposed forms and supporting documents may be obtained from Pauline Lohens, the agency clearance officer (312-751-4692). Comments regarding the information collection should be addressed to Pauline Lohens, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611 and the OMB reviewer, Judy McIntosh (202-395-6880), Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503.

Pauline Lohens,

Director of Information and Data
Management.

[FR Doc. 86-1573 Filed 1-23-86; 8:45 am]

BILLING CODE 7905-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-22806; File No. SR-Amex-86-1]

Self-Regulatory Organizations; American Stock Exchange, Inc.; Order Granting Accelerated Approval of Proposed Rule Change

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on January 13, 1986 the American Stock Exchange, Inc. filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The American Stock Exchange, Inc. ("Amex" or "Exchange") proposes to clarify its interpretation of the words "stock" and "shares" as used in its options rules, particularly Exchange Rule 915, to permit the listing of options contracts on securities which are not common stock but have sufficient indicia of common stock ownership to satisfy the criteria for listing options on a national securities exchange. An

example of this interpretation is set forth below in Item 3.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The need to clarify the interpretation of the words "stocks" and "shares", as used in certain Exchange rules (including Exchange Rule 915) has arisen in connection with the reorganization of Mesa Petroleum Co. ("MSA").

Options on MSA common stock began trading on the Exchange in May 1975. On December 4, 1985, the shareholders of MSA approved a two-step plan to reorganize the company's business into a limited partnership. Pursuant to the terms of the reorganization, first, in December 1985, MSA transferred its oil and gas properties into a limited partnership. The partnership interests were issued to a Depository which, in turn, issued freely transferable Units that were distributed to MSA shareholders. Each MSA shareholder of record as of December 16, 1985 received one partnership Unit for each share of common stock held. The Units were listed on the New York Stock Exchange (NYSE), where both the Units and the MSA common stock continue to trade independently.

In the second step of the reorganization, scheduled to take place in the first half of 1987, MSA will make a liquidating distribution. After the second step, MSA common stock will cease to be publicly traded and the MSA limited partnership will be the sole surviving successor entity.

Pursuant to the rules of the Options Clearing Corporation (OCC), each MSA options contract was adjusted to settle for 100 MSA common shares and 100 Units for all options exercised on or after the ex-distribution date (December 31, 1985). Usually, to facilitate the maintenance of a fair and orderly market in MSA options, new series with

a contract unit of 100 shares of MSA common stock would be listed for trading.

However, because substantially all the oil and gas properties, in addition to other operating assets, have been transferred to the limited partnership, and because the rights adherent to ownership of the Units are so similar to common stock ownership rights, the OCC has determined that the actual successor corporation to MSA is the limited partnership. Therefore, the Exchange will list options contracts representing 100 MSA partnership Units.

Exchange Rule 915, which governs the criteria to be used to select new options contracts, refers to the security underlying options contracts as "stock" and "shares". Accordingly, the Amex proposes to interpret Rule 915 to also apply to options trading on listed securities like the MSA partnership Units, that have the principal indicia of stock ownership. Of course, all other options rules will also be interpreted similarly.

The proposed interpretation is consistent with the requirements of the Securities Exchange Act of 1934 ("1934 Act") and the rules and regulations thereunder applicable to the Exchange by providing options investors with continuity in options trading on the successor equity security to MSA. Therefore, the proposed interpretation is consistent with section 6(b)(5) of the 1934 Act, which provides in pertinent part, that the rules of the Exchange be designed to promote just and equitable principles of trade and to protect the investing public.

B. Self-Regulatory Organization's Statement on Burden on Competition

The AMEX believes that the proposed rule change will not impose a burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange requests that the proposed rule change be given accelerated effectiveness pursuant to section 19(b)(2) of the 1934 Act to facilitate the maintenance of a fair and orderly market in MSA options by providing continuity in MSA options trading. The Exchange is converting the current options on MSA to options on MSA Units to coordinate the options

with the successor equity security to MSA.

The Commission finds that the proposed rule change is consistent with the requirements of the 1934 Act and the rules and regulations thereunder applicable to a national securities exchange, and in particular, the requirements of section 6 and the rules and regulations thereunder.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof because of the necessity to provide a continuous market for investors in options on MSA. Establishing options on MSA Units is consistent with the OCC's determination that the successor corporation to MSA is the limited partnership. Indeed, the MSA Units already are traded on the NYSE and MSA common stock will cease to be traded after the liquidating distribution in the first half of 1987.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 5th Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 5th Street NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by February 14, 1986.

It is therefore ordered, pursuant to section 19(b)(2) of the Act that the proposed rule change referenced above be, and hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: January 17, 1986.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 85-1587 Filed 1-23-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-22812; File No. SR-AMEX-85-41]

**Self-Regulatory Organizations;
Proposed Rule Change by American
Stock Exchange, Incorporated;
Relating to Treasury Note Options
Escrow Receipts**

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on November 20, 1985 the American Stock Exchange, Inc. filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's
Statement of the Terms of Substance of
the Proposed Rule Change**

The American Stock Exchange, Inc. ("AMEX" or "Exchange") proposes a policy change to permit Treasury Notes other than those which underlie specific Treasury Note option contracts to collateralize escrow receipts for such option contracts. The details of the proposal are set forth below in Item 3.

**II. Self-Regulatory Organization's
Statement of the Purpose of, and
Statutory Basis for, the Proposed Rule
Change**

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

**A. Self-Regulatory Organization's
Statement of the Purpose of, and
Statutory Basis for, the Proposed Rule
Change**

Treasury Note option contracts traded on the Exchange are primarily used by institutions to produce income and to hedge their Government portfolios. The majority of these institutions, however, are restricted from trading in margin accounts, so their options writing programs are done in cash accounts, usually through the use of escrow receipts.

Under current Exchange margin rules, to collateralize a short call Treasury Note option, a customer delivers to a

member organization an escrow receipt from an approved bank stating, among other things, that the bank holds for the customer's account the specific Treasury Note underlying the call and will deliver it if the customer's account is assigned an exercise notice. In the case of a short put option, a customer delivers a similar escrow receipt stating that the bank holds cash or cash equivalents which have an aggregate market value of not less than 100 percent of the aggregate exercise price of the underlying put.

To provide institutional investors with flexibility in hedging their investments, as well as to promote liquidity in the Exchange's Treasury Note options market, it is proposed that Treasury Notes other than those specifically underlying an option contract may be used to collateralize a specific short Treasury Note call option contract. The proposal is based on that fact that changes in interest rate levels tend to have a similar impact on the dollar price of Treasury Notes with approximately the same time to maturity.

Accordingly, the Exchange proposes that the following two tests be met for any surrogate Treasury Notes used as collateral. First, the Treasury Notes which may be used as collateral must mature (i) not more than one month after the underlying Note; and (ii) not less than 80 percent of the time to maturity before the underlying Note. That is, under the proposal, the most current 10-year Treasury Note options traded on the Exchange must be collateralized by Treasury Notes maturing no later than ten years and one month and no earlier than eight years (i.e. 80% of ten years). This will ensure that a close relationship exists between the market price fluctuations of the Note underlying the option and the Note used to collateralize the escrow receipt.

Second, the Exchange proposes that the amount of surrogate Treasury Notes to be required to collateralize a Treasury Note escrow receipt shall be determined by multiplying \$10,000 per contract by a multiplier (which would be determined by dividing the coupon rate of the underlying Treasury Note by the coupon rate of the surrogate Treasury Note). For example, if a Treasury Note with a 12% coupon is used to collateralize a Treasury Note option contract overlying a Treasury Note with a 10% coupon, \$83,333 worth of the Treasury Note with the 12% coupon would be required as collateral ($1\frac{1}{2} \times \$100,000 = \$83,333$). Similarly, if a Treasury Note with a 8% coupon is used to collateralize a Treasury Note option contract overlying a Treasury Note with an 10% coupon, \$125,000 worth of the Treasury Note with the 8% coupon

would be required as collateral ($1\frac{1}{2} \times \$100,000 = \$125,000$). Thus, the proposal has been structured to satisfy the concern that, if the writer fails to deliver the Treasury Note underlying the option, there are sufficient funds available which can be derived from the sale of the surrogate security to ensure that the specific security can be purchased in the market and delivered. (The Treasury Note contract specifications will continue to require the underlying Note to be delivered upon assignment.)

The proposed change is consistent with the requirements of the Securities Exchange Act of 1934 ("1934 Act") and the rules and regulations thereunder applicable to the Exchange by expanding the available securities which may be used to collateralize Treasury Note escrow receipts and by providing flexibility in hedging Treasury Note options investments. Therefore, the proposed rule change is consistent with section 6(b)(5) of the 1934 Act, which provides in pertinent part, that the rules of the Exchange be designed to promote just and equitable principles of trade and to protect the investing public.

**B. Self-Regulatory Organization's
Statement on Burden on Competition**

The AMEX believes that the proposed rule change will not impose a burden on competition.

**C. Self-Regulatory Organization's
Statement on Comments on the
Proposed Rule Change Received from
Members, Participants, or Others**

The Options Committee, a committee of the AMEX Board of Governors comprised of members and representatives of member firms, has endorsed the proposed rule change.

No written comments were either solicited or received.

**III. Date of Effectiveness of the
Proposed Rule Change and Timing for
Commission Action**

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the Submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by February 14, 1986.

For the Commission by the Division of Market Regulation pursuant to delegated authority.

Dated: January 17, 1986.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 86-1580 Filed 1-23-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-22805; File No. SR-DTC-85-7]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change of Depository Trust Company

On December 23, 1985, the Depository Trust Company ("DTC") filed a proposed rule change with the Commission under section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"). The Commission is publishing this Notice to solicit comment on the rule change.

The proposed rule change revises DTC's procedures to clarify that securities pledged to the Option Clearing Corporation ("OCC") through the Participant Terminal System ("PTS") are pledged pursuant to the same terms and conditions and with the same legal effect as pledge data submitted on paper forms. DTC previously amended its pledge procedures, SR-DTC-85-2, to permit DTC participants to pledge securities to OCC through PTS as an alternative to submitting pledge data in paper form.

DTC states in its filing that the proposal is consistent with the requirements of the Act in that it promotes the prompt and accurate clearance and settlement of securities transactions. DTC also stated that the submission of pledge data through PTS improves the efficiency and reduces the cost of pledging securities to OCC.

The rule change has become effective, pursuant to section 19(b)(3)(A) of the Act. The Commission may summarily abrogate the rule change at any time within 60 days of its filing if it appears to the Commission that abrogation is necessary or appropriate in the public interest, for protection of investors, or otherwise in furtherance of the purposes of the Act.

You can submit written comment within 21 days after this Notice is published in the **Federal Register**. Please refer to File No. SR-DTC-85-7, and file six copies of your comments with the Secretary of the Commission, 450 5th Street NW., Washington, DC 20549. Material on the rule change, other than material that may be withheld from the public under 5 U.S.C. 552, is available for inspection at the Commission's Public Reference Room and at the principal offices of DTC.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

Dated January 17, 1986.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 86-1586 Filed 1-23-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-22809; File No. SR-MSRB-86-3]

Self-Regulatory Organizations; Proposed Rule Change by the Municipal Securities Rulemaking Board; Relating to the Conduct of Municipal Securities Business

The Municipal Securities Rulemaking Board on January 6, 1986, filed with the Securities and Exchange Commission pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), a proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

(a) The Municipal Securities Rulemaking Board (the "Board") is filing

an interpretation of Board rule G-17 (hereafter referred to as the "proposed rule change") concerning the conduct of municipal securities business. The text of the proposed rule change is as follows:

The Board has received inquiries concerning situations in which syndicate managers charge fees for designated sales that do not appear to be actual expenses incurred on behalf of the syndicate or may appear to be excessive in amount. For example, one commentator has described a situation in which the syndicate manager charged \$.25 to \$.40 per bond as expenses on designated sales and has suggested that such a charge seems to bear no relation to the actual out-of-pocket costs of handling such transactions.

Rule G-17 provides that

In the conduct of its municipal securities business, each broker, dealer, and municipal securities dealer shall deal fairly with all persons and shall not engage in any deceptive, dishonest, or unfair practice.

The Board wishes to emphasize that syndicate managers should take care in determining the actual expenses involved in handling designated sales and may be acting in violation of rule G-17 if the expenses charged to syndicate members bear no relation to or otherwise overstate the actual expenses incurred on behalf of the syndicate.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change.

(a) The Board has received inquiries concerning situations in which syndicate managers charge fees for designated sales that either do not appear to be actual expenses incurred on behalf of the syndicate or appear to be excessive in amount. The Board has determined that syndicate managers may be acting in violation of rule G-17, which sets forth a general requirement that municipal securities dealers deal with all persons fairly and not engage in any deceptive, dishonest, or unfair practice, if expenses charged to syndicate members bear no relation to or otherwise overstate the actual expenses incurred on behalf of the syndicate.

(b) The Board has adopted the proposed rule change pursuant to section 15B(b)(2)(C) of the Securities Exchange Act of 1934, which directs the Board to propose and adopt rules which are

designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in municipal securities, to remove impediments to and perfect the mechanism of a free and open market in municipal securities, and, in general, to protect investors and the public interest. . . .

B. Self-Regulatory Organization's Statement on Burden on Competition

The Board believes that the proposed rule change will not have any impact on competition since it applies equally to all municipal securities brokers and dealers that act as syndicate managers.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The Board has not solicited or received comments on the proposed rule change. As noted previously, the Board's consideration of the proposed rule change was prompted by an interpretive inquiry.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3) of the Securities Exchange Act of 1934 and subparagraph (e) of Securities Exchange Act Rule 19b-4. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will

be available for inspection and copying in the Commission's Public Reference Section. Copies of such filing also will be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by February 14, 1986.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: January 17, 1986.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 86-1581 Filed 1-23-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-22810; File No. SR-MSRB-86-2]

Self-Regulatory Organizations; Proposed Rule Change by the Municipal Securities Rulemaking Board; Relating to Customer Account Transfers

The Municipal Securities Rulemaking Board on January 2, 1986, filed with the Securities and Exchange Commission pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), a proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

A. The Municipal Securities Rulemaking Board (the "Board") is filing proposed rule G-26 on customer account transfers (hereafter referred to as "the proposed rule change"), as follows:

*Rule G-26. Customer Account Transfers**

(a) *When a customer whose municipal securities account is carried by a municipal securities broker or dealer (the "carrying party") wishes to transfer its entire account to another municipal securities broker or dealer (the "receiving party") and gives written notice of that fact to the receiving party, both municipal securities brokers or dealers must expedite and coordinate activities with respect to the transfer as follows:*

(i) *Upon receipt from the customer of a signed transfer instruction to receive*

such customer's securities account from the carrying party, the receiving party shall immediately submit such instruction to the carrying party. The carrying party shall, within five business days following receipt of such instruction, validate and return the transfer instruction to the receiving party (with an attachment reflecting all positions and money balances as shown on its books) or take exception to the transfer instruction for reasons other than securities positions or money balance differences and advise the receiving party of the exception taken.

(ii) *The carrying party and the receiving party shall promptly resolve any exceptions taken to the transfer instruction.*

(iii) *Within five business days following the validation of a transfer instruction, the carrying party shall complete the transfer of the account to the receiving party. The receiving party and the carrying party must immediately establish fail-to-receive and fail-to-deliver contracts as of the date of validation upon their respective books of account against the long/short positions in the customer's account that have not been physically delivered/received and the receiving party/carrying party shall debit/credit the related money amount. The customer's account shall thereupon be deemed transferred.*

(b) *Any fail contracts resulting from this account transfer procedure shall be closed out in accordance with rule G-12(h).*

(c) *Any discrepancies relating to positions or money balances that exist or occur after transfer of a customer's securities account shall be resolved promptly.*

(d) *The Board may exempt from the provisions of this rule, either unconditionally or on specified terms and conditions, any dealer or any type of account, security or municipal security.*

(e) *When both the carrying party and the receiving party are direct participants in a clearing agency registered with the Securities and Exchange Commission offering automated customer securities account transfer capabilities, the account transfer procedure, including the establishing and closing out of fail contracts, shall be accomplished pursuant to the rules of and through such registered clearing agency.*

(f) *The carrying party shall provide a copy of each customer account transfer instruction issued pursuant to paragraph (a)(i) to the enforcement authority having jurisdiction over the carrying*

*Italics indicate new language; [brackets] indicate deletions.

party member, at the request of such authority.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The securities industry recently has sought to address the problems that can arise when a customer decides to transfer its entire account from one industry member to another. Previously, only one self-regulatory organization, the New York Stock Exchange ("NYSE"), had a rule addressing this situation. NYSE rule 412 had required that customer account transfers between members be accomplished "promptly." Because of dissatisfaction with this standard, and a perceived increase in the number of "problem transfers" involving securities industry participants, the NYSE and the National Association of Securities Dealers ("NASD") recently adopted rules regarding customer account transfers and filed them with the Commission.¹ The Commission approved NYSE amended rule 412 on November 26, 1985, with an effective date of February 24, 1986. The Commission has not yet taken action on the NASD proposal, although it is expected that it will be approved in time to take effect at the same time as NYSE rule 412.

It is apparent that the securities industry is moving toward a uniform customer account transfer standard. Proposed rule G-26 is designed to enhance this development by applying a customer account transfer procedure to all municipal securities brokers and municipal securities dealers. The proposed rule change provides that a customer account transfer instruction must be validated unless the transferring dealer objects for reasons unrelated to securities positions or money balances in the account. It provides for the establishment and resolution of fail contracts in accordance with the Board's close-out rule. It requires the use of automated customer account transfer systems in place at registered clearing agencies when both dealers are participants in said agency. It contains a provision for enhancing compliance with the rule by requiring submission of transfer instructions to the enforcement agency with jurisdiction over the dealer

carrying the account, if the enforcement agency requests such submission.

Approval of the proposed rule change will benefit the securities industry as a whole by ensuring a uniform customer account transfer standard. Currently certain municipal securities brokers or municipal securities dealers, particularly those with municipal security-only accounts and bank dealers, will not be covered by the standards governing the rest of the securities industry. The Board requests that the Commission approve the proposed rule change in time to take effect along with the customer account transfer rules of the NYSE and the NASD.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change applies uniformly to all brokers, dealers, or municipal securities dealers that are engaged in municipal securities activities and are generally technical in nature. The Board therefore believes that the proposed rule change would not impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Board has neither asked for nor received any comments concerning the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approved such proposed rule, or

(B) Institute proceedings to determine whether the proposed rule should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written

communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section. Copies of such filing also will be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by February 14, 1986.

For the Commission by the Division of Market Regulation pursuant to delegated authority.

Dated: January 17, 1986.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 86-1582 Filed 1-23-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-22808; File No. SR-MSRB-86-1]

Self-Regulatory Organizations; Notice of Proposed Rule Change by the Municipal Securities Rulemaking Board; Relating to Dissemination of CUSIP Numbers and Initial Trade Dates

The Municipal Securities Rulemaking Board on January 6, 1986, filed with the Securities and Exchange Commission pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), a proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

A. The Municipal Securities Rulemaking Board (the "Board") is filing herewith an amendment to Board rule G-34 on CUSIP numbers (hereafter referred to as the "proposed rule change"). The text of the proposed rule change is as follows:¹

G-34 CUSIP Numbers and Dissemination of Initial Trade Date Information

(a)-(b) No change.

(c) *Each municipal securities broker or municipal securities dealer who acquires, whether as principal or agent,*

¹ Italics indicate new language; [brackets] indicate deletions.

a new issue of municipal securities from the issuer of such securities for the purposes of distributing the new issue shall on the initial trade date communicate the following information to syndicate and selling group members:

(i) the CUSIP number or numbers assigned to the issue and descriptive information sufficient to identify the CUSIP number corresponding to each part of the issue assigned a specific CUSIP number; and

(ii) the initial trade date. For purposes of this paragraph (c), initial trade date shall mean, for competitive issues, either the date of award, or the first date allocations are made to syndicate or selling group members, whichever date is later, and, for negotiated issues, either the date on which the contract to purchase the securities from the issuer is executed, or the first date allocations are made to syndicate or selling group members, whichever date is later.

(d) [(c)]: No change.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) Rule G-34 requires a municipal securities dealer acting as an underwriter of a new issue to apply to the Board or its designee (currently the CUSIP Service Bureau) for assignment of CUSIP numbers to the issue. National Securities Clearing Corporation is planning to provide automated comparison facilities for when, as and if issued ("when-issued") transactions in mid-February 1986. The proposed system will require that a dealer submitting a transaction to the system include the CUSIP number for the issue, which will require dealers to have access to CUSIP numbers for a new issue at the time that trading in the issue begins. For when-issued transactions that are not between a syndicate member and a syndicate member, both dealers should submit transactions to the registered clearing agency by the day after trade date in order for the system to work efficiently. Therefore, dealers submitting transactions to the system will need CUSIP numbers, on, or as soon as possible after, trade date.

In addition, since many dealers wish to begin trading in an issue as soon as possible, it also is necessary for the industry to be advised by the underwriters when trading begins. For purposes of rule G-12(c), which requires when-issued confirmations to be sent

within two business days of trade date, the Board has interpreted "trade date" to be no earlier than the date of award, for competitive issues, or the date of the execution of the contract to purchase the issue, for negotiated issues, and has interpreted rule G-17, on the conduct of municipal securities business, to prohibit the sending of confirmations of when-issued transactions prior to these dates. Although managing underwriters will know the date of award or the execution of the contract to purchase the issue, other dealers with pre-sale orders also will need to know the "initial trade date" on which traders can be submitted to the automated comparison system.

The proposed rule change would require managing underwriters to communicate CUSIP numbers and the "initial trade date" to syndicate members and to selling group members on the initial trade date. The "initial trade date" is defined in the proposed rule change to mean, for competitive issues, either the date of award or the first date allocations are made to syndicate or selling group members, whichever date is later, and, for negotiated issues, either the date on which the contract to purchase the securities from the issuer is executed or the first date allocations are made to syndicate or selling group members, whichever date is later. This would ensure that syndicate members and selling group members have information necessary for timely submission of transactions to the automated comparison system. If the proposed rule change does not result in adequate dissemination of this information, the Board will consider other measures, such as a requirement that managing underwriters publish the information through channels generally available to the industry.

(b) The Board has adopted the proposed rule change pursuant to section 15B(b)(2)(C) of the Securities Exchange Act of 1934, as amended, which requires and empowers the Board to adopt rules.

designed . . . to foster cooperation and coordination with persons engaged in . . . clearing, settling, processing information with respect to, and facilitating transactions in municipal securities. . . .

The proposed rule change is consistent with the provisions of section 17A of the Act, which mandates the creation of an automated national clearing system for securities.

The Board believes that the proposed rule change will promote compliance with rule G-12(f)(i), thereby fostering the use of automated clearance facilities

and providing greater efficiencies in the comparison of inter-dealer transactions.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change applies in a uniform manner to all brokers, dealers, and municipal securities dealers that are engaged in municipal securities activities. The Board therefore believes that the proposed rule change would not impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Board has neither asked for nor received comments concerning the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the *Federal Register* or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will: (A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

The Board has requested the Commission to find good cause for approving the proposed rule change prior to the 35th day after publication in the *Federal Register* under section 19(b)(2) of the Act if the approval date would not occur prior to or concurrent with the commencement of operation of the automated comparison system for when-issued transaction. The Board has advised that National Securities Clearing Corporation is planning to begin operation of the when-issued comparison system in mid-February 1986. The Board believes that the proposed rule change is necessary to ensure that municipal securities dealers can submit transactions to the comparison system in a timely and efficient manner. Therefore, the Board believes that good cause exists to accelerate the effectiveness of the proposed rule change under section 19(b)(2) of the Act if such acceleration is necessary to obtain effectiveness of the proposed rule change on or prior to the commencement date for the operation of the when-issued comparison system.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission and all related items other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section. Copies of such filing also will be available for inspection and copying at the office of the MSRB. All submissions should refer to the file number in the caption above and should be submitted by February 14, 1986.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: January 17, 1986.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 86-1583 Filed 1-23-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-22807; File No. SR-MSRB-86-4]

Self-Regulatory Organizations; Proposed Rule Change by the Municipal Securities Rulemaking Board; Relating to Uniform Practice

The Municipal Securities Rulemaking Board on January 6, 1986, filed with the Securities and Exchange Commission pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), a proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

(a) The Municipal Securities Rulemaking Board (the "Board") is filing herewith proposed amendments to rule G-12 on uniform practice (hereafter referred to as the "proposed rule change"). The text of the proposed rule change is as follows:¹

G-12 Uniform Practice

- (a) and (b) No change.
- (c) Dealer Confirmations.
- (i) through (iv) No change.

(v) Each confirmation shall contain the following information:

(A) through (I) No change.

(J) amount of concession, if any, per \$1000 par value unless stated to be an aggregate figure, *provided however, that for a transaction in securities maturing in two or more years and, at the time of the transaction, paying investment return solely through capital appreciation, the concession, if any, shall be expressed as a percentage of the price of these securities;*

(K) through (N) No change.

(vi) No change.

(d) through (l) No change.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Board rule G-12(c)(v)(J) requires municipal securities dealers to disclose on inter-dealer confirmations the amount of concession on the transaction, if any, per \$1000 par value unless stated to be an aggregate figure. In response to industry inquiries on how the rule applies to zero coupon, compound interest, and multiplier securities,² the Board has adopted amendments to rule G-12(c)(v)(J) to require disclosure of the amount of concession on these securities as a percentage of the bond's price. This new requirement is more consistent with industry practice. The Board also was concerned that disclosure of the amount of concession on the basis of maturity or par value may be confusing.³

² Zero coupon securities have a stated interest rate of "0%" and are sold at deep discounts, with the investor's return received in the form of an accretion to this discount to par at the rate of return represented by the original offering yield. Other similar municipal securities, often described as "compound interest" or "multiplier" securities, are issued with a stated rate of investment return; an investor purchasing such a security would receive at maturity a single payment (the "maturity value") representing both return of the initial principal value and payment of an investment return accrued over the life of the instrument at a stated compounded rate.

³ The proposed rule change also would accommodate transactions in "GAINS," municipal securities that are issued as zero coupon bonds but, after a certain period, convert to bonds paying interest periodically. During the period that these securities pay investment return solely through capital appreciation, the concession on these securities must be expressed as a percentage of their price. Once these bonds convert to paying interest periodically, the concession must be expressed per \$1000 par value or as an aggregate figure.

(b) The Board has adopted the proposed rule change pursuant to section 15B(b)(2)(C) of the Securities Exchange Act of 1934, which directs the Board to propose and adopt rules which are

designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in municipal securities, to remove impediments to and perfect the mechanism of a free and open market in municipal securities, and, in general, to protect investors and the public interest

B. Self-Regulatory Organization's Statement on Burden on Competition

The Board does not believe that the proposed rule change will impose any burden on competition since it applies equally to all municipal securities brokers and dealers.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The Board has not solicited or received comments on the proposed rule change. As noted previously, the Board's consideration of the proposed rule change was prompted by an interpretive inquiry.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the *Federal Register* or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- (A) By order approve such proposed rule change, or
- (B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC, 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed

¹ Italics indicate additions.

with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section. Copies of such filing also will be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by February 14, 1986.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: January 17, 1986.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 86-1584 Filed 1-23-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-22800; File No. SR-NYSE-85-45]

Self-Regulatory Organizations; Filing and Immediate Effectiveness of Proposed Rule Change by New York Stock Exchange, Inc., Relating to Option Fees

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

OPTION TRANSACTION FEES

Agency Transactions	
[Per Contract Charge]	
[Premiums < \$1.00]	\$0.15
[Premiums ≥ \$1.00]	.30
[Per Side Charge]	.02
Index Options	
[Premiums Less than \$1.00 (per contract side)]	.20
[Premiums equal to or greater than \$1.00 (per contract side)]	.35
Stock Options	
[Premiums less than \$1.00 (per contract side)]	\$1.15
[Premiums equal to or greater than \$1.00 (per contract side)]	.30
Principal Transactions	
[Per Contract Charge] In all options (per contract side)	\$0.06
[Per side Charge (comparison)]	.02
OPTION COMPARISON FEES	
For all option transactions (per contract side)	\$0.125
The new fees will be effective January 1, 1986.	

OPTIONS FLOOR FACILITY OPERATION FEES

Option Clerk Ticket Fee	
Per annum Charge	
Regular	\$510
[Premium]	\$960
	(\$715.)
Options Floor Telephone Fee Per Annum/each private line	\$900.
Options Floor Booth Fee Per Annum	\$3,000.
OPTIONS TRADING RIGHT FEES	
Options Trading Right Transfer Charge—5% of purchase price (in no case more than \$5,000.)	
Options Trading Badge Per Annum	\$300.
Application Processing Fee	\$150. (100.)

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below and is set forth in Section A, B, and C below.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to adjust the fees charged for agency transactions in index options, for the comparison of all option transactions made on the Exchange, for clerks on the options floor, and for the processing of OTR applications. The increase in fees would assist the Exchange in offsetting the costs of operating a facility for options trading. The proposed fees and methods of calculating these fees are similar to fees collected by other option exchanges.

The statutory basis under the Securities Exchange Act of 1934 (the "Act") is section 6(b)(4) and its requirement that a national securities exchange have rules that provide for the equitable allocation of reasonable dues, fees, and other charges among its members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will not impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The proposed fees were reviewed and approved by the Options Subcommittee on Market Performance, comprised of Exchange members and representatives of member organizations.

No written comments were solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A) of the Securities Exchange Act of 1934 and subparagraph (e) of Securities Exchange Act Rule 19b-4. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule

change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552 will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by February 14, 1986.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: January 15, 1986.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 86-1526 Filed 1-23-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-22801; File No. SR-PSE-85-33]

Self-Regulatory Organizations; Pacific Stock Exchange, Inc.; Summary Effectiveness of Proposed Rule Change

The Pacific Stock Exchange, Incorporated ("PSE" or the "Exchange") submitted on November 15, 1985, copies of a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1) and Rule 19b-4 thereunder, to establish a policy for Floor Brokers to vocalize the name of the Member Firm or Market Maker for whom they are transacting orders.

In its filing with the Commission, the self-regulatory organization included statements concerning the terms of

substance, purpose of and basis for the proposed rule change and discussed any comments received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below and is set forth in Items I and II below.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PSE proposes to amend its Options Floor Procedure Advices B-6 and D-9 to more clearly define the responsibility of Floor Brokers in effecting agency orders. Specifically, the proposed changes will set out the obligations of Floor Brokers to vocalize the name of the Member Firm or Market Maker for whom they are transacting orders.

Currently OFPA B-6 requires that a Floor Broker, after effecting a transaction for the account of a Market Maker, shall supply the name of the Market Maker upon request. However, it is unclear as to which party or parties may make such a request and to whom the name shall be supplied. The Exchange proposes to amend OFPA B-6 to remove the ambiguity in the provision.

OFPA D-9 requires that a Floor Broker executing an order for a Member Firm shall indicate by public outcry the name of such member firm immediately upon effecting the transaction. This requirement is seen as overly burdensome, particularly in active trading Crowds. The Exchange propose to amend OFPA D-9 to require this give-up only upon request.

Set forth below are the proposed rule changes. (Brackets indicate language to be deleted; italic indicates new language.)

PSE OPTIONS FLOOR PROCEDURE ADVICE

B-6

Subject: Market Maker's Use of Floor Brokers to Effect Transactions for the Market Maker's Account

Section 73 of Rule VI states, in part, that "A Market Maker is an individual who is registered with the Exchange for the purpose of making transactions as dealer-specialist on the Floor," and Section 79 requires, in part, that "Transactions of a Market Maker should constitute a course of dealings reasonably calculated to contribute to the maintenance of a fair and orderly market. . . ." Accordingly, the Exchange believes that the special obligations and role of the Market Maker warrant that the crowd be fully aware of the Market Maker's trading

activity. Pursuant to Sections 73 and 79, the following special procedures will be applicable when a Market Maker has occasion to utilize the services of a Floor Broker to effect transactions for the Market Maker's account:

Sections 1 and 2 are not amended.
(3) A Floor Broker holding an order for the account of a Market Maker shall verbally identify the order as such prior to consummating a transaction, and shall after effecting the trade, supply the name of the Market Maker concerned, *by public outcry, upon request[,] of any member or members in the trading crowd.*

Sections 4 and 5 are not amended.
PSE OPTIONS FLOOR PROCEDURE ADVICE

Subject: Giving Up the Name of a Member Organization At a Time of Requesting the Size of the Market and/or Executing an Order
First Paragraph—No Change.

Paragraph (1)—No Change.
(2) Whether or not he shall have previously indicated the name of the member organization for whom he is acting in requesting a quotation, a Floor Broker executing an order shall upon request by any Member or Members in the trading crowd indicate by public outcry the name of such member organization immediately upon effecting any transaction on the Options Trading Floor.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included the following statements concerning the purpose of and basis for the proposed rule change.

(A) *Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for the Proposed Rule Change*

The PSE is proposing to change its Options Floor Procedure Advices ("OFPA" or "Advices") with respect to the obligations of Floor Brokers to vocalize for whom they are executing transactions. OFPA B-6 indicates that a Floor Broker after executing a transaction for a market maker should supply the name of the market maker upon request. However, the Advice does not specify to whom the name should be supplied or upon whose request. The proposed rule change is designed to remedy this deficiency and make clear that any member in the trading crowd may request this information and that the floor broker must announce the

information, generally, to the trading crowd.

With respect to OFPA D-9, a Floor Broker is required to give up the name of the member organization for whom he is executing a transaction immediately upon effecting such transaction. The PSE notes that such a requirement is needed on certain exchanges in order to facilitate comparison and clearing of trades. This is not the case at the PSE however, owing to its unique-trade match. Moreover, the requirement to vocalize the name of the member organization after each trade is deemed burdensome, particularly in active or fast markets. Consequently, the PSE proposes to change the OFPA to require Floor Brokers to announce the name of the member organization only upon request. This will preserve the right of crowd members to gain this knowledge when so desired, and will also be consistent with the proposed change to OFPA B-6.

(B) *Self-Regulatory Organization's Statement on Burden on Competition*

The proposed rule change imposes no burden on competition.

(C) *Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others*

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has been put into effect summarily, pursuant to section 19(b)(3)(B) of the Act. At any time within sixty days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in the furtherance of the purposes of the Act.

On preliminary consideration, it appears to the Commission that summary effectiveness is necessary for the maintenance of fair and orderly markets.

Section 19(b)(3)(B) of the Act requires that any proposed rule change put into effect summarily shall be filed promptly thereafter in accordance with the provisions of section 19(b)(1) of the Act.

Publication of the submission is expected to be made in the **Federal Register** during the week of January 20, 1986. Interested persons are invited to submit written data, views and

arguments concerning the submission within 21 days from the date of publication in the **Federal Register**. Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Reference should be made to File No. PSE-85-33.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of the filing and of any subsequent amendments also will be available at the principal office of the PSE.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

Dated: January 15, 1986.

Shirley E. Hollis,
Assistant Secretary.

[FR Doc. 86-1527 Filed 1-23-86; 8:45 am]

BILLING CODE 8010-01-M

[File No. 22-14600]

Application and Opportunity for Hearing; Marine Midland Banks, Inc.

January 17, 1986.

Notice is Hereby Given that Marine Midland Banks, Inc. (the "Applicant") has filed an application under clause (ii) of section 310(b)(1) of the Trust Indenture Act of 1939 (the "Act") for a finding that the trusteeship of Manufacturers Hanover Trust Company (the "Trust Company") under two existing Indentures between the Applicant and the Trust Company and a Pooling and Servicing Agreement, dated as of December 1, 1985 (the "Agreement"), between Marine Midland Bank, N.A. ("Marine") and Trust Company under which certificates evidencing interest in a pool of mortgage loans have been issued, is not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify the Trust Company from acting as Trustee under the Indentures.

Section 310(b) of the Act provides in part that if a trustee under an indenture qualified under the Act has or shall acquire any conflicting interest in shall,

within ninety days after ascertaining the conflicting interest, either eliminate such conflicting interest or resign as trustee. Subsection (1) of section 310(b) provides, with certain exceptions, that a trustee under a qualified indenture shall be deemed to have a conflicting interest if such trustee is trustee upon another indenture under which any other securities of an obligor upon the indenture securities are outstanding. However, under clause (ii) of subsection (1), there may be excluded from the operation of the subsection another indenture under which other securities of the same obligor are outstanding, if the issuer shall have sustained the burden of proving, on application to the Commission and after opportunity for hearing thereon, that trusteeship under both the qualified indenture and such other indenture is not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify such trustee from acting as trustee under one of such indentures.

The Applicant alleges that: (1) The Trust Company currently is acting as Trustee under two indentures under which the Applicant is the obligor. The indenture dated as of April 1, 1969 and supplemented by a Supplemental Indenture dated as of December 6, 1974 involved the issuance of 8½% Debentures due 1994. The indenture dated as of March 1, 1973 involved the issuance of 7% Debentures due 2003. Said indentures were filed respectively as Exhibit 2 and 2-A to Applicant's respective Registration Statements Nos. 2-31857 and 2-46974 filed under the Securities Act of 1933, and have been qualified under the Trust Indenture Act of 1939. Said two indentures are hereinafter called the Indentures and the Securities issued pursuant to the Indentures are hereinafter called the Notes.

(2) The Applicant is not in default in any respect under the Indentures or under any other existing indenture.

(3) On December 16, 1985, the Trust Company entered into a Pooling & Servicing Agreement dated as of December 1, 1985 (the "1985-1 Agreement") with Marine Midland Bank, N.A., Seller, Servicer and Custodian, under which there were issued on December 16, 1985 Mortgage Pass-Through Certificates, Series 1985-1 11.00% Pass-Through Rate (the "Series 1985-1 Certificates"), which evidence fractional undivided ownership interests in a pool of conventional one-to-four family mortgage loans (the "1985-1 Mortgage Pool") having an adjusted principal balance aggregating \$15,063,928.77 at the close of business on

December 1, 1985 which mortgage loans were assigned to the Trust Company as Trustee simultaneously with the issuance of the Series 1985-1 Certificates.

(4) On December 16, 1985, Applicant, the parent of Marine Midland Bank, N.A., entered into a Limited Guaranty of even date (the "1985-1 Limited Guaranty") pursuant to which Applicant agreed, for the benefit of the holders of the Series 1985-1 Certificates, to be liable for 5% of the initial aggregate principal balance of the 1985-1 Mortgage Pool and for lesser amounts in later years pursuant to the provisions of the 1985-1 Limited Guaranty. The Series 1985-1 Certificates were not registered under the Securities Act of 1933 by reason of a section 4(2) exemption under said Act. The 1985-1 Agreement has not been qualified under the Trust Indenture Act of 1939.

(5) On December 28, 1984, Applicant and National Westminster Bank USA, a national banking association ("NatWest") entered into a Trust Agreement of even date (the "Trust Agreement") providing for the delivery of certain debt securities to be held by NatWest in a special and irrevocable trust (the "Trust") for the purpose of satisfying Applicant's obligations in respect of the Debentures and other outstanding debt securities of Applicant. The Trust was created by Applicant so that it might utilize Statement of Financial Accounting Standards No. 76 and as a result the Debentures have been defeased for financial accounting purposes only. The Bank is not a party to the Trust Agreement and has no rights thereunder.

(6) The obligations of Applicant under the Indentures and the 1985-1 Limited Guaranty are wholly unsecured, are unsubordinated and rank *pari passu*. The setting aside of certain securities pursuant to the Trust Agreement was to effect favorable accounting treatment and not for the purpose of securing accounting treatment and not for the purpose of securing Applicant's obligations under the Indentures. The Trust Agreement does not provide for a grant of a security interest and the Bank has no rights under the Trust Agreement in the assets held in Trust. Any differences that exist between the provisions of the Indentures and the 1985-1 Limited Guaranty are unlikely to cause any conflict of interest among the trusteeships of the Trust Company under the Indentures and the 1985-1 Agreement.

Applicant has waived notice of hearing, and waived hearing, and waived all rights to specify procedures

under Rule 8(b) of the Commission's Rules of Practice in connection with this matter.

For a more detailed statement of the matters of fact and law asserted, all persons are referred to said application, File No. 22-14600, which is a public document on file in the office of the Commission's Public Reference Room, 450 Fifth Street, NW, Washington, DC 20549.

Notice is Further Given that any interested person may, not later than February 11, 1986 request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of law or fact raised by said application which desires to controvert or may request that he be notified if the Commission should order a hearing thereon.

Any such request should be addressed to: Secretary, Securities and Exchange Commission, Washington, DC 20549. At any time after said date, the

Commission may issue an order granting the application upon such terms and conditions as the Commission may deem necessary or appropriate in the public interest and for the protection of investors, unless a hearing is ordered by the Commission.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

Shirley E. Hollis

Assistant Secretary.

[FR Doc. 86-1585 Filed 1-23-86; 8:45 am]

BILLING CODE 8010-01-M

VETERANS ADMINISTRATION

Station Committee on Educational Allowance; Meeting

Notice is hereby given pursuant to Section V, Review Procedure and Hearing Rules, Station Committee on Educational Allowances that on April 2,

1986, at 1:00 p.m., the Veterans Administration Regional Office, St. Petersburg, Florida, Station Committee on Educational Allowances, shall, at the Federal Building, 6th Floor, Hearing Room A, Room 660, 144 First Avenue South, St. Petersburg, Florida, conduct a hearing to determine whether Veterans Administration benefits to all eligible persons pursuing/enrolled in BAR/BRI Florida Bar Review, 226 West Pensacola Street, Suite 108, Tallahassee, Florida, 32301, should be discontinued, as provided in 38 CFR 21.4134, because a requirement of law is not being met or a provision of the law has been violated. All interested persons shall be permitted to attend, appear before, or file statements with the Committee at that time and place.

Dated: January 13, 1986.

Carlos L. Rainwater,

Director.

[FR Doc. 86-1575 Filed 1-23-86; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register

Vol. 51, No. 16

Friday, January 24, 1986

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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1

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 10:00 a.m., Wednesday, January 29, 1986.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION:

Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: January 21, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-1602 Filed 1-22-86; 10:11 am]

BILLING CODE 6210-01-M

2

NATIONAL MEDIATION BOARD

TIME AND DATE: 2:00 p.m., Wednesday, February 5, 1986.

PLACE: Board Hearing Room 8th Floor, 1425 K. Street, NW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Ratification of the Board actions taken by notation voting during the month of January, 1986.

2. Other priority matters which may come before the Board for which notice will be given at the earliest practicable time.

SUPPLEMENTARY INFORMATION: Copies of the monthly report of the Board's notation voting actions will be available from the Executive Director's office following the meeting.

CONTACT PERSON FOR MORE INFORMATION:

Mr. Rowland K. Quinn, Jr., Executive Director, Tel: (202) 523-5920.

DATE OF NOTICE: January 14, 1986.

Mr. B.E. Meredith,

Acting Executive Director, National Mediation Board.

[FR Doc. 86-1636 Filed 1-22-86; 11:22 am]

BILLING CODE 7550-01-M

3

SECURITIES AND EXCHANGE COMMISSION

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94-409, that the Securities and Exchange Commission will hold the following meeting during the week of January 28, 1986.

Closed meetings will be held on Tuesday, January 28, 1986, at 2:30 p.m. and on Thursday, January 30, 1986, following the 2:30 p.m. open meeting. Open meetings will be held on Thursday, January 30, 1986, at 10:00 a.m., 1:45 p.m. and 2:30 p.m., in Room 1C30.

The Commissioners, Counsel to the Commissioners, the Secretary of the Commission, and recording secretaries will attend the closed meetings. Certain staff members who are responsible for the calendared matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(i) and (10), permit consideration of the scheduled matters at closed meetings.

Commissioner Cox, as duty officer, voted to consider the items listed for the closed meetings in closed session.

The subject matter of the closed meeting scheduled for Tuesday, January 28, 1986, at 2:30 p.m., will be:

- Formal orders of investigation.
- Settlement of administrative proceedings of an enforcement nature.
- Settlement of injunctive actions.
- Institution of injunctive action.
- Regulatory matter regarding financial institutions.

The subject matter of the open meeting scheduled for Thursday, January 30, 1986, at 10:00 a.m., will be:

1. Consideration of whether to issue a release proposing amendments to Rule 3a12-8 under the Securities Exchange Act of 1934 that would exempt certain Japanese government securities from the provisions of the Act for purposes of marketing futures contracts on these securities in the United States. For further information, please contact Sharon Lawson at (202) 272-3116.

2. Consideration of whether to propose amendments to rule 202.3a under the Commission's Rules on Informal and Other Procedures which would require payment of filing and other fees to a U.S. Treasury designated lockbox depository. The proposed amendments respond to regulations issued by the U.S. Treasury Department to facilitate payments to the federal government. For further information, please contact Kathleen A. Jackson at (202) 272-2700.

The subject matter of the open meeting scheduled for Thursday, January 30, 1986, at 1:45 p.m., will be:

The Commission will hear oral argument on an appeal by C.E. Carlson, Inc., a registered broker-dealer, and Charles E. Carlson, its president, from an administrative law judge's initial decision. For further information, please contact Daniel J. Savitsky at (202) 272-7400.

The subject matter of the open meeting scheduled for Thursday, January 30, 1986, at 2:30 p.m., will be:

The Commission will hear oral argument on an appeal by Butcher & Singer, Inc., a registered broker-dealer, and Thomas A. Grey and Samuel J. Bennett, vice presidents, from an administrative law judge's initial decision. For further information, please contact Herbert V. Efron at (202) 272-7400.

The subject matter of the closed meeting scheduled for Thursday, January 30, 1986 following the 2:30 p.m. open meeting, will be: Post oral argument discussions.

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: Jerry Laporte at (202) 272-2468.

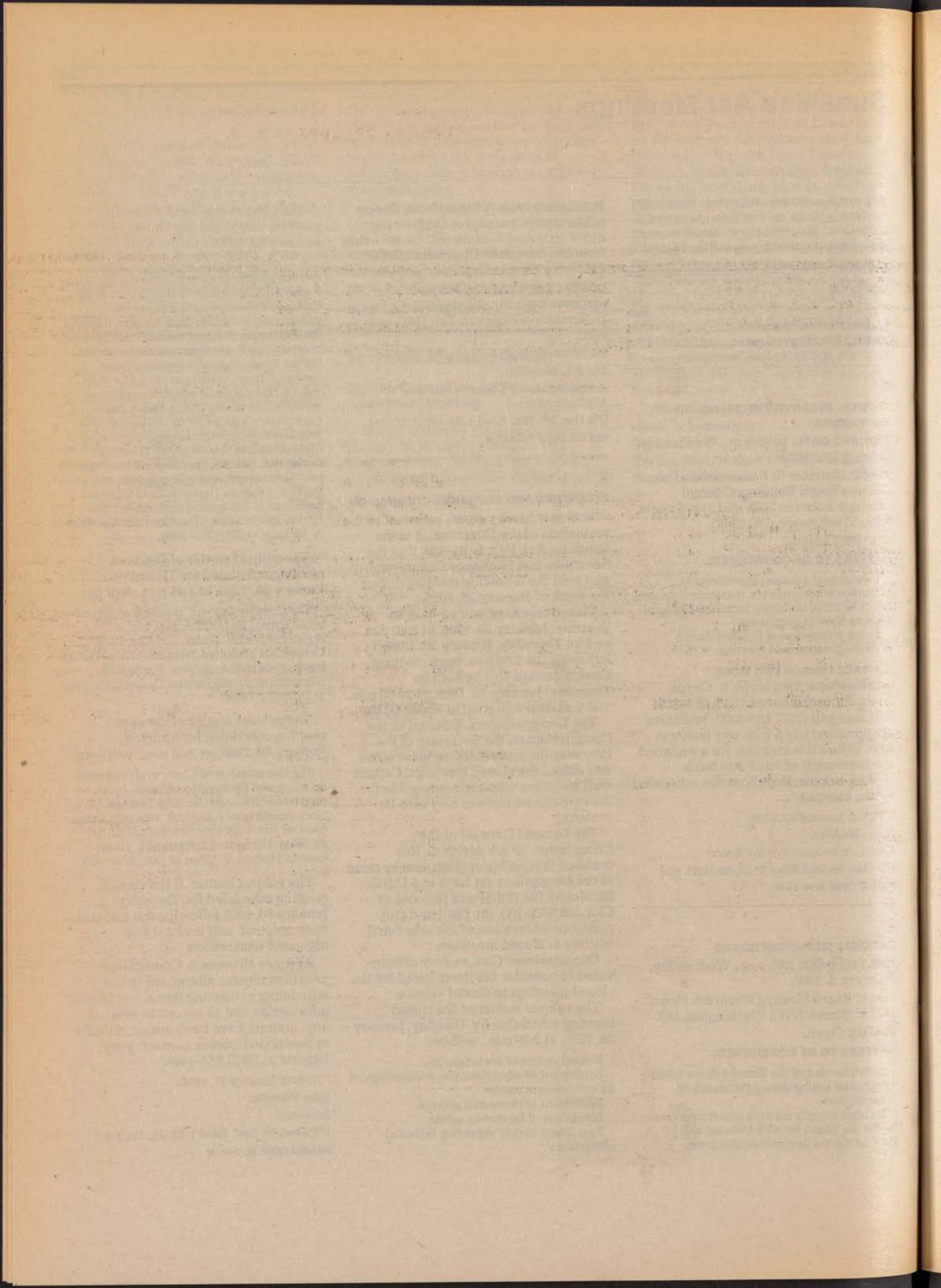
Dated: January 17, 1986.

John Wheeler,

Secretary.

[FR Doc. 86-1647 Filed 1-22-86; 11:23 am]

BILLING CODE 8010-01-M



Registered Federal Report

Friday
January 24, 1986

Part II

Environmental Protection Agency

40 CFR Part 60

Review and Amendment of Standards of
Performance for New Stationary Sources;
Hot Mix Asphalt Facilities (Asphalt
Concrete Plants); Proposed Rule

**ENVIRONMENTAL PROTECTION
AGENCY**
40 CFR Part 60
[AD-FRL-2943-3]
**Review and Amendment of Standards
of Performance for New Stationary
Sources; Hot Mix Asphalt Facilities
(Asphalt Concrete Plants)**
AGENCY: Environmental Protection
Agency (EPA).

ACTION: Review and amendment of
standards.

SUMMARY: Under section 111 of the Clean Air Act, EPA is required to review standards of performance for new, modified, or reconstructed stationary sources every 4 years. A review of the existing standards of performance for hot mix asphalt (HMA) facilities (asphalt concrete plants) (40 CFR Part 60, Subpart I) has been completed. Only minor revisions of terminology in the standards are warranted as a result of this review.

DATES: *Comments.* Comments must be received on or before March 25, 1986.

ADDRESSES: *Comments.* Comments should be submitted (in duplicate if possible) to: Central Docket Section (LE-131), Attention: Docket Number A-83-26, U.S. Environmental Protection Agency, 401 M Street SW, Washington, D.C. 20460.

Document. The document summarizing information gathered during the review may be obtained by written request from the EPA Library (MD-35), Research Triangle Park, North Carolina 27711, or by phone at (919) 541-2777. Please refer to "A Second Review of Standards of Performance for New Stationary Sources—Asphalt Concrete Plants," EPA-450/3-85-024.

Docket. Docket No. A-83-26, which contains information gathered during the review, is available for public inspection and copying between 8:00 a.m. and 4:00 p.m., Monday through Friday, at EPA's Central Docket Section, West Tower Lobby, Gallery 1, Waterside Mall, 401 M Street SW, Washington, DC 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Mr. Gilbert H. Wood at (919) 541-5624, Standards Development Branch, concerning regulatory aspects and the standards, or Mr. Kenneth R. Durkee at (919) 541-5595, Industrial Studies Branch, concerning technical aspects of the industry and control technologies. The address for both persons is Emission Standards and Engineering Division (MD-13), U.S. Environmental

Protection Agency, Research Triangle Park, North Carolina 27711.

SUPPLEMENTARY INFORMATION:
I. Background

Subsequent to the development of the document, "A Second Review of Standards of Performance for New Stationary Sources—Asphalt Concrete Plants" (EPA-450/3-85-024), the National Asphalt Paving Association (NAPA) suggested that terminology used in the asphalt concrete industry be standardized. The Association suggests using the terms "hot mix asphalt (HMA)" instead of "asphalt concrete"; "HMA facility" instead of "asphalt concrete plant"; "virgin hot mix asphalt" or "virgin HMA" instead of "conventional mix"; and "recycled hot mix asphalt" or recycled HMA" instead of "recycled asphalt pavement (RAP)." The standard terminology recommended by NAPA is used in this *Federal Register* notice and will be used by EPA in future documents pertaining to the HMA industry. The new source performance standards (NSPS) are being amended to use the terminology recommended by NAPA.

The NSPS for the industry were proposed on June 11, 1973, and promulgated on March 8, 1974. The standards apply to any HMA facility for which construction, modification, or reconstruction (as defined under 40 CFR 60.2, 60.14, 60.15) began after June 11, 1973. An HMA facility is defined as any facility used to manufacture HMA by heating and drying aggregate and then mixing the aggregate with asphalt cement. The HMA facility is comprised of any combination of dryers; systems for screening, handling, storing, and weighing hot aggregate systems for loading, transferring, and storing mineral filler; systems for mixing HMA; and systems for loading, transfer, and storage associated with emission control devices.

The existing standards prohibit the discharge into the atmosphere from any affected facility exhaust gases that:

- Contain particulate matter in excess of 90 milligrams per dry standard cubic meter (mg/dscm) (0.04 grains per dry standard cubic foot [gr/dscf]), and
- Exhibit 20 percent opacity or greater.

Section 111(b)(1)(B) of the Act requires review of the NSPS at least every 4 years and, if appropriate, revision of the standards. The principal purpose of such review and appropriate revisions is to ensure that the standards reflect a current assessment of best demonstrated control technology (BDCT). The first review of the standards was

completed in 1979. No revisions to the standards were made as a result of that review.

In 1983, EPA undertook a second review of the standards of performance for HMA facilities. During this review, EPA regional offices, State and local air pollution control agencies, the National Asphalt Pavement Association, the Asphalt Institute, and industry representatives were contacted to identify concerns regarding all facets of the NSPS. In addition, 369 NSPS compliance test reports were collected and analyzed. Visits were made to 45 HMA facilities owned by 34 companies and to 5 equipment manufacturers to obtain information on HMA processes, emission control devices, trends in the HMA industry, and any problems complying with the NSPS. Tests were conducted by EPA at four HMA facilities to measure particulate emissions, hydrocarbon emissions, and visible emissions. The tests were conducted at fabric filter- and scrubber-controlled HMA facilities during production of virgin and recycled HMA. Based on the data and information obtained, a background information document was prepared that summarizes the current status of the HMA industry and industry compliance with the NSPS. A summary of the findings of this review follows.

II. Findings
A. Industry Status

There is steady growth in the number of facilities affected by the NSPS. The Bureau of Census and the Construction Industry Manufacturers Association estimate that approximately 700 HMA facilities were shipped between June 1973 and January 1979, and more than 800 new HMA facilities were shipped between January 1979 and the end of 1984. More than 100 new HMA facilities are expected to be shipped in 1985.

Since the 1979 review, the use of drum-mix HMA facilities and recycled HMA in this industry has increased. At the time of the 1979 review, only 2.5 percent of the existing HMA facilities were drum-mix. In 1983, approximately 96 percent of all new HMA facilities purchased in the U.S. were drum-mix. The use of recycled HMA approximately doubled between 1981 and 1983. Both of these trends are expected to continue.

B. Control Technology

Fabric filters or wet scrubbers (venturi scrubbers) are used to control emissions from both batch and drum-mix HMA facilities. Most HMA facilities use knockout boxes or cyclones to recover

particulate matter from the exhaust gas stream and to reduce the particulate load to the emission control device. The recovered material is recycled to the process as filler; thus, knockout boxes or cyclones are considered to be process equipment rather than emission control devices. Based on compliance test data and cost-effectiveness calculations, the Agency has determined that fabric filters and wet scrubbers are still BDT.

C. Cost Effectiveness of the NSPS

The control costs for meeting the NSPS were estimated for three sizes of model HMA facilities operated seasonally (1,000 hours per year) and year-round (1,500 hours per year) by comparing the annualized costs and emissions for facilities controlled by fabric filters or wet scrubbers to those for uncontrolled facilities. In all cases, the control costs were found to be reasonable.

For seasonal operation, the cost effectiveness of controlling particulate emissions from model HMA facilities with a fabric filter ranges from \$130 to \$253 per megagram (Mg) (\$118 to \$230 per ton). With a wet scrubber, the cost effectiveness of emission control ranges from \$108 to \$213 per Mg (\$99 to \$194 per ton). For year-round operation, the cost effectiveness of control ranges from \$89 to \$183 per Mg (\$81 to \$168 per ton) for fabric filters and from \$84 to \$166 per Mg (\$76 to \$151 per ton) for wet scrubbers.

D. Compliance Test Results

The EPA analyzed 369 compliance test reports obtained from State agencies and HMA companies. The amount of information contained in the reports varied greatly. However, of these reports that identified test results, 87 percent showed compliance with the NSPS. Of those HMA facilities that produced recycled HMA during testing, 82 percent showed compliance with the NSPS. Of the HMA facilities that failed to demonstrate compliance, over 60 percent were controlled by wet scrubbers. In addition, 82 percent of the scrubber-controlled HMA facilities analyzed were operated at pressure drops (ΔP) less than 5 kilopascals (kPa) (20 inches of water column [in. w.c.]). Most HMA facility vendors recommend operating scrubbers at a ΔP of 4 to 5 kPa (15 to 20 in. w.c.) and a liquid-to-gas ratio of at least 1.1 liters per cubic meter (8.0 gallons per thousand actual cubic feet) to achieve compliance with the NSPS.

Compliance test data indicate that HMA facilities are frequently tested for compliance while operating at less than 80 percent of design capacity. Test data

acquired during this review indicate that particulate emissions decrease as production rate decreases.

E. EPA-Conducted Tests

During the NSPS review, seven emission tests were conducted by EPA at four HMA facilities. These HMA facilities were selected primarily because they had predictable production schedules for both virgin and recycled HMA. Four tests demonstrated HMA facility compliance with the NSPS particulate emission limit. Three tests had results above the NSPS limit, but HMA facility or control device operation was determined to be the cause in each case as described in detail in the review document, EPA-450/3-85-024. Visible emission data were obtained during five tests, and all results were less than the NSPS limit of 20 percent opacity.

A blue haze is sometimes observed at HMA facilities producing recycled HMA. Although the blue haze is generally believed to consist of condensing hydrocarbons, available data do not show a relationship between blue haze and hydrocarbon emissions or between the production of recycled HMA and hydrocarbon emissions.

F. Coal Use

The use of coal as fuel in HMA facilities, which is a recent (since 1983) development in the U.S., may increase emissions of SO_x and particulate matter. During the present NSPS review, three test reports were available for HMA facilities using coal as a fuel. All of these HMA facilities were fabric filter-controlled, and two of the three had particulate emissions greater than 90 mg/dscm (0.04 gr/dscf). One of these two HMA facilities was retested while firing fuel oil and met the NSPS. The other HMA facility has not been retested at this time. The third HMA facility demonstrated particulate emissions of 23 to 30 percent of the NSPS limit. These test results indicate that the use of coal as a fuel may cause particulate emissions to exceed the NSPS limit. Adjustments to the control device and its operating parameters may be necessary for an HMA facility to remain in compliance with the particulate standard when coal is used as a fuel.

Any HMA facility not originally designed to burn coal that switches from gas or oil to coal fuel would be a modified facility and would be required to conduct an emission test to demonstrate compliance with the NSPS or to demonstrate that conversion to coal firing does not increase particulate emissions to the atmosphere. Any

existing HMA facility already subject to the NSPS also would have to demonstrate compliance with the standards if it were to switch from oil or gas to coal firing.

III. Conclusions

The conclusions of this NSPS review are as follows: (1) The present standards are appropriate, (2) the present standards are achievable when control devices are operated and maintained properly, and (3) the costs and cost effectiveness of the present standards are reasonable. Therefore, except for revisions in terminology, no changes in the standards are being made.

IV. Miscellaneous

Under Executive Order 12291, EPA is required to judge whether a regulation is a "major rule" and, therefore, subject to the requirements of a regulatory impact analysis. The Agency has determined that this 4-year review would result in none of the adverse economic effects set forth in Section 1 of the Order as grounds for finding a regulation to be a "major rule." It has been concluded from the review that no changes are necessary to the existing standards. The Agency has, therefore, concluded that this review is not a "major rule" under Executive Order 12291.

The review was submitted to the Office of Management and Budget (OMB) for review as required under Executive Order 12291. Any written comments from OMB and any EPA responses to those comments will be included in Docket A-83-26. This docket is available for public inspection at EPA's Central Docket Section, which is listed under the ADDRESSES section of this notice.

The Regulatory Flexibility Act of 1980 requires the identification of potentially adverse impacts of Federal regulations upon small business entities. The Act specifically requires the completion of a Regulatory Flexibility Analysis in those instances where small business impacts are possible. Because there are no adverse economic impacts associated with this 4-year review, a Regulatory Flexibility Analysis has not been conducted.

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this review will not have a significant economic impact on a substantial number of small entities.

The Agency finds that notice and public procedure on the changes in terminology made by this notice are unnecessary because the changes have no substantive effect.

V. List of Subjects in 40 CFR Part 60

Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements, Incorporation by reference, and Hot mix asphalt facilities (SIC 2951).

Dated: December 13, 1985.

Charles L. Elkins,

Acting Assistant Administrator.

PART 60—[AMENDED]

For the reasons outlined in the preamble, Part 60, Subpart I, of 40 CFR is amended as follows:

1. The authority citation for Part 60 continues to read as follows:

Authority: Secs. 101, 111, 114, 116, 301, Clean Air Act as amended (42 U.S.C. 7401, 7411, 7414, 7416, and 7601).

2. 40 CFR Part 60, Subpart I title is amended as follows:

Subpart I—Standards of Performance for Hot Mix Asphalt Facilities

3. Section 60.90 paragraph (a) is revised to read as follows:

§ 60.90 Applicability and designation of affected facility.

(a) The affected facility to which the provisions of this subpart apply is each hot mix asphalt facility. For the purpose of this subpart, a hot mix asphalt facility is comprised only of any combination of the following: dryers; systems for screening, handling, storing, and weighing hot aggregate; systems for loading, transferring, and storing mineral filler; systems for mixing hot

mix asphalt; and the loading, transfer, and storage systems associated with emission control systems.

* * * * *

4. Section 60.91 is revised to read as follows:

§ 60.91 Definitions

As used in this subpart, all terms not defined herein shall have the meaning given them in the Act and in Subpart A of this part.

(a) "Hot mix asphalt facility" means any facility, as described in § 60.90, used to manufacture hot mix asphalt by heating and drying aggregate and mixing with asphalt cements.

[FR Doc. 86-1553 Filed 1-23-86; 8:45 am]

BILLING CODE 6560-50-M

Federal Register

Friday
January 24, 1986

Part III

Department of Transportation

Urban Mass Transportation
Administration

Guidance on Private Sector Participation
for Section 18 and Section 16(b)(2)
Recipients; Notice

DEPARTMENT OF TRANSPORTATION

Urban Mass Transportation
Administration

(Docket No. 86-B)

Guidance on Private Sector
Participation for Section 18 and
Section 16(b)(2) RecipientsAGENCY: Urban Mass Transportation
Administration, DOT.

ACTION: Notice.

SUMMARY: This Notice provides guidance to section 18 and section 16(b)(2) recipients for complying with the Urban Mass Transportation Administration's (UMTA) policy, "Private Enterprise Participation in the Urban Mass Transportation Programs," 49 FR 41310 (1984).

DATE: The policy provisions of this Notice are effective upon issuance. New information requirements are effective beginning in Fiscal Year 1987. UMTA is interested in receiving comments on this Notice. Comments will be accepted for sixty (60) days after publication in the Federal Register.

ADDRESS: Comments on this Notice should be submitted to UMTA Docket Number 86-B, Urban Mass Transportation Administration, Room 9228, 400 Seventh Street, SW., Washington, DC 20590. All comments and suggestions received will be available for examination at the above address between 8:30 a.m. and 5:00 p.m., Monday through Friday. Receipt of comments will be acknowledged by UMTA if a self-addressed, stamped postcard is included with each comment.

FOR FURTHER INFORMATION CONTACT: Mr. Douglas Birnie, Acting Director, Office of Private Sector Initiatives, Room 9310, Telephone (202) 426-6385, UMTA, 400 Seventh Street, SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION: On October 22, 1984, UMTA published its private sector policy statement in the Federal Register. The policy statement provided guidance to the major UMTA programs, sections 3 and 9, for achieving compliance with the private enterprise provisions contained in the UMT Act, and "to promote greater reliance on the private sector in the provision of mass transportation services both as an independent private sector activity and through competitive contractual arrangements with public bodies". The three provisions of the UMT Act which address private sector involvement, sections 3(e), 8(e), and 9(f), address urbanized area planning and

programming processes, and for this reason the section 18 and section 16(b)(2) programs were not cited in the policy statement, although section 16(b)(2) subrecipients within urbanized areas were implicitly covered.

On November 19, 1985, the UMTA Administrator signed a "Dear Colleague letter" which stated that the basic spirit and principles of UMTA's policy statement on private sector participation apply to the section 18 and 16(b)(2) programs and should be recognized by States and subrecipients in the project and program development processes. The letter mentioned the longstanding procedure in the section 16(b)(2) program requiring nonprofit agencies applying for capital grants to formally notify private operators of their intentions and invite their written comments and signoffs on the applications.

It is recognized that the method of applying the policy must take into consideration the nature and characteristics of the rural and small urban environment and the wide variety of small operations funded under these two programs. It is also recognized that a number of States already have good policies and procedures in place for involving the private sector in State-administered transit programs, and that in these cases, significant changes may not be required.

UMTA intends to issue a Circular establishing permanent guidance for sections 18 and 16(b)(2) recipients. To ensure that grantees and other affected parties have full opportunity to participate in the establishment of this guidance, UMTA invites comments on this Notice. Such comments will be considered in the development of further guidance.

Issued: January 16, 1986.

Ralph L. Stanley,
Administrator.Urban Mass Transportation
Administration, Guidance on Private
Sector Participation for Section 18 and
Section 16(b)(2) Recipients

1. Purpose

This Notice recites the elements of the private sector policy which apply to the section 18 and section 16(b)(2) programs and clarifies the State's role in implementing and assessing compliance. The Notice also outlines the type of information considered reasonable to be provided by local recipients so that State agencies can assess local recipients' compliance with the policy, and it outlines procedures and guidance which States must incorporate into their State Management Plans.

2. Scope

This Notice provides guidance for all applicants for Federal assistance under section 18 and 16(b)(2) of the Urban Mass Transportation Act of 1964, as amended. The policy provisions of this guidance are effective upon issuance. New information requirements are effective beginning in Fiscal Year 1987.

3. Guidance

The following provisions contained in or based upon the October 22, 1984, policy statement apply to the section 18 and section 16(b)(2) programs.

a. *Notification.* Local entities should provide reasonable notice to private transportation providers and possible new business entrants regarding proposed services and opportunities for private transportation providers in order that they may present their views concerning the development of local plans and programs. To the extent possible, it is also desirable to make known in advance the criteria which will be taken into account in making public/private service decisions.

b. *Early Consultation.* A fair appraisal of private sector views and capabilities should be assured by affording private providers an early opportunity to participate in the development of projects. Private providers should be given opportunity to present their views concerning the development of local transportation plans and programs and to offer their own service proposals for consideration.

c. *Consideration of Unsubsidized Private Sector Service.* When the need for new services is defined or services are significantly restructured, consideration first should be given to whether private carriers could provide such service in a manner which is consistent with local objectives without public subsidy.

d. *Periodic Review of Existing Services.* Existing transit services should be periodically reviewed to determine if they can be provided more efficiently by the private sector. Public officials should encourage possible adjustments in local regulations or existing service requirements in order to permit private carriers to perform service without subsidy in the free market.

e. *Consideration of Private Carriers to Provide Assisted Services.* Where it is determined that public assistance is required for new or substantially restructured mass transportation services, consideration should be given to the capability of private providers to provide them.

f. Local Barriers to Private Participation. UMTA does not consider it acceptable for localities to foreclose opportunities for private enterprise by simply pointing to local barriers to their involvement in federally assisted local transportation programs. In general, a simple reference in the public record to public agency labor agreements or a local policy that calls for direct operation of all mass transportation services would not satisfy the private enterprise policy.

g. True Comparison of Costs. When comparing the service proposals made by public and private entities, all the fully allocated costs of public and nonprofit agencies should be counted. Subsidies provided to public and private nonprofit carriers, including operating subsidies, capital grants and the use of public facilities should be reflected in the cost comparisons. If a private for-profit carrier receives public subsidies, these should be indicated.

h. Complaint Procedures. Since the underlying spirit of the UMT Act is to afford communities maximum flexibility in local decisionmaking, it is appropriate that questions dealing with the fairness of local procedures and decisions be addressed at the local level. Accordingly, a discrete local mechanism, preferably independent, should be devised for resolving disputes in a manner which assures fairness to all parties. In the absence of a locally developed process, the State may prescribe and/or be party to a local process. Complaints which cannot be resolved at the local level should be resolved at the State level. State agencies are required, as part of their State Management plan, to have in place a mechanism for resolving conflicts or complaints from private transportation providers, including hearing and appeal procedures.

i. UMTA will entertain complaints from private enterprise organizations only upon procedural grounds based on the following claims: That the local project development process has not established procedures for the maximum feasible participation of private transportation providers consistent with the spirit of the policy; or that the local procedures were not followed; or that the State hearing and appeals procedures do not provide for fair resolution of local disputes. UMTA will not review disputes concerning the substance of local decisions regarding service or who should provide the service. Nor will UMTA entertain procedural protests prior to a disposition of complaints at the local and State level.

j. Documentation. Grantees are expected to maintain public records that document private participation in the project development process and the rationale used in making public/private service decisions. This information, along with State documentation, will be the primary evidence of compliance with the policy if a complaint is sent to UMTA.

k. "Private nonprofit organization". For purposes of implementing this policy, a private nonprofit organization which is exempt from taxation under 26 U.S.C. 501(a), or which has been determined under State law to be private nonprofit, is *not* included in the term "private enterprise", and is *not* considered to be a private transportation company or carrier.

4. State Role

The State agency administering the section 18 and section 16(b)(2) programs is responsible for having in place policies and procedures for achieving compliance with UMTA's private sector policy. In order to receive a section 18 or 16(b)(2) grant, State agencies are required to certify to UMTA that local recipients have afforded private for-profit transit and paratransit operators a fair and timely opportunity to participate to the maximum extent feasible in the planning and provision of the proposed transportation services. This assurance is one of the "State Assurances" contained in UMTA program circulars 9040.1A, and 9070.1A. In making this assurance, the State is henceforth assuring to UMTA that the policy provisions of this notice have been complied with. As is the case with other assurances for these programs, local projects must be placed in Category B of the State's program of projects until all the assurances, including participation by the private sector, can be made.

5. Information Requirements

a. Local Recipients. In order for the State to make the required assurance to UMTA, each local applicant should make available to the State agency, either in its application for funds, or through other channels, information which addresses the following areas, as appropriate:

1. The current participation of private providers in section 18 or 16(b)(2) supported services.

2. All efforts to provide written notice to private providers of proposed services.

3. All forums, meetings, hearings, or other opportunities for involving the

private sector early in the project development process.

4. Description of private sector proposals, if any, offered for consideration, and the rationale for inclusion or exclusion.

5. Methods for periodically reviewing existing services to determine whether they can be provided more efficiently by the private sector.

6. Any locally established criteria for making public/private service decisions.

7. The local methodology for making true cost comparisons when there are two or more operators interested in providing service.

8. Any complaints from private operators and how these were resolved.

9. The local mechanism for resolving conflicts or complaints involving private operators.

b. State agencies: Each State's State Management Plan for the section 18 program must be revised as necessary to fully address the areas listed below. If the same procedures will be used for the section 16(b)(2) program the State agency should so indicate. If they are different, the State should provide these to UMTA, since there is no State Management Plan requirement for the section 16(b)(2) program.

Revisions to the State Management Plans or section 16(b)(2) procedures must be received in the UMTA Regional Offices by July 31, 1986. These must be approved by UMTA before FY 1987 grants will be awarded. Revisions should:

1. Describe the State's procedures and requirements for achieving participation by private providers in local services at the beginning of the project development process and in the provision of service.

2. Describe the State's guidance to and requirements of local applicants to address implementation of the private sector policy.

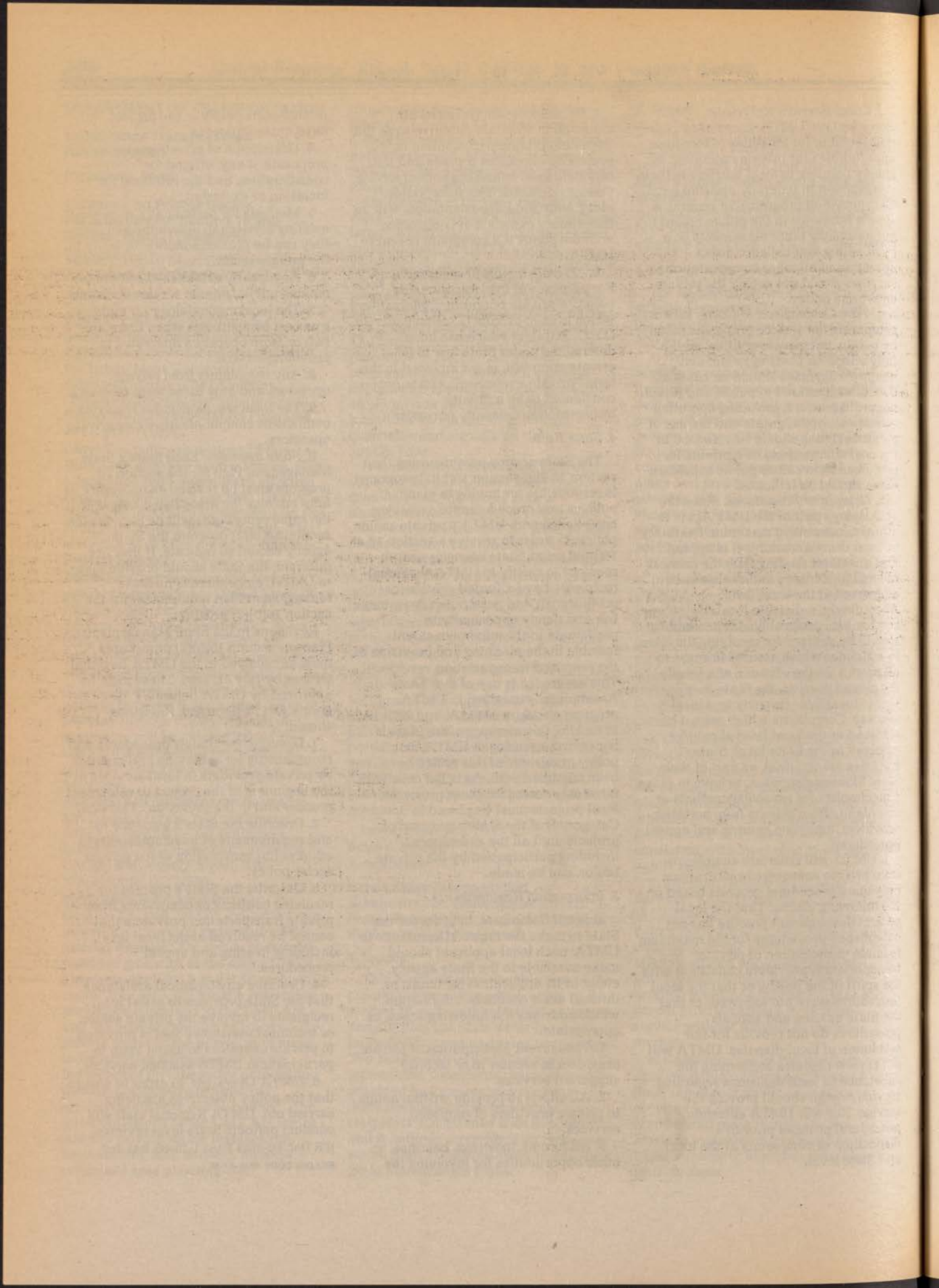
3. Describe the State's process for resolving conflicts or complaints from private transportation providers that cannot be resolved at the local level, including hearing and appeal procedures.

4. Describe any technical assistance that the State provides to assist local recipients to involve the private sector; or technical assistance that is provided to private operators to assist them to participate in UMTA assisted services.

6. *UMTA Oversight.* In order to ensure that the policy objectives are being carried out, UMTA Regional staff will conduct periodic State level reviews.

[FR Doc. 86-1623 Filed 1-23-86; 8:45 am]

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Massachusetts Federal Register

Friday
January 24, 1986

Part IV

Department of Transportation

Urban Mass Transportation
Administration

Guidance on Documentation of Private
Enterprise Participation in Urban Mass
Transportation Programs; Notice

DEPARTMENT OF TRANSPORTATION**Urban Mass Transportation Administration**

[Docket No. 86-A]

Guidance on Documentation of Private Enterprise Participation in Urban Mass Transportation Programs

AGENCY: Urban Mass Transportation Administration, DOT.

ACTION: Notice.

SUMMARY: On October 22, 1984, the Urban Mass Transportation Administration (UMTA) announced in the *Federal Register* (49 FR 41310) its policy regarding private enterprise participation in the development of plans and programs to be funded under the Urban Mass Transportation Act of 1964, as amended (the UMT Act), and under provisions authorizing the use of Federal-Aid Highway Funds for public mass transit projects. The purpose of this Notice is to provide guidance on pending or proposed applications for Federal financial assistance under sections 3, 5, 9 and 9A of the Act.

DATE: This guidance is effective January 24, 1986. UMTA is interested in receiving comments on this guidance. Comments must be received before February 24, 1986.

ADDRESS: Comments on this policy should be submitted to UMTA Docket Number 86-A, Urban Mass Transportation Administration, Room 9228, 400 Seventh Street, SW., Washington, DC 20590.

All comments and suggestions received will be available for examination at the above address between 8:30 a.m. and 5:00 p.m., Monday through Friday. Receipt of comments will be acknowledged by UMTA if a self-addressed, stamped postcard is included with each comment.

FOR FURTHER INFORMATION CONTACT: Mr. Douglas Birnie, Acting Director, Office of Private Sector Initiatives, Room 9310, telephone (202) 426-6385, UMTA, 400 Seventh Street, SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION: This Notice provides FY 1986 guidance for the documentation of private sector participation to be submitted to UMTA to assist in making the findings required under sections 3(e), 8(c), 8(e), and 9(f) of the UMT Act. UMTA intends to issue in the near future a Circular establishing permanent guidance. However, to ensure that grantees and other affected parties have full opportunity to participate in the establishment of this guidance, UMTA invites comments on

this Notice. Such comments will be considered in developing the Circular establishing this guidance for FY 1987 and beyond.

Section 8(c) requires the Secretary to find that (1) the planning process on which a program is based is being carried on in conformance with the objectives of section 8, and (2) the program of projects is based on the planning process. Section 8(e) requires that federally assisted plans and programs encourage to the maximum extent feasible the participation of private enterprise. Section 3(e) establishes protections for existing private mass transportation companies against federally assisted acquisition or competitive service by requiring the Secretary to find that (1) the financial assistance requested would be essential in carrying out the local programs, and (2) that the local provides for the participation of private mass transportation companies to the maximum extent feasible. Among other things, section 9(f) requires each grant recipient to (1) develop a proposed program of projects concerning activities to be funded in consultation with interested parties, including private transportation providers, and (2) publish a proposed program of projects in such a manner to afford affected citizens, private transportation providers and, as appropriate, local elected officials an opportunity to examine its content and to submit comments on the proposed program of projects and on the performance of the recipient.

Applications for Federal financial assistance under sections 3, 5, 9, and 9A of the UMT Act, or under sections 103(e)(4), and 162 of Title 23, U.S.C., should include documentation as set forth in this guidance.

Issued: January 16, 1986.
Ralph L. Stanley,
Administrator.

Urban Mass Transportation Administration, Guidance on Documentation of Private Enterprise Participation in Urban Mass Transportation Programs

1. Purpose

This Notice issues implementation guidance for the documentation of private sector participation to be submitted to UMTA to assist in making the findings required under sections 3(e), 8(c), 8(e), and 9(f) of the UMT Act.

2. Scope

This Notice provides interim guidance for all pending and proposed applications for Federal assistance under sections 3, 5, 9, and 9A of the

Urban Mass Transportation Act of 1964, as amended, and Sections 103(e)(4) and 142 of Title 23, U.S.C.

3. Background

The policy statement implementing these sections of the UMT Act is intended to promote a greater competitive environment and increased opportunities for the private sector in the provision of mass transportation services and operations. It is anticipated that transit services will be improved or provided more efficiently in a more competitive environment.

Since the policy was issued in 1984, grantees have had a reasonable period to react to its intent. Therefore, local programs and projects in FY 1986 will be closely reviewed for their conformance with the principles outlined in the policy statement. Where possible, this will take place during the review of the Annual Element of the Transportation Improvement Program (TIP). However, recognizing that some projects may have progressed beyond the TIP stage, review of individual grantee's projects and activities will be conducted at the grant approval stage.

This Notice outlines the necessary documentation which must be submitted to UMTA to make these findings. In those cases where the State is the recipient for section 9 funds in urbanized areas of less than 200,000 population, those individual areas must submit the appropriate documentation to the State. The State shall provide UMTA with a summary of the documentation submitted by urbanized areas of less than 200,000. The actual documentation shall be retained by the State to be made available to UMTA upon request.

Nothing in this Notice shall be construed to mandate or prescribe a specific level of private enterprise participation in federally assisted programs. The choice of the most efficient and effective provider of services is best decided locally. Rather, the intent of this Notice is to ensure that the capabilities of private enterprise are fairly and adequately considered by local decisionmakers, as required by the UMT Act.

4. Program and Application Guidance**I. Review of Transportation Improvement Programs (TIP)**

A. Required documentation for review of TIP Annual Element for conformance with Sections 3(e), 8(e), and 9(f) of the UMT Act. Projects included in the TIP must have been developed in conformance with a local process called

for under the UMTA private sector policy. Documentation of this process would include the following, which will normally result from the local planning process, and should be submitted to the UMTA regional office either prior to or along with the TIP, normally as part of the Short-Range Transit plan.

1. Narrative description of local private sector policy process.
2. List of new and restructured services and operations and description of how these services have been or will be developed consistent with the policy. In particular, these services should provide competitive opportunity for private providers or an analysis of fully allocated costs which demonstrate service and operations decisions.
3. Narrative description of analysis of existing public services to determine if services can be provided by private operators and the results of that analysis. If analysis has not been undertaken, a schedule of when such analysis will be undertaken should be presented. To the extent feasible, such a review should be undertaken at least every three years.
4. Description of private sector proposals, if any, offered for consideration in the TIP and rationale for inclusion or exclusion.
5. Description of efforts to include private sector capital investment strategies.

If all such documentation is available, the TIP will be reviewed for conformance with locally adopted procedures designed to implement UMTA's private enterprise policy and sections of the UMT Act previously cited. Projects which have been programmed based on this may move to the application stage and, unless additional documentation is requested in the TIP review letter, no further private sector justification will be required.

"New or restructured services" may involve any or all of the following: establishment of a new mass transportation service; addition of a new route or routes to an applicant's or grantee's mass transportation system; a significant increase in service on an existing route in an applicant's or grantee's mass transportation system; or a change in the type or mode of service provided on a specific, regularly scheduled route in an applicant's or grantee's mass transportation system.

B. UMTA action in absence of full documentation. If all documentation is not available, UMTA will only allow the programming of projects which do not represent a change in service or operation, or a major capital project, as discussed in paragraph II below. For

projects not programmed, as additional documentation becomes available, UMTA will amend its TIP approval to include such projects.

In the case of operating assistance projects which do not represent a change in service or operation, certification to that effect must be submitted with the annual element of the TIP.

The discussion in the following section illustrates more specifically the type of information in UMTA is seeking.

II. Review of Grant Applications

Where projects have been previously programmed based on a TIP Annual Element but not supported by the private sector documentation required by this Notice, the following information must be submitted in support of grant applications for capital and operating projects in order for UMTA to make its statutory findings.

- A. Involvement of Private Sector.* 1. What specific steps have been taken in the past 12 months to involve the private sector in the early development of services and operations? This would include systems planning and any other studies of possible service modification.
2. What comments and proposals have been received from the private sector and how were they responded to?
3. How is the private sector informed of opportunities for participation, both service and operation?
4. Are there impediments to contracting out? Describe impediments and measures that will be taken to resolve these impediments.
5. What specific steps will be taken over the next 12 months to involve the private sector in the early development of services and operation?
6. Are there outstanding private sector complaints? What is their status?

B. Analysis of New and Restructured Services. 1. List of new and restructured services developed over the last 12 months.

2. Assessment of whether private operators could participate through competitive procurement.
3. Methods for evaluating proposals, including assessment of fully allocated costs.
4. Actions planned during the next 12 months to give private operators competitive procurement opportunities.

C. Analysis of Existing Services and Operations. 1. Has competitive procurement of existing services or operations been examined during the last 12 months?

2. If so, describe the analysis and rationale for the outcome.
3. Were fully allocated costs for public operations considered in this analysis?

4. What further analysis of existing service or operations are planned during the next 12 months?

D. Public/Private Partnerships in Financing of Transportation Services and Facilities. 1. Describe efforts to develop and analyze private sector investment strategies.

2. Describe procedures for joint development and any current joint development projects.
3. Describe efforts to involve local firms and developers in providing fixed facilities, such as benefit assessment districts, connection fees, and developer proposals.
4. Describe consideration of any financing arrangements with the private sector to reduce costs, such as sale leaseback, grant anticipation notes, bonds and partnerships.

III. Compliance

The guidelines described below will be used by UMTA in making pre-award determinations of compliance with the private sector requirement of the UMT Act for FY 1986 grants.

A. Operating Assistance Projects. The approval of operating assistance grants is conditioned by the demonstration of the grantee to involve the private sector in its transportation program.

B. Bus Capital Projects. 1. Purchase of buses for new or restructured service-projects will be approved if the project is based upon full consideration of private sector operators, through competitive procurement which may include public operators. When services are competitively developed, this analysis and decision must be based on fully allocated public costs.

2. Bus replacement—the grantee must justify its decision on private sector proposals that have been presented. The justification must include a cost analysis of the proposals considered. If no private sector proposal has been forthcoming, replacements may be funded.

3. Maintenance facilities—the design and construction or major rehabilitation of maintenance facilities shall be approved if an analysis of contracting out maintenance services opportunities and their impact on the need for maintenance facilities has been evaluated. The justification must include a cost analysis of the alternatives considered. This paragraph shall not apply to facilities currently under construction; that is, a facility already partially constructed (not including land acquisition or site preparation).

4. Rehabilitation of buses—projects for the rehabilitation of buses will be approved if the project was based upon

full consideration of private contractors, through competitive procurement which may include public contractors based on their fully allocated costs.

5. Force Account Activities—will be allowed if justified by a competitive cost analysis. If a decision is made to utilize public forces at higher costs, a detailed rationale must be submitted for evaluation.

C. Rail Capital Projects. 1. New Starts/Extension—projects will be considered after full evaluation of joint public/private opportunities, as required in other UMTA documents. Private sector must be involved in the earliest phases of project development, including systems planning and alternatives analysis. This requirement does not apply to projects which are under a full funding contract signed before the effective date of this Notice.

2. Force Account Activities—will be allowed if justified by a competitive cost analysis. If a decision is made to utilize public forces at higher costs, a detailed rationale must be submitted for evaluation.

3. Maintenance facilities—the design for construction or major rehabilitation of maintenance facilities shall be approved if all analysis of contracting out maintenance services opportunities has been done and evaluated. The justification must include a cost analysis of the alternatives considered.

4. Rehabilitation of rail cars—projects for the rehabilitation of rail cars will be approved if the project was based upon full consideration of private contractors, through competitive procurement which may include public contractors based upon their fully allocated costs.

D. Critical Projects. UMTA recognizes that, since this Notice is appearing after the start of the fiscal year 1986, it may be necessary in certain, limited cases to phase in these guidelines. It is not the intent of the guidelines to slow the delivery of formula funds to UMTA grantees. Accordingly, if a grantee believes that a particular section 9 project is critical, UMTA will consider a request by the grantee to submit, in lieu of the information requested in this Notice for that project, a statement of intent to comply with this Notice on all other projects and with its remaining formula funds. UMTA particularly will consider such requests where the grantee can show that a TIP has been completed at the time this Notice is published.

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Friday
January 24, 1986

Federal Register

Part V

**Department of
Transportation**

**Urban Mass Transportation
Administration**

**Fiscal Year 1986 UMTA Formula Grant
Apportionments; Notice**

DEPARTMENT OF TRANSPORTATION

Urban Mass Transportation
AdministrationFiscal Year 1986 UMTA Formula Grant
Apportionments

AGENCY: Urban Mass Transportation
Administration (UMTA), DOT.

ACTION: Notice.

SUMMARY: The Surface Transportation Assistance Act of 1982 (Pub. L. 97-424) established a formula grant program for Fiscal Years 1984, 1985, and 1986 under section 9 and section 18 of the Urban Mass Transportation Act of 1964, as amended (the UMT Act). This Notice provides the Fiscal Year 1986 apportionment of funds to each urbanized area over 200,000 in population, and to State Governors for both urbanized areas under 200,000 in population and nonurbanized areas. This Notice also provides information on other matters, including actions taken in light of the recently enacted Gramm-Rudman legislation.

FOR FURTHER INFORMATION CONTACT: Edward R. Fleischman, Chief, Resource Management Division, (202) 426-2053, 400 Seventh Street, SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION: A program of Federal assistance to urban mass transportation systems by means of formula grants for capital and operating assistance was enacted January 6, 1983, under the Surface Transportation Assistance Act of 1982 (Pub. L. 97-424). The legislation is authorized for Fiscal Years 1984, 1985, and 1986. Funds for Fiscal Year 1986 were appropriated by the Department of Transportation and Related Agencies Appropriations Act, 1986, Pub. L. 99-190 (the Fiscal Year 1986 Appropriations Act).

This Notice provides the Fiscal Year 1986 apportionment of section 9 and section 18 funds for urbanized and nonurbanized areas, based on census information and operating and financial data submitted for the 1984 section 15 Annual Report. In addition, this Notice discusses a number of other significant legislative and administrative matters.

FY 1985 Data Corrections

Corrections have been made to the data from certain urbanized areas that were used to compute the Fiscal Year 1985 formula grant apportionments published in the *Federal Register* of October 26, 1984 (49 FR 43218). Differences between corrected apportionments and previously published apportionments have been

resolved and necessary adjustments have been made by adding to or subtracting from, as appropriate, the apportionments for Fiscal Year 1986. The dollar amounts published in this Notice contain these corrections. Each affected urbanized area has been advised of these corrections.

Section 5 Issues

This apportionment includes more than Fiscal Year 1986 appropriated funds. It also includes unobligated Fiscal Year 1982 section 5 funds for urbanized areas over 200,000 in population. In addition, it includes those Fiscal Year 1975 through Fiscal Year 1981 section 5 funds that have now been deobligated but were not available for apportionment on September 30, 1985 (50 FR 39948), when the majority of prior year deobligated funds were reapportioned. All of these funds, totaling \$17,153,650, are being apportioned under and become part of the Fiscal Year 1986 section 9 program as provided for in the Surface Transportation Assistance Act of 1982.

Moreover, pursuant to section 317 of the Fiscal Year 1986 Appropriations Act, which amends section 5 of the UMT Act, unobligated Fiscal Year 1982 section 5 funds attributable to urbanized areas under 200,000 in population will remain available, along with unobligated Fiscal Year 1983 section 5 funds, until September 30, 1986. Section 317 further provides that any such unobligated Fiscal Year 1982 or related Fiscal Year 1983 section 5 funds (i.e., those attributable to urbanized areas with populations of less than 200,000) may be expended in an urbanized area of 200,000 or more in population as well as in urbanized areas under 200,000 in population. Any residual section 5 funds not obligated by the end of Fiscal Year 1986 will be reapportioned to urbanized areas under the section 9 program.

**FY 1986 Apportionments to the
Governors**

For all urbanized areas under 200,000 in population within each State, an initial table provides only one figure for the Governor's apportionment. This practice was initiated last fiscal year with the September 30, 1985 (50 FR 39948), apportionment of certain lapsed section 5 funds. Section 9(m)(2) of the UMT Act states that "[s]ums apportioned under this subsection . . . shall be made available to the Governor for expenditure in urbanized areas with populations of less than 200,000."

In accordance with section 9 of the UMT Act, these apportionments are not made to individual urbanized areas but are made to the Governors for use

within all urbanized areas between 50,000 and 200,000 in population as needed. UMTA has administered the section 9 program in this fashion from its inception, and it parallels UMTA's procedures under the section 5 program. Because the section 9 program has been showing large balances of unobligated funds at the end of each fiscal year, especially in urbanized areas between 50,000 and 200,000 in population, UMTA is now stressing the Governor's flexibility in using these funds to meet statewide needs by showing one amount for the Governor's apportionment.

However, this Notice also contains a list showing the percentages and the dollar amounts of the Governor's apportionment attributable to the 1980 census data for individual urbanized areas between 50,000 and 200,000 in population. An individual urbanized area's attributable apportionment was determined by multiplying the State total by the urbanized area percentage.

Period of Availability of Funds

The funds apportioned to urbanized areas in this Notice will remain available to be obligated by UMTA to recipients for three (3) fiscal years following Fiscal Year 1986. Any apportioned funds unobligated at close of business on September 30, 1989, will be added to the amounts available for apportionment for the succeeding fiscal year under section 9. Funds apportioned to nonurbanized areas will remain available for two (2) years following Fiscal Year 1986. Any such funds remaining unobligated at the close of business on September 30, 1988, will be reapportioned among the States in the succeeding fiscal year.

Construction Management Oversight

The Fiscal Year 1986 Appropriations Act allows the Secretary of Transportation to use not more than one-half of one percent of the funds made available for Fiscal Year 1986 under sections 3, 9, and 18 of the UMT Act, the Interstate Transfer Grants-Transit Program, and the National Capital Transportation Act of 1969 ("Stark-Harris") to contract with any person to oversee the construction of any major project under such programs. Therefore, one-half of one percent of the funds appropriated for Fiscal Year 1986 under the formula program, \$10,750,000, has been reserved for this purpose. The remaining amount of \$2,139,250,000 of Fiscal Year 1986 funds is apportioned in this Notice. If the \$10,750,000 reserved for construction management oversight is not fully required for this function in

Fiscal Year 1986, the balance remaining will be apportioned in Fiscal Year 1987.

Gramm-Rudman Issues

Until actual reductions required by the Balanced Budget and Emergency Deficit Control Act of 1985 ("Gramm-Rudman"), Pub. L. 99-177, can be determined, UMTA is temporarily establishing an obligation limitation of 50 percent of an area's Fiscal Year 1986 formula apportionment. A similar 50 percent limitation is also established on the operating assistance caps established by the Surface Transportation Assistance Act of 1982. Even though the apportionment tables show apportionments for the entire year, an urbanized area may not receive funds in excess of 50 percent of its total apportionment and 50 percent of its operating cap until further notice. The same restriction applies to funds apportioned to the Governors for urbanized areas between 50,000 and 200,000 in population, except that the limitation is in effect only at the State level, not for individual urbanized areas. In order to minimize paperwork and processing time, applicants should consider submitting a single grant application at the time full Fiscal Year 1986 apportionments are available.

Application Procedures

Applications for section 9 funds should be submitted to the appropriate UMTA Regional Office in conformance with UMTA Circular 9030.1, published June 27, 1983. Applications for section 18 funds should be submitted to the appropriate UMTA Regional Office in conformance with UMTA Circular 9040.1, published May 23, 1985.

Private Enterprise

Applications should also be in conformance with the UMTA Notice of Policy published in the *Federal Register* of October 22, 1984 (49 FR 41310), entitled "Private Enterprise Participation in the Urban Mass Transportation Program." This Policy, which implements the private enterprise directives of the Urban Mass Transportation Act of 1964 (sections 3(e), 8(c), 8(e), and 9(f)) is designed to promote a more competitive environment and to create increased opportunities for the private sector in the provision of public transportation services. As this Policy has been in circulation for over a year, localities and States have had sufficient opportunity to consider how they will integrate private programs. Effective immediately, UMTA will begin a private sector review of section 9 programs and projects to

determine whether they are consistent with the Policy.

Two separate Notices found elsewhere in this *Federal Register* have been developed to facilitate implementation of the private enterprise policy. The first Notice addresses the UMTA programs under sections 3 and 9. The guidance in this Notice describes the documentation that UMTA will now review to judge consistency with the principles outlined in the private enterprise policy which is based upon sections 3(e), 8(c), 8(e), and 9(f) of the UMT Act. The review of this documentation will take place, for the most part, during the review of the Transportation Improvement Program (TIP). Supplemental information will be requested for projects which have been programmed without the benefit of such a review. The second Notice provides guidance for applying the private enterprise policy to the section 16(b)(2) and section 18 programs. It is intended that these Notices will become permanent guidance in the near future after appropriate public comment and input. Please contact the appropriate UMTA Regional Office for assistance.

Issued on: January 16, 1986.

Ralph L. Stanley,
Administrator.

BILLING CODE 4910-57-M

FISCAL YEAR 1986 UMTA SECTION 9 FORMULA APPORTIONMENTS
 AMOUNTS APPORTIONED TO URBANIZED AREAS OVER 200,000 POPULATION

URBANIZED AREA	APPORTIONMENT	URBANIZED AREA	APPORTIONMENT
Akron, Ohio.....	\$4,200,231	Fayetteville, North Carolina.....	1,118,266
Albany-Schenectady-Troy, New York.....	6,188,602	Flint, Michigan.....	2,485,053
Albuquerque, New Mexico.....	3,684,776	Fort Lauderdale-Hollywood, Florida.....	8,196,649
Allentown-Bethlehem-Easton, Pa.-N.J.....	3,128,171	Fort Wayne, Indiana.....	1,815,540
Ann Arbor, Michigan.....	2,151,092	Fresno, California.....	3,531,087
Atlanta, Georgia.....	23,432,529	Grand Rapids, Michigan.....	3,181,942
Augusta, Georgia-South Carolina.....	1,357,449	Greenville, South Carolina.....	1,306,642
Austin, Texas.....	3,365,813	Harrisburg, Pennsylvania.....	2,155,699
Bakersfield, California.....	2,046,366	Hartford, Connecticut.....	6,132,321
Baltimore, Maryland.....	24,372,412	Honolulu, Hawaii.....	17,497,376
Baton Rouge, Louisiana.....	2,588,163	Houston, Texas.....	26,382,183
Birmingham, Alabama.....	3,993,850	Indianapolis, Indiana.....	6,938,759
Boston, Massachusetts.....	63,656,353	Jackson, Mississippi.....	1,584,970
Bridgeport, Connecticut.....	4,645,276	Jacksonville, Florida.....	5,304,211
Buffalo, New York.....	9,764,169	Kansas City, Missouri-Kansas.....	7,375,859
Canton, Ohio.....	1,709,236	Knoxville, Tennessee.....	1,510,936
Charleston, South Carolina.....	1,193,196	Lansing, Michigan.....	2,335,577
Charlotte, North Carolina.....	3,055,373	Las Vegas, Nevada.....	2,802,675
Chattanooga, Tennessee-Georgia.....	2,046,291	Lawrence-Haverhill, Mass.-New Hampshire....	2,614,717
Chicago, Illinois-Northwestern Indiana.....	170,840,353	Little Rock-North Little Rock, Arkansas....	2,053,512
Cincinnati, Ohio-Kentucky.....	10,152,424	Lorain-Elyria, Ohio.....	920,853
Cleveland, Ohio.....	22,510,387	Los Angeles-Long Beach, California.....	129,592,770
Colorado Springs, Colorado.....	2,445,385	Louisville, Kentucky-Indiana.....	8,644,421
Columbia, South Carolina.....	1,203,263	Madison, Wisconsin.....	3,653,922
Columbus, Georgia-Alabama.....	1,634,675	Melbourne-Cocoa, Florida.....	1,395,650
Columbus, Ohio.....	9,744,885	Memphis, Tennessee-Arkansas-Mississippi....	7,000,967
Corpus Christi, Texas.....	1,630,969	Miami, Florida.....	20,670,116
Dallas-Fort Worth, Texas.....	19,098,456	Milwaukee, Wisconsin.....	15,701,256
Davenport-Rock Island-Moline, Iowa-Illinois	2,470,348	Minneapolis-St. Paul, Minnesota.....	18,499,909
Dayton, Ohio.....	11,005,062	Mobile, Alabama.....	1,866,232
Denver, Colorado.....	15,829,284	Nashville-Davidson, Tennessee.....	4,254,169
Des Moines, Iowa.....	2,434,310	New Haven, Connecticut.....	5,281,071
Detroit, Michigan.....	39,486,177	New Orleans, Louisiana.....	14,006,243
El Paso, Texas.....	4,061,340	Newport News-Hampton, Virginia.....	2,383,445

FISCAL YEAR 1986 UMTA SECTION 9 FORMULA APPORTIONMENTS
 AMOUNTS APPORTIONED TO URBANIZED AREAS OVER 200,000 POPULATION

URBANIZED AREA	APPORTIONMENT	URBANIZED AREA	APPORTIONMENT
New York, N.Y.-Northeastern New Jersey.....	531,029,295	San Diego, California.....	22,003,460
Norfolk-Portsmouth, Virginia.....	5,925,340	San Francisco-Oakland, California.....	87,845,915
Ogden, Utah.....	2,271,052	San Jose, California.....	19,055,992
Oklahoma City, Oklahoma.....	3,717,255	San Juan, Puerto Rico.....	13,518,567
Omaha, Nebraska-Iowa.....	5,381,606	Sarasota-Bradenton, Florida.....	2,214,103
Orlando, Florida.....	4,254,914	Scranton-Wilkes-Barre, Pennsylvania.....	3,311,578
Oxnard-Ventura-Thousand Oaks, California...	2,354,552	Seattle-Everett, Washington.....	30,854,801
Pensacola, Florida.....	1,244,860	Shreveport, Louisiana.....	2,000,986
Peoria, Illinois.....	2,052,262	South Bend, Indiana-Michigan.....	2,106,782
Philadelphia, Pennsylvania-New Jersey.....	92,127,408	Spokane, Washington.....	4,089,661
Phoenix, Arizona.....	10,030,328	Springfield-Chicopee-Holyoke, Mass.-Conn...	4,664,231
Pittsburgh, Pennsylvania.....	28,860,226	Syracuse, New York.....	5,110,920
Portland, Oregon-Washington.....	15,541,066	Tacoma, Washington.....	5,765,949
Providence-Pawtucket-Warwick, R.I.-Mass....	11,824,625	Tampa, Florida.....	5,463,686
Raleigh, North Carolina.....	1,637,799	Toledo, Ohio-Michigan.....	5,416,088
Richmond, Virginia.....	5,033,739	Trenton, New Jersey-Pennsylvania.....	86,867
Rochester, New York.....	6,003,363	Tucson, Arizona.....	5,342,543
Rockford, Illinois.....	1,631,778	Tulsa, Oklahoma.....	3,093,072
Sacramento, California.....	8,157,818	Washington, D.C.-Maryland-Virginia.....	53,832,735
St. Louis, Missouri-Illinois.....	17,354,662	West Palm Beach, Florida.....	3,382,756
St. Petersburg, Florida.....	6,814,399	Wichita, Kansas.....	2,380,099
Salt Lake City, Utah.....	7,955,561	Wilmington, Delaware-New Jersey-Maryland...	3,034,526
San Antonio, Texas.....	12,940,819	Worcester, Massachusetts.....	2,503,614
San Bernardino-Riverside, California.....	5,774,748	Youngstown-Warren, Ohio.....	2,284,412
TOTAL		\$1,901,501,202	

FISCAL YEAR 1986 UMTA SECTION 9 FORMULA APPORTIONMENTS
 AMOUNTS APPORTIONED TO STATE GOVERNORS FOR AREAS UNDER 200,000 POPULATION

STATE	APPORTIONMENT	STATE	APPORTIONMENT
ALABAMA	\$5,089,012	MONTANA	1,703,353
ALASKA	1,031,906	NEBRASKA	1,603,178
ARIZONA	444,424	NEVADA	1,289,467
ARKANSAS	1,499,562	NEW HAMPSHIRE	1,927,906
CALIFORNIA	15,222,978	NEW JERSEY	1,511,485
COLORADO	3,364,374	NEW MEXICO	730,934
CONNECTICUT	13,277,739	NEW YORK	4,819,007
DELAWARE	0	NORTH CAROLINA	8,258,723
FLORIDA	7,033,542	NORTH DAKOTA	1,447,968
GEORGIA	3,917,461	OHIO	4,690,123
HAWAII	1,004,035	OKLAHOMA	1,021,370
IDAHO	1,457,030	OREGON	3,263,902
ILLINOIS	9,664,662	PENNSYLVANIA	9,345,893
INDIANA	5,953,042	PUERTO RICO	6,529,920
IOWA	3,320,500	RHODE ISLAND	519,588
KANSAS	1,427,377	SOUTH CAROLINA	1,632,485
KENTUCKY	3,019,790	SOUTH DAKOTA	1,036,988
LOUISIANA	3,527,171	TENNESSEE	1,776,455
MAINE	1,522,631	TEXAS	16,340,334
MARYLAND	1,336,634	UTAH	1,324,337
MASSACHUSETTS	6,661,492	VERMONT	516,369
MICHIGAN	5,927,760	VIRGINIA	3,701,177
MINNESOTA	2,013,659	WASHINGTON	3,119,250
MISSISSIPPI	1,909,897	WEST VIRGINIA	3,408,377
MISSOURI	2,353,935	WISCONSIN	7,749,973
		WYOMING	973,248

TOTAL			\$192,222,423

FISCAL YEAR 1986 UMTA SECTION 9 FORMULA APPORTIONMENTS
GOVERNOR'S APPORTIONMENT ATTRIBUTABLE TO 1980 CENSUS DATA FOR THE GOVERNOR'S INDIVIDUAL URBANIZED AREAS

STATE/URBANIZED AREA	PERCENTAGE OF STATE TOTAL	AMOUNT	STATE/URBANIZED AREA	PERCENTAGE OF STATE TOTAL	AMOUNT
ALABAMA:			COLORADO:		
Governor's apportionment for areas 50,000 to 200,000 population:		\$5,089,012	Governor's apportionment for areas 50,000 to 200,000 population:		\$3,364,374
Anniston.....	0.086822528	441,841	Boulder.....	0.247885553	833,980
Auburn-Opelika.....	0.053977303	274,691	Fort Collins.....	0.184172224	619,624
Decatur.....	0.063229779	321,777	Grand Junction.....	0.119638374	402,508
Dothan.....	0.055416054	282,813	Greeley.....	0.176069865	592,365
Florence.....	0.084918670	432,152	Pueblo.....	0.272233984	915,897
Gadsden.....	0.080022591	407,236			
Huntsville.....	0.178566225	908,726	CONNECTICUT:		
Montgomery.....	0.266398907	1,355,707	Governor's apportionment for areas 50,000 to 200,000 population:		\$13,277,739
Tuscaloosa.....	0.130647942	664,869	Bristol.....	0.079121916	586,557
			* Danbury, Conn.-N.Y.....	0.078443563	2,048,467
ALASKA:			Meriden.....	0.064422523	477,585
Governor's apportionment for areas 50,000 to 200,000 population:		\$1,031,906	New Britain.....	0.159172573	1,179,998
Anchorage.....	1.000000000	1,031,906	New London-Norwich.....	0.130540869	967,742
			* Norwalk.....	0.114930195	2,318,954
ARIZONA:			* Stamford.....	0.200239128	2,948,032
Governor's apportionment for areas 50,000 to 200,000 population:		\$444,424	* Waterbury.....	0.173129234	2,750,483
Yuma, Ariz.-Calif.....	1.000000000	444,424	*An appropriate amount for commuter rail from UZA's above 200,000 has been included.		
ARKANSAS:			DELAWARE:		
Governor's apportionment for areas 50,000 to 200,000 population:		\$1,499,562	FLORIDA:		
Fayetteville-Springdale.....	0.237883535	356,721	Governor's apportionment for areas 50,000 to 200,000 population:		\$7,033,542
Fort Smith, Ark.-Okla.....	0.355694045	533,385	Daytona Beach.....	0.165214252	1,162,041
Pine Bluff.....	0.326152749	489,086	Fort Myers.....	0.131222633	922,960
Texarkana, Tex.-Ark.....	0.080269670	120,369	Fort Pierce.....	0.061892935	435,327
			Fort Walton Beach.....	0.077553553	545,476
CALIFORNIA:			Gainesville.....	0.110314392	775,901
Governor's apportionment for areas 50,000 to 200,000 population:		\$15,222,978	Lakeland.....	0.106491098	749,010
Antioch-Pittsburg.....	0.056144233	854,682	Naples.....	0.044287682	311,499
Chico.....	0.026000699	395,808	Ocala.....	0.044144210	310,490
Fairfield.....	0.035404375	538,960	Panama City.....	0.070912898	498,765
Hemet.....	0.027081338	412,259	Tallahassee.....	0.118676086	834,713
Lancaster.....	0.022669529	345,098	Winter Haven.....	0.069290261	487,356
Modesto.....	0.106368320	1,619,243			
Napa.....	0.037061544	564,187	GEORGIA:		
Palm Springs.....	0.025166937	383,116	Governor's apportionment for areas 50,000 to 200,000 population:		\$3,917,461
Redding.....	0.020791165	316,583	Albany.....	0.144253459	565,107
Salinas.....	0.068773745	1,046,941	Athens.....	0.106583724	417,538
Santa Barbara.....	0.097778333	1,488,477	Wacon.....	0.256768154	1,005,879
Santa Cruz.....	0.055662277	847,346	Rome.....	0.081261000	318,337
Santa Maria.....	0.031478975	479,204	Savannah.....	0.310501815	1,216,379
Santa Rosa.....	0.077742782	1,183,477	Warner Robins.....	0.100631849	394,221
Seaside-Monterey.....	0.072148587	1,098,316			
Simi Valley.....	0.048443711	737,458	HAWAII:		
Stockton.....	0.127055944	1,934,170	Governor's apportionment for areas 50,000 to 200,000 population:		\$1,004,035
Visalia.....	0.031503848	479,582	Kailua-Kaneohe.....	1.000000000	1,004,035
Yuba City.....	0.032594436	496,184			
Yuma, Ariz.-Calif.....	0.000129223	1,967			

FISCAL YEAR 1986 URBA SECTION 3 FORMULA APPORTIONMENTS
GOVERNOR'S APPORTIONMENT ATTRIBUTABLE TO 1980 CENSUS DATA FOR THE GOVERNOR'S INDIVIDUAL URBANIZED AREAS

STATE/URBANIZED AREA	PERCENTAGE OF STATE TOTAL	AMOUNT	STATE/URBANIZED AREA	PERCENTAGE OF STATE TOTAL	AMOUNT
IDAHO:			KENTUCKY:		
Governor's apportionment for areas			Governor's apportionment for areas		
50,000 to 200,000 population:		\$1,457,030	50,000 to 200,000 population:		\$3,019,790
Boise City.....	0.722095208	1,052,114	Clarksville, Tenn.-Ky.....	0.055470701	167,510
Pocatello.....	0.277904792	404,916	Evansville, Ind.-Ky.....	0.059812843	180,622
ILLINOIS:			Huntington-Ashland, W.Va.-Ky.-Ohio	0.141129359	426,181
Governor's apportionment for areas			Lexington-Fayette.....	0.545700811	1,647,902
50,000 to 200,000 population:		\$9,664,662	Owensboro.....	0.197886286	597,575
Alton.....	0.065843006	636,350	LOUISIANA:		
Aurora.....	0.132108676	1,276,786	Governor's apportionment for areas		
Beloit, Wis.-Ill.....	0.004716446	45,583	50,000 to 200,000 population:		\$3,527,171
Bloomington-Normal.....	0.085989443	831,059	Alexandria.....	0.177653691	626,615
Champaign-Urbana.....	0.123690122	1,195,423	Houma.....	0.115544189	407,544
Danville.....	0.043117585	416,717	Lafayette.....	0.263904780	930,837
Decatur.....	0.088536812	855,678	Lake Charles.....	0.228136026	804,675
Dubuque, Iowa-Ill.....	0.001798984	17,387	Monroe.....	0.214761314	757,580
Elgin.....	0.098666155	953,575	MAINE:		
Joliet.....	0.142059532	1,372,957	Governor's apportionment for areas		
Kankakee.....	0.058277888	563,236	50,000 to 200,000 population:		\$1,522,631
Round Lake Beach.....	0.045950951	444,100	Bangor.....	0.212315735	323,278
Springfield.....	0.109244401	1,055,810	Lewiston-Auburn.....	0.251581973	383,066
INDIANA:			Portland.....	0.488139396	743,256
Governor's apportionment for areas			Portsmouth-Dover-Rochester, N.H.-Me	0.047962895	73,030
50,000 to 200,000 population:		\$5,953,042	MARYLAND:		
Anderson.....	0.090936671	541,350	Governor's apportionment for areas		
Bloomington.....	0.102630096	610,961	50,000 to 200,000 population:		\$1,336,634
Elkhart-Goshen.....	0.103129168	613,932	Annapolis.....	0.362098577	483,993
Evansville, Ind.-Ky.....	0.231665437	1,379,114	Cumberland, Md.-W. Va.....	0.290063593	387,709
Kokomo.....	0.094058162	559,932	Hagerstown, Md.-Pa.....	0.347837831	464,932
Lafayette-West Lafayette.....	0.146963465	874,880	MASSACHUSETTS:		
Muncie.....	0.132141744	786,645	Governor's apportionment for areas		
Terre Haute.....	0.098475257	586,227	50,000 to 200,000 population:		\$6,661,492
IOWA:			Brockton.....	0.237443951	1,581,731
Governor's apportionment for areas			Fall River, Mass.-R.I.....	0.188895876	1,258,328
50,000 to 200,000 population:		\$3,320,500	Fitchburg-Leominster.....	0.069765776	464,744
Cedar Rapids.....	0.312701377	1,038,325	Lowell, Mass.-N.H.....	0.202923451	1,351,773
Dubuque, Iowa-Ill.....	0.167898022	557,505	New Bedford.....	0.204475183	1,362,110
Iowa City.....	0.132907300	441,319	Pittsfield.....	0.053355944	355,430
Sioux City, Iowa-Nebr.-S. Dak.....	0.166192865	551,843	Taunton.....	0.043139819	287,376
Waterloo.....	0.220300436	731,508	KANSAS:		
Governor's apportionment for areas			Governor's apportionment for areas		
50,000 to 200,000 population:			50,000 to 200,000 population:		\$1,427,377
Lawrence.....	0.329235236	469,943	St. Joseph, Mo.-Kans.....	0.005447885	7,776
St. Joseph, Mo.-Kans.....	0.005447885	7,776	Topeka.....	0.665316879	949,658
Topeka.....	0.665316879	949,658			

FISCAL YEAR 1986 UMTA SECTION 9 FORMULA APPOINTMENTS
GOVERNOR'S APPOINTMENT ATTRIBUTABLE TO 1980 CENSUS DATA FOR THE GOVERNOR'S INDIVIDUAL URBANIZED AREAS

STATE/URBANIZED AREA	PERCENTAGE OF STATE TOTAL	AMOUNT	STATE/URBANIZED AREA	PERCENTAGE OF STATE TOTAL	AMOUNT
MICHIGAN:			NEW HAMPSHIRE:		
Governor's apportionment for areas			Governor's apportionment for areas		
50,000 to 200,000 population:		\$5,927,760	50,000 to 200,000 population:		\$1,927,906
Battle Creek.....	0.089999033	533,493	Lowell, Mass.-N.H.....	0.002438545	4,701
Bay City.....	0.103207972	612,266	Manchester.....	0.442744197	853,569
Benton Harbor.....	0.075747058	449,010	Nashua.....	0.303032767	584,219
Jackson.....	0.107320303	636,169	Portsmouth-Dover-Rochester, N.H.-Me	0.251784491	485,417
Kalamazoo.....	0.195076858	1,156,369			
Muskegon-Muskegon Heights.....	0.128620277	762,430	NEW JERSEY:		
Port Huron.....	0.077686350	460,506	Governor's apportionment for areas		
Saginaw.....	0.222262149	1,317,517	50,000 to 200,000 population:		\$1,511,485
			Atlantic City.....	0.700675556	1,059,060
			Vineland-Millville.....	0.299324444	452,424
MINNESOTA:			NEW MEXICO:		
Governor's apportionment for areas			Governor's apportionment for areas		
50,000 to 200,000 population:		\$2,013,659	50,000 to 200,000 population:		\$730,934
Duluth-Superior, Minn.-Wis.....	0.298290047	600,656	Las Cruces.....	0.533416538	389,892
Fargo-Moorhead, N. Dak.-Minn.....	0.141370602	284,672	Santa Fe.....	0.466583462	341,042
Grand Forks, N. Dak.-Minn.....	0.033541994	67,542			
La Crosse, Wis.-Minn.....	0.014340095	28,876	NEW YORK:		
Rochester.....	0.272740223	549,222	Governor's apportionment for areas		
St. Cloud.....	0.239708239	482,691	50,000 to 200,000 population:		\$4,819,007
			Binghamton.....	0.279828852	1,348,497
			Danbury, Conn.-N.Y.....	0.003197697	15,410
MISSISSIPPI:			Elmira.....	0.122003483	587,936
Governor's apportionment for areas			Glens Falls.....	0.072176050	347,817
50,000 to 200,000 population:		\$1,909,897	Newburgh.....	0.089506656	431,333
Biloxi-Gulfport.....	0.606110832	1,157,609	Poughkeepsie.....	0.197037178	949,524
Hattiesburg.....	0.184761601	352,076	Utica-Rome.....	0.236250084	1,138,491
Pascagoula-Moss Point.....	0.209127567	399,412			
			NORTH CAROLINA:		
MISSOURI:			Governor's apportionment for areas		
Governor's apportionment for areas			50,000 to 200,000 population:		\$8,250,723
50,000 to 200,000 population:		\$2,353,935	Asheville.....	0.075550357	624,016
Columbia.....	0.181963596	428,331	Burlington.....	0.053723274	443,686
Joplin.....	0.142773670	336,000	Concord.....	0.053501468	442,515
St. Joseph, Mo.-Kans.....	0.234707123	552,485	Durham.....	0.147901442	1,221,477
Springfield.....	0.440555611	1,037,039	Gastonia.....	0.082485330	681,224
			Goldboro.....	0.041830628	345,468
MONTANA:			Greensboro.....	0.165831093	1,369,553
Governor's apportionment for areas			Hickory.....	0.044607153	360,390
50,000 to 200,000 population:		\$1,703,353	High Point.....	0.078627451	649,362
Billings.....	0.395612195	673,867	Jacksonville.....	0.052550653	434,001
Great Falls.....	0.344066928	587,430	Wilmington.....	0.063915524	527,061
Missoula.....	0.259520076	442,056	Winston-Salem.....	0.139387625	1,151,164
NEBRASKA:			NORTH DAKOTA:		
Governor's apportionment for areas			Governor's apportionment for areas		
50,000 to 200,000 population:		\$1,603,178	50,000 to 200,000 population:		\$1,447,968
Lincoln.....	0.950154973	1,523,267	Bismarck-Mandan.....	0.318685462	461,446
Sioux City, Iowa-Nebr.-S. Dak.....	0.049845027	79,910	Fargo-Moorhead, N. Dak.-Minn.....	0.386936110	560,271
			Grand Forks, N. Dak.-Minn.....	0.294378428	426,251
NEVADA:					
Governor's apportionment for areas					
50,000 to 200,000 population:		\$1,289,467			
Reno.....	1.000000000	1,289,467			

FISCAL YEAR 1986 UMTA SECTION 9 FORMULA APPOINTMENTS
GOVERNOR'S APPOINTMENT ATTRIBUTABLE TO 1980 CENSUS DATA FOR THE GOVERNOR'S INDIVIDUAL URBANIZED AREAS

STATE/URBANIZED AREA	PERCENTAGE OF STATE TOTAL	AMOUNT	STATE/URBANIZED AREA	PERCENTAGE OF STATE TOTAL	AMOUNT
OHIO:			PUERTO RICO:		
Governor's apportionment for areas 50,000 to 200,000 population:			Governor's apportionment for areas 50,000 to 200,000 population:		
Hamilton.....	0.181179092	\$4,690,123	Aquadilla.....	0.080009386	\$5,529,920
Runtington-Ashland, W. Va.-Ky.-Ohio	0.052518802	849,752	Arceibo.....	0.091640011	522,455
Lima.....	0.115237140	246,320	Caguas.....	0.214622934	598,402
Mansfield.....	0.114090260	540,476	Mayaguez.....	0.150299096	1,401,471
Middletown.....	0.120771999	535,135	Ponce.....	0.353241780	981,441
Newark.....	0.077500204	603,956	Vega Baja-Manati.....	0.110186793	2,306,641
Parkersburg, W. Va.-Ohio.....	0.012799829	363,523			719,511
Sharon, Pa.-Ohio.....	0.007685417	60,033	RHODE ISLAND:		
Springfield.....	0.007685417	36,046	Governor's apportionment for areas 50,000 to 200,000 population:		
Springfield.....	0.179150675	848,239	Fall River, Mass.-R.I.....	0.217861331	\$519,588
Steubenville-Weirton, Ohio-W. Va.-Pa	0.070638439	331,303	Newport.....	0.782138669	113,198
Wheeling, W. Va.-Ohio.....	0.060412056	283,340			406,390
OKLAHOMA:			SOUTH CAROLINA:		
Governor's apportionment for areas 50,000 to 200,000 population:			Governor's apportionment for areas 50,000 to 200,000 population:		
Enid.....	0.320973520	\$1,021,370	Anderson.....	0.205520609	\$1,632,485
Fort Smith, Ark.-Okla.....	0.012156063	327,833	Florence.....	0.216505405	335,509
Lawton.....	0.666870417	12,416	Rock Hill.....	0.193761240	353,442
		681,121	Spartanburg.....	0.384212746	316,312
OREGON:			SOUTH DAKOTA:		
Governor's apportionment for areas 50,000 to 200,000 population:			Governor's apportionment for areas 50,000 to 200,000 population:		
Eugene.....	0.514203707	\$3,263,902	Rapid City.....	0.363413810	\$1,036,988
Longview, Wash.-Oreg.....	0.002632044	1,678,310	Sioux City, Iowa-Nebr.-S. Dak.....	0.010462344	376,856
Medford.....	0.125746026	8,593	Sioux Falls.....	0.626123846	10,849
Medford.....	0.125746026	418,423			649,283
Salem.....	0.357417422	1,166,575	TENNESSEE:		
PENNSYLVANIA:			Governor's apportionment for areas 50,000 to 200,000 population:		
Governor's apportionment for areas 50,000 to 200,000 population:			Bristol, Tenn.-Bristol, Va.....	0.096994436	\$1,776,455
Altoona.....	0.077174727	\$9,345,893	Clarksville, Tenn.-Ky.....	0.103644002	172,306
Erie.....	0.197103347	721,267	Jackson.....	0.177359257	326,235
Hagerstown, Md.-Pa.....	0.000639084	1,842,107	Johnson City.....	0.273361835	315,071
Johnstown.....	0.001167235	5,973	Kingsport, Tenn.-Va.....	0.268640470	485,615
Johnstown.....	0.001167235	758,580			477,228
Lancaster.....	0.137809684	1,287,955			
Monessen.....	0.047732680	1,287,955			
Monessen.....	0.047732680	446,105			
Reading.....	0.183918037	1,718,878			
Reading.....	0.183918037	1,718,878			
Sharon, Pa.-Ohio.....	0.042343948	395,742			
Sharon, Pa.-Ohio.....	0.042343948	395,742			
State College.....	0.057662270	538,905			
State College.....	0.057662270	538,905			
Steubenville-Weirton, Ohio-W. Va.-Pa	0.000176471	1,649			
Steubenville-Weirton, Ohio-W. Va.-Pa	0.000176471	1,649			
Williamsport.....	0.053234944	497,528			
Williamsport.....	0.053234944	497,528			
York.....	0.121037572	1,131,204			
York.....	0.121037572	1,131,204			

FISCAL YEAR 1986 UMTA SECTION 9 FORMULA APPORTIONMENTS
GOVERNOR'S APPORTIONMENT ATTRIBUTABLE TO 1980 CENSUS DATA FOR THE GOVERNOR'S INDIVIDUAL URBANIZED AREAS

STATE/URBANIZED AREA	PERCENTAGE OF STATE TOTAL	AMOUNT	STATE/URBANIZED AREA	PERCENTAGE OF STATE TOTAL	AMOUNT
TEXAS:			WASHINGTON:		
Governor's apportionment for areas			Governor's apportionment for areas		
50,000 to 200,000 population:		\$16,340,334	50,000 to 200,000 population:		\$3,119,250
Abilene.....	0.037183113	607,584	Bellingham.....	0.121333911	378,471
Amarillo.....	0.066115035	1,030,342	Bremerton.....	0.148992269	454,744
Beaumont.....	0.050184520	820,032	Longview, Wash.-Oreg.....	0.118787872	370,529
Brownsville.....	0.051681542	844,494	Olympia.....	0.150025195	467,966
Bryan-College Station.....	0.033542963	580,784	Richland-Kennewick.....	0.244733674	763,306
Galveston.....	0.028913277	472,453	Yakima.....	0.216127079	674,154
Harlingen-San Benito.....	0.027787978	454,065			
Killeen.....	0.042371712	692,368	WEST VIRGINIA:		
Laredo.....	0.067930323	1,110,004	Governor's apportionment for areas		
Longview.....	0.026650446	435,477	50,000 to 200,000 population:		\$3,408,377
Lubbock.....	0.077783403	1,271,007	Charleston.....	0.364170562	1,241,231
McAllen-Pharr-Edinburg.....	0.080833437	1,320,848	Cumberland, Md.-W. Va.....	0.005410634	18,441
Midland.....	0.032710907	534,507	Huntington-Ashland, W. Va.-Ky.-Ohio	0.235730335	803,458
Odessa.....	0.049386647	806,994	Parkersburg, W. Va.-Ohio.....	0.155082619	528,580
Port Arthur.....	0.044571764	728,317	Steubenville-Weirton, Ohio-W. Va.-Pa	0.061496712	209,604
San Angelo.....	0.033456508	546,690	Wheeling, W. Va.-Ohio.....	0.178109138	607,063
Sherman-Dension.....	0.020685205	338,003			
Temple.....	0.019092261	311,974	WISCONSIN:		
Texarkana, Tex.-Ark.....	0.018258768	298,354	Governor's apportionment for areas		
Texas City-La Marque.....	0.036791451	601,185	50,000 to 200,000 population:		\$7,749,973
Tyler.....	0.033614132	549,266	Appleton.....	0.167284251	1,296,448
Victoria.....	0.026254742	429,011	Beloit, Wis.-Ill.....	0.043604138	337,931
Waco.....	0.050320965	822,261	Duluth-Superior, Minn.-Wis.....	0.019605671	151,943
Wichita Falls.....	0.041878902	684,315	Eau Claire.....	0.065130677	504,761
			Green Bay.....	0.126488585	980,283
UTAH:			Janesville.....	0.052837962	409,493
Governor's apportionment for areas			Kenosha.....	0.120906523	937,022
50,000 to 200,000 population:		\$1,324,337	La Crosse, Wis.-Minn.....	0.070143272	543,608
Provo-Orem.....	1.000000000	1,324,337	Oshkosh.....	0.062829975	486,931
			Racine.....	0.153933161	1,192,978
VERMONT:			Sheboygan.....	0.065589135	508,314
Governor's apportionment for areas			Wausau.....	0.051646651	400,260
50,000 to 200,000 population:		\$516,369			
Burlington.....	1.000000000	516,369	WYOMING:		
			Governor's apportionment for areas		
VIRGINIA:			50,000 to 200,000 population:		\$973,248
Governor's apportionment for areas			Casper.....	0.532792106	518,539
50,000 to 200,000 population:		\$3,701,177	Cheyenne.....	0.467207894	454,709
Bristol, Tenn.-Bristol, Va.....	0.036235960	134,116			
Charlottesville.....	0.148464466	549,493			
Danville.....	0.104609124	387,177			
Kingsport, Tenn.-Va.....	0.007005092	25,927			
Lynchburg.....	0.146392725	541,825			
Petersburg-Colonial Heights.....	0.200839926	743,344			
Roanoke.....	0.356452707	1,319,294			
TOTAL					\$192,222,423

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