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# federal register

Monday
May 4, 1987

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

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

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

**WHO:** The Office of the Federal Register.

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

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

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

### WASHINGTON, DC

**WHEN:** June 9, at 9 a.m.
**WHERE:** Office of the Federal Register, First Floor Conference Room, 1100 L Street NW., Washington, DC.
**RESERVATIONS:** Gertrude E. Belton, 202-523-5237

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# Presidential Documents

Title 3—

The President

Proclamation 5644 of April 30, 1987

## National Child Abuse Prevention Month, 1987

By the President of the United States of America

A Proclamation

Child abuse is a tragedy that can and must be prevented. Yearly estimates of the number of children who are suspected victims of child abuse or neglect run into the millions. Each year, maltreatment kills several thousand children and inflicts long-term physical, mental, and emotional harm on many others. Much remains to be done if we are to guarantee all American youngsters the safe and happy upbringing due every child granted to us.

Fortunately, we have come to understand better the duty of every American to protect our children, and our knowledge about the prevention and treatment of child abuse continues to grow. We better realize the duty of individuals—neighbors, friends, clergy, teachers, parents, relatives, doctors, nurses, volunteers, and so on—State and local authorities, and community child protection agencies to safeguard children and to provide support, information, and guidance to families in which maltreatment of children may happen.

All Americans should cherish the children of our land and revere the precious gift of every life. We must guard our children and join with citizens in our communities who are working to eliminate child abuse. We should also cultivate a safe nurturing social environment for our children that promotes strong and loving families and embodies the morality, compassion, and traditional values that have ever protected society and its most vulnerable members.

The Congress, by Senate Joint Resolution 58, has designated the month of April 1987 as "National Child Abuse Prevention Month" 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 proclaim the month of April 1987 as National Child Abuse Prevention Month. As we observe this time, let us all consider our responsibility for the wholesome and secure development of our children.

IN WITNESS WHEREOF, I have hereunto set my hand this thirtieth day of April, in the year of our Lord nineteen hundred and eighty-seven, and of the Independence of the United States of America the two hundred and eleventh.

Ronald Reagan

[FR Doc. 87-10238
Filed 5-1-87; 11:50 am]
Billing code 3195-01-M

# Rules and Regulations

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

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

### 7 CFR Part 989

### Raisins Produced From Grapes Grown in California; Final Free and Reserve Percentages for the 1986–87 Crop Year for Certain Varietal Types of Raisins

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** This final rule designates final free and reserve percentages for Natural (sun-dried) Seedless, Dipped Seedless, Zante Currant, and Monukka raisins from California's 1986 production. They are intended to stabilize supplies and prices, and help counter the destabilizing effects of the burdensome supply situtation facing the raisin industry. Free percentage raisins can be shipped immediately to any market, while reserve raisins must be held by handlers in a pool for the account of the Raisin Administrative Committee (Committee). Under the order, reserve raisins may be: Sold later by the Committee to handlers for free use; used in diversion programs; exported to authorized countries; carried over as a hedge against a short crop the following year; sold to government agencies; or disposed of in other outlets noncompetitive with those for free raisins.

**EFFECTIVE DATE:** August 1, 1986, through July 31, 1987.

**FOR FURTHER INFORMATION CONTACT:** James M. Scanlon, Acting Chief, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, Washington, DC 20250, (202) 447–5697.

**SUPPLEMENTARY INFORMATION:** This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service has considered the economic impact of this final rule on small entities as well as large ones.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Agricultural Marketing Agreement Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

It is estimated that approximately 23 handlers of raisins under the marketing order will be subject to regulation during the course of the current season. There are about 5,000 raisin producers in the regulated area. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2 (1985)) as those having average annual gross revenues for the last three years of less than $100,000 and agricultural service firms which would include handlers have been defined as those whose gross annual receipts are less than $3,500,000. The majority of handlers and producers of raisins may be characterized as small entities. The estimated average annual production for the past three years for the four varietal types was $201,583,000.

The regulation would apply to all handlers of Natural (sun-dried) Seedless, Dipped Seedless, Zante Currant, and Monukka raisins. The amount of tonnage estimated to be affected during the 1986–87 crop season by this regulation is 361,611 tons.

The order prescribes procedures for computing trade demands, preliminary and final percentages which establish the amounts of raisins the market can support throughout the season. Accordingly, the Committee is required to meet prior to August 15 of each year to compute a trade demand for each varietal type of raisin. The Committee is then required to establish a preliminary percentage for each such varietal type. The computation of the trade demand is discussed in detail in the latter part of this document. Until the industry is able to obtain a more accurate estimate of the raisin production for that year, handlers operate under the preliminary percentages, which release 85 percent of the trade demand. On or before February 15, the Committee must recommend to the Secretary final free and reserve percentages which will release 100 percent of the trade demands. The Committee's recommendation and this rule are based on requirements specified in the order.

While this rule may restrict the amount of raisins that enter domestic markets, the recommended final free and reserve percentages are needed to lessen the impact of the oversupply situation facing the industry and to promote stronger marketing conditions, thus stabilizing prices and supplies and improving grower returns. In addition to the quantity of raisins released pursuant to this rule, the order specifies methods to provide additional raisins to handlers by authorizing sales of reserve pool raisins for use as free tonnage under the "10 plus 10" offers, export sales, and school lunch programs.

Based on available information, the Administrator of the Agricultural Marketing Service has determined that the issuance of this final rule will not have a significant economic impact on a substantial number of small entities.

This action designates final free and reserve percentages for the 1986–87 crop year for Natural (sun-dried) Seedless raisins of 66 percent and 34 percent, for Dipped Seedless raisins of 100 percent and 0 percent, for Zante Currant raisins of 66 percent and 34 percent, and for Monukka raisins of 43 percent and 57 percent, respectively. These percentages apply to all standard raisins of these varietal types acquired by handlers during the 1986–87 crop year.

These final marketing percentage designations are established pursuant to §§ 989.54 and 989.55 of the marketing agreement and Order No. 989 (7 CFR Part 989), both as amended, regulating the handling of raisins produced from grapes grown in California, hereinafter referred to collectively as the "order". The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674).

Pursuant to § 989.54(a), on or before August 15 of each crop year, the Committee is required to hold a meeting to review shipment data, inventory data, and other matters relating to the supply of raisins of all varietal types. For any varietal type for which a free tonnage percentage may be recommended, the Committee is required to compute a trade demand under a formula prescribed in that paragraph. The trade demand is computed by using 90 percent of the prior year's shipments of free tonnage and reserve tonnage raisins sold for free use for each varietal type, into all market outlets. That amount is adjusted by the carrying of each varietal type on August 1 of the current crop year and the desirable carryout for each varietal type at the end of that crop year. The order prescribes that the desirable carryout for the 1986–87 crop year shall be 55,000 tons for Natural Seedless and 1,500 tons for Dipped and Oleate and Related Seedless raisins. An order amendment in 1984 established the desirable carryout for that year at 45,000 tons for Natural Seedless and provided for that amount to be increased at a rate of 5,000 tons per year to a ceiling of 60,000 tons during the crop years following the amendment. The increase in the desirable carryout is necessary to meet future anticipated increases in early season market needs.

In accordance with these provisions, the Committee computed and announced a trade demand of 230,449 tons for Natural (sun-dried) Seedless raisins, 9,733 tons for Dipped Seedless raisins, 2,145 tons for Zante Currant raisins, and 819 tons for Monukka raisins.

The 1982 Guidelines for Fruit, Vegetable, and Specialty Crop Marketing Orders (Guidelines) specify that 110 percent of the recent years' sales be made available to primary markets each season. This requirement is met by the establishment of these final percentages which release 100 percent of the computed trade demand for each varietal type, and the additional release of such raisins under "10 plus 10" offers. The "10 plus 10" offers are two simultaneous sales of reserve pool raisins which are made available to handlers each season. For each such offer, 10 percent of the prior year's shipments are made available for free use.

As required under § 989.54(b), the Committee met on October 2, 1986, and computed and announced preliminary free and reserve percentages for each of these varietal types. The Committee determined that the field price for all four varietal types are firmly established. Hence, in accordance with § 989.54(b), preliminary free and reserve percentages were computed and announced by the Committee for the four varietal types which released 85 percent of each varietal type's computed trade demand.

Under § 989.54(d) of the order, the Committee is required to recommend to the Secretary, no later than February 15 of each crop year, final free and reserve percentages which, when applied to the final production estimate of a varietal type, will tend to release the full trade demand for any varietal type for which preliminary or interim percentages have been computed and announced. Section 989.54(d) also provides that the difference between any final free percentage designated by the Secretary and 100 percent shall be the final reserve percentage.

On February 3, 1987, the Committee met and recommended final free and reserve percentages for the 1986–87 crop year and made its final production estimates for Natural (sun-dried) Seedless, Dipped Seedless, Zante Currant, and Monukka raisins.

The Committee's final estimate of 1986–87 production of Natural (sundried) Seedless raisins totaled 346,795 tons, which includes the 1986 diversion tonnage of about 103,500 tons (49,795 tons more than its preliminary estimate of 297,000 tons). Dividing the computed trade demand of 230,449 tons by the final estimate of production results in a final free percentage of 66.45 percent. The Committee rounded that percentage to 66 percent which results in a final reserve percentage of 34 percent.

For Dipped Seedless raisins, the Committee's final estimate of 1986–87 production totaled 9,688 tons (532 tons less than its preliminary estimate of 10,200 tons). Because the computed trade demand of 9,733 tons exceeds the final production estimate, a free percentage of 100 percent must be established and the reserve percentage shall be 0 percent.

For Zante Currant raisins, the Committee's final estimate of 1986–87 production totaled 3,236 tons (436 tons more than its preliminary estimate of 2,800 tons). Dividing the computing trade demand of 2,145 tons by the final production estimate results in a free percentage of 66.28 percent. The Committee rounded that percentage to 66 percent which results in a final reserve percentage of 34 percent.

For Monukka raisins, the Committee's final estimate of 1986–87 production totaled 1,912 tons (112 tons more than its preliminary estimate of 1,800 tons). Dividing the computed trade demand of 819 tons by the final production estimate results in a free percentage of 42.8 percent. The Committee rounded that percentage to 43 percent which results in a final reserve percentage of 57 percent.

After consideration of all relevant matter presented (the information and recommendation submitted by the Committee, and other available information), it is further found that the designation, under §§ 989.54 and 989.55, of final free and reserve percentages for the 1986–87 crop year for Natural (sun-dried) Seedless, Dipped Seedless, Zante Currant, and Monukka raisins, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

It is found that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice and to engage in further public procedures, and good cause is found for not postponing the effective date of this action until 30 days after publication in the **Federal Register** (5 U.S.C. 553) in that: (1) The relevant provisions of this part require that the percentages designated herein for the 1986–87 crop year apply to all Natural (sun-dried) Seedless, Dipped Seedless, Zante Currant, and Monukka raisins acquired by handlers from the beginning of that crop year; (2) handlers are marketing 1986–87 crop raisins of these varietal types and this action must be taken promptly to achieve its purpose of making the full trade demand quantities computed by the Committee for these varietial types available to handlers; and (3) handlers are aware of this action which was recommended by the Committee at an open meeting and need no additional time to comply with these percentages.

**List of Subjects in 7 CFR Part 989**

Marketing agreements and orders, Grapes, Raisins, California.

For the reasons set forth in the preamble, 7 CFR Part 989 is amended as follows:

## PART 989—RAISINS PRODUCED FROM GRAPES GROWN IN CALIFORNIA

1. The authority citation for 7 CFR Part 989 continues to read as follows:

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

2. Section 989.239 is added to Subpart—*Supplementary Regulations* to read as follows:

Note.—The following section will not be published in the Code of Federal Regulations.

**§ 989.239 Final free and reserve percentages for the 1986-87 crop year.**

The percentages of standard Natural (sun-dried) Seedless, Dipped Seedless, Zante Currant, and Monukka raisins acquired by handlers during the crop year beginning August 1, 1986, which shall be free tonnage and reserve tonnage, respectively, are designated as follows:

| | Free percentage | Reserve percentage |
|---|---|---|
| Natural (sun-dried) Seedless | 66 | 34 |
| Dipped Seedless | 100 | 0 |
| Zante Currant | 66 | 34 |
| Monukka | 43 | 57 |

Dated: April 29, 1987.

**Ronald L. Cioffi,**

*Acting Deputy Director, Fruit and Vegetable Division.*

[FR Doc. 87-10059 Filed 5-1-87; 8:45 am]

BILLING CODE 3410-02-M

## DEPARTMENT OF JUSTICE

### Immigration and Naturalization Service

### 8 CFR Part 204

[INS: 1009-87]

### Relationship by Adoption

**AGENCY:** Immigration and Naturalization Service, Justice.

**ACTION:** Final rule.

**SUMMARY:** The Immigration and Nationality Act Amendments of 1986, Pub. L. 99-653, became effective November 14, 1986, and changes the legal custody requirement of section 101(b)(1)(E) of the Act. The amendment retains the two-year requirement for legal custody; however, instead of measuring the two-year requirement of legal custody from the date of the adoption decree as with the previous law, the requirement is now computed from the date the adopting parent(s) was first awarded legal custody of the child. This change will facilitate meeting of the two-year legal custody requirement by children who have been residing in the legal custody of the adopting parents, but whose adoptions have not been finalized until the latter stages of the pre-immigration relationship. This problem was inherent in the old law because the legal custody time did not begin to toll until the child had been adopted.

**EFFECTIVE DATE:** November 14, 1986.

**FOR FURTHER INFORMATION CONTACT:** For Specific Information: Jeffrey D. Trecartin, Senior Immigration Examiner, Immigration and Naturalization Service, 425 I Street, NW., Washington, DC 20536, Telephone: (202) 633-5014

**SUPPLEMENTARY INFORMATION:** Since section 101(b)(1)(E) of the Act does not specify that the two-year period of residence must begin after adoption, such requirement may be met at any time, provided the child is legally adopted while under sixteen years of age. The two-year period of legal custody required by section 101(b)(1)(E) of the Act shall be computed from the date a court grants legal custody either through formal adoption or through separate proceedings prior to adoption.

Compliance with 5 U.S.C. 553 as to notice of proposed rulemaking and delayed effective date is impracticable and unnecessary as the changes have been mandated by the passage of Pub. L. 99-603.

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

This is not a major rule within the meaning of section 1(b) E.O. 12291.

**List of Subjects in 8 CFR Part 204**

Administrative practice and procedure, Reporting and recordkeeping requirements.

Accordingly, Chapter 1 of Title 8, Code of Federal Regulations, is amended as follows:

### PART 204—PETITION TO CLASSIFY ALIEN AS RELATIVE OF A UNITED STATES CITIZEN OR AS A PREFERENCE IMMIGRANT

1. The authority citation for Part 204 continues to read as follows:

**Authority:** Secs. 101, 103, 201, 203, 204, 212, 245; 66 Stat. 166, 173, 175, 178, 179, 182, 217; (8 U.S.C. 1101, 1103, 1151, 1153, 1154, 1182, 1255).

2. In § 204.2, paragraph (c)(7) is revised to read as follows:

**§ 204.2 Documents.**

* * * * *

(c) * * *

(7) *Relationship by adoption.* If the petitioner and the beneficiary are related to each other by adoption, a certified copy of the adoption decree must accompany the petition. Immigration benefits may be obtained under sections 101(b)(1)(E) or 101(b)(2) of the Act by virtue of an adoptive relationship if the child was adopted while under the age of sixteen and the child has been in the legal custody of, and has resided with the adopting parent or parents for at least two years. Legal custody and residence occurring prior to or after the adoption will satisfy both requirements. Legal custody is measured from the date the adopting parent or parents are awarded legal custody, rather than from the date of the adoption decree. A child adopted under the age of sixteen years is a "child" for purposes of sections 101(b)(1)(E) and 101(b)(2) of the Act.

* * * * *

Dated: April 22, 1987.

**Richard E. Norton,**

*Associate Commissioner, Examinations, Immigration and Naturalization Service.*

[FR Doc. 87-9988 Filed 5-1-87; 8:45 am]

BILLING CODE 4410-01-M

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

### 9 CFR Part 97

[Docket No. 87-032]

### Overtime Services Relating to Imports and Exports; Commuted Traveltime Allowances

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** We are amending the regulations in 9 CFR Part 97, which prescribe commuted traveltime allowances, by adding or removing commuted traveltime periods in California and Mexico. Commuted traveltime periods reflect the time necessarily spent in reporting to, and returning from, the place at which an employee of Veterinary Services performs Sunday, holiday, or unscheduled overtime duty. This action is necessary to inform the public where VS employees are available to perform Sunday, holiday, or unscheduled overtime duty and to inform the public of the commuted traveltime periods for this travel.

**EFFECTIVE DATE:** May 4, 1987.

**FOR FURTHER INFORMATION CONTACT:** Louise Rakestraw Lothery, Assistant Director, Resource Management Staff, VS, APHIS, USDA, Room 857, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-8511.

**SUPPLEMENTARY INFORMATION:**

**Background**

We are amending the regulations in 9 CFR Part 97, entiled "Overtime Services Relating to Imports and Exports" (referred to below as the regulations), which set forth provisions for obtaining inspection, laboratory testing, certification, or quarantine services pertaining to the importation and exportation of animals, animal byproducts, or other commodities, during Sundays, holidays, or other times outside the regular tour of duty of Veterinary Services (VS) employees who perform these services.

The regulations provide that, under certain circumstances, the charges for services of a VS employee shall include charges for a commuted traveltime period. Section 97.2 of the regulations contains administrative instructions prescribing commuted traveltime periods, which reflect, as nearly as is practicable, the time required for a VS employee to travel to, and return from, the place where he or she performs the Sunday, holiday, or unscheduled overtime duty.

We are amending § 97.2 of the regulations by adding or removing commuted traveltime periods in California and Mexico. (The amendments are set forth in the rule portion of this document). This action is necessary to inform the public where VS employees are available to perform Sunday, holiday, or unscheduled overtime duty and to inform the public of the commuted traveltime periods for this travel.

**Executive Order 12291 and Regulatory Flexibility Act**

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will not have a significant 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 not cause adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

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

The number of animals, animal byproducts, or other commodities requiring inspection and other services of a VS employee on a Sunday, holiday, or unscheduled overtime basis at the affected locations represent an insignificant portion of the total number that requires these services at locations in the United States.

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.

**Effective Date**

The commuted traveltime periods appropriate for employees performing services at ports of entry, and the features of the reimbursement plan for recovering the cost of furnishing port of entry services, depend upon facts within the knowledge of the Department of Agriculture. It does not appear that public participation in this rulemaking proceeding would make additional relevant information available to the Department.

Accordingly, pursuant to the administrative procedure provisions in 5 U.S.C. 553, we find for good cause that prior notice and other public procedure with respect to this rule are impracticable and unnecessary; we also find for good cause that this rule be made effective less than 30 days after publication of this document in the Federal Register.

**Executive Order 12372**

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

**List of Subjects in 9 CFR Part 97**

Exports, Government employees, Imports, Livestock and livestock products, Poultry and poultry products, Transportation.

## PART 97—OVERTIME SERVICES RELATING TO IMPORTS AND EXPORTS

Under the circumstances described above, 9 CFR Part 97 is amended as follows:

1. The authority citation for Part 97 continues to read as follows:

Authority: 7 U.S.C. 2260; 49 U.S.C. 1741; 7 CFR 2.17, 2.51, and 371.2(d).

2. Section 97.2 is amended by removing or adding in alphabetical order, the information as shown below:

**§ 97.2 Administrative instructions prescribing commuted traveltime.**

* * * * *

COMMUTED TRAVELTIME ALLOWANCES

[In hours]

| Location covered | Served from | Metropolitan Area | |
|---|---|---|---|
| | | Within | Outside |
| Remove: | | | |
| * | * * | * | |
| California: | | | |
| Calexico | San Ysidro | | 3 |
| * | * * | * | |
| Add: | | | |
| * | * * | * | |
| California: | | | |
| * | * * | * | |
| Calexico | San Ysidro | | 6 |
| * | * * | * | |
| Mexico: | | | |
| Mexicali | Calexico, CA | | 1 |
| * | * * | * | |

Done in Washington, DC, this 29th day of April, 1987.

J.K. Atwell,

*Deputy Administrator, Veterinary Services, Animal and Plant Health Inspection Service*

[FR Doc. 87-10060 Filed 5-1-87; 8:45 am]

BILLING CODE 3410-34-M

## FEDERAL TRADE COMMISSION

## 16 CFR Part 13

**[Docket No. 9073]**

## Ford Motor Co. et al.; Prohibited Trade Practices, and Affirmative Corrective Actions

**AGENCY:** Federal Trade Commission.

**ACTION:** Modifying order.

**SUMMARY:** The Federal Trade Commission has modified a 1979 consent order with Ford Motor Co. and Ford Motor Credit Co. by replacing procedures for the sale of repossessed cars and light trucks. The modified order has replaced the repossession accounting procedure with a "repossession guide" which respondents must provide its dealers to give them guidance in handling repossessions in various states. Additionally, the modified order eliminates specific limitations on deductions dealers were allowed to take when calculating surpluses and substitutes a provision permitting them to deduct costs allowed under state law.

**DATES:** Consent Order issued March 29, 1979. Modified Order issued April 3, 1987.

**FOR FURTHER INFORMATION CONTACT:** FTC/S-4631, Thomas D. Massie, Washington, DC 20580. (202) 326-2982.

**SUPPLEMENTARY INFORMATION:** In the Matter of Ford Motor Company, and

Ford Motor Credit Company, corporations. The prohibited trade practices and/or corrective actions, as set forth at 44 FR 25630, remain unchanged.

**List of Subjects in 16 CFR Part 13**

Repossessed autos, Trade practices.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45)

In the matter of Ford Motor Co., and Ford Motor Credit Co., corporations.

**Order Reopening the Processing and Modifying Cease and Desist Order**

Commissioners: Daniel Oliver, Chairman, Patricia P. Bailey, Terry Calvani, Mary L. Azcuenaga, and Andrew J. Strenio, Jr.

On November 12, 1986, Ford Motor Company and Ford Motor Credit Company ("Ford") filed a request pursuant to Rule 2.51 of the Commission's Rules of Practice, 16 CFR 2.51, to reopen the proceeding and vacate or modify the cease and desist order entered against Ford on March 29, 1979, in Docket No. 9073, 93 F.T.C. 402.

This matter arose out of allegations that certain franchised Ford dealerships and certain dealerships owned in whole or in part by Ford were failing to account for and pay to defaulting customers surpluses generated by the sale of repossessed motor vehicles.[1] A complaint was issued against Ford and Francis Ford, Inc., a franchised Ford dealer, on February 10, 1976. Subsequently, the matter was withdrawn from litigation with respect to Ford, who consented to the order at issue here.

One of the principal features of the Ford order is a repossession accounting procedure that Ford was required to make a part of the Ford Manual of Dealer Accounting Procedure, which is binding on its dealers through various sales and service agreements. The repossession accounting procedure was intended to bring about the uniform calculation of surpluses by Ford dealers. The order limits deductible expenses to specified direct out-of-pocket expenses under the repossession accounting procedure.

The complaint against Francis Ford was tried administratively and led to an order that limited the deductible expenses in accounting for repossessions to the same specified expenses that were allowable under the repossession accounting procedure featured in the order against Ford. Francis Ford appealed the Commission's decision and order to the Ninth Circuit Court of Appeals. That court vacated the order against Francis Ford in *Ford Motor Co.* v. *FTC*, 673 F.2d 1008 (9th Cir. 1981), *cert. denied sub nom. FTC* v. *Francis Ford, Inc.*, 459 U.S. 999 (1982), ruling that the Commission should have proceeded by rulemaking rather than adjudication.

Ford's petition asks the Commission to reopen the proceeding and either vacate or modify the order. Ford offers several arguments in support of its request. First, Ford argues that the order competitively disadvantages Ford dealers compared to dealers of motor vehicles manufactured by companies not under similar orders (referred to as foreign dealers), since the repossession accounting procedure forces Ford dealers to absorb costs that other dealers can recoup under applicable state law. Second, it is argued that the *Francis Ford* decision precludes enforcement of the Commission's repossession policy against dealers, so that the Commission should not continue to enforce it against manufacturers. Third, it is argued that the *Francis Ford* decision triggers the provisions of the "most favored company" clause since it represents a less restrictive adjudicated order that requires deletion of Parts II and VI of the order. Fourth, it is argued that the *Francis Ford* decision raises questions about the Commission's jurisdiction over the matter. Fifth, it is argued that the Commission's 1980 Unfairness Policy Statement represents a changed condition of law that requires vacation or modification of the order.

The National Automobile Dealers Association (NADA), a national trade association representing approximately 19,000 franchised new car and truck dealers, filed comments supporting the Ford respondents' request in response to the Commission's request for public comment published on December 4, 1986, 51 FR 43746. NADA's comments track the Ford respondents' arguments and put forward one additional argument: that the failure to include repossession accounting provisions in the Commission's Credit Practices Trade Regulation Rule resulted in less restrictive standards that trigger provisions of the "most favored company" clause.

Section 5(b) of the Federal Trade Commission Act provides that the Commission shall reopen and consider modification of an existing order upon a satisfactory showing by the party subject to the order that changed conditions of law or fact require modification. The statute also provides that the Commission may reopen and modify or set aside an order "if the public interest shall so require." *See* 15 U.S.C. 45(b) (1982); 16 CFR 2.51, 3.72 (1986). The Commission has decided to grant in part the Ford petition on the ground that, although the petition does not make a showing of changed circumstances of law or fact sufficient to warrant this action, the action is justified in the public interest.

Most of the arguments advanced by the Ford respondents were also made by General Motors (GM) in a similar request that the Commission denied on November 28, 1984, in Docket No. 9074. With respect to GM's argument that the GM order placed its dealers at a competitive disadvantage compared to foreign car dealers, the Commission noted that GM had presented no evidence that the order's provisions imposed significant financial burdens on GM dealers that were not also borne by foreign dealers who comply with their obligation under state law to account for and pay surpluses.

In contrast, Ford's petition contains concrete evidence of competitive disadvantage. Ford submitted the results of a survey of 100 dealers whose repossession practices were audited under the order. The survey identifies five categories of costs that Ford dealers are required to absorb in whole or in part, but that dealers operating under state law standards generally are able to recoup. The petition then estimates the cost disadvantage this places on the universe of Ford dealers who handle repossessions. Although Ford's methodology probably overstates the actual cost disadvantage to Ford dealers because most repossession sales result in deficiencies rather than surpluses and because most deficiencies are not recovered, the Commission finds that the cost disadvantage is nevertheless real and substantial and that modifications to the order are therefore warranted in the public interest.[2] The

[1] The obligation of the secured creditor or his guarantor to account for and pay surpluses arises out of Article Nine of the Uniform Commercial Code (UCC), which has been adopted by 49 states and the District of Columbia. Under the UCC, a secured party, after repossession and disposition of the collateral, is required to account to the defaulting buyer for any surplus of proceeds from the sale or disposition of the collateral in excess of the amount needed to satisfy all secured indebtedness, reasonable expenses of retaking, holding, preparing for sale, selling, and the like, and allowable legal costs and fees. *See* U.C.C. 9-504.

[2] In addition, as the NADA comments noted, the order may have the unintended effect of raising financing costs to a number of purchasers of Ford vehicles because of the tendency of a number of Ford dealers to minimize their compliance burden and attendant costs by assigning retail installment contracts on a non-recourse basis, which are generally more costly than recourse assignments.

Commission therefore will make appropriate modifications to the order to remove the competitive disadvantage Ford dealers suffer under the existing accounting procedure.

The remaining arguments made in Ford's petition and in the NADA comments do not justify vacating or further modifying the order. Ford argues the Commission should not continue to enforce its orders against manufacturers since it cannot proceed against dealers after the decision in *Francis Ford*. That is not our reading of *Francis Ford*, but in any event the modifications to the order that are being made to remove the competitive disadvantage to Ford dealers will result in dealers and manufacturers alike being subject to the same requirement to account for and pay surpluses in accordance with state law.

Ford next argues that the "most favored company" clause in Part VII.B. of the order is triggered by the decision in *Francis Ford* and requires deletion of Parts II through VI of the order. The "most favored company" clause states that the Commission will modify the Ford order to match any adjudicated or consent order in three related proceedings that prescribes less restrictive standards for disposing of repossessed vehicles or determining surpluses or redemption rights. The clause on its face limits its coverage to *order-prescribed* standards. Because the *Francis Ford* decision failed to prescribe less restrictive standards, the "most favored company" clause is not triggered. Nor does the decision in the Credit Practices Rule, where the Commission declined to impose standards to account for deficiencies in repossession sales, trigger a similar "most favored treatment" clause referring to the rule, as NADA argues.

Ford also suggests that the order should be vacated or modified because the Commission lacks jurisdiction after *Francis Ford* and because the order does not meet the requirements of the Commission's 1980 Unfairness Policy Statement. The *Francis Ford* decision attacked the procedure by which the Commission chose to proceed but not its jurisdiction. Thus there has been no change in the Commission's jurisdiction over dealers who fail to pay surpluses to consumers. Similarly, the Commission's Unfairness Policy Statement does not change the law and does not support vacation of the order.

*It is therefore ordered* that the proceeding be reopened and that the final order issued March 29, 1979, in Docket No. 9073 be, and it hereby is modified to read as follows:

I

*It is ordered* that for purposes of this order the following definitions shall apply:

A. "Ford respondents" means Ford Motor Company ("Ford") and Ford Motor Credit Company ("Ford Credit"), corporations. References to either or both of the Ford respondents shall include their successors, assignees, officers, agents, representatives and employees, as well as any corporations, subsidiaries, divisions or devices through which they act in the United States. *Provided, however*, that references to Ford shall not include Ford Credit and references to either or both of the Ford respondents shall not include dealerships.

B. "Vehicle" means a passenger car or a truck with a gross vehicle weight less than 26,000 pounds (11,794 kilograms).

C. "Dealership" or "dealer" means a corporation, partnership or proprietorship that is a Ford, Lincoln or Mercury vehicle dealership but excludes truck dealerships whose principal business is the sale of trucks with a gross vehicle weight more than 8,000 pounds (3,629 kilograms).

D. "Retail sale" means the installment credit sale of a vehicle, other than for purposes of resale (*e.g.*, sale to dealers or wholesalers), lease or rental, to a purchaser who is not a fleet purchaser.

E. "Repurchase financing" means the financing of a retail sale subject to an agreement between a financing institution and a dealership (generally called a "repurchase," "recourse," or "guaranty" agreement) which provides that the dealership is obligated to pay off the outstanding obligation to the financing institution after receiving a transfer of the repossessed vehicle.

F. "Repurchase dealership" or "repurchase dealer" means a dealership that engages more than occasionally in repurchase financing transactions.

G. "Equity dealership" means a dealership in which Ford has a controlling equity interest, holds 50 percent or more of the voting stock, or is entitled to elect 50 percent or more of the board of directors.

H. "Liquidating dealership" means an equity dealership that has ceased or is in the process of ceasing normal operation of a dealership and whose business has been or is being wound up by Ford or under Ford's supervision. It shall not mean a dealership not previously an equity dealership whose assets come into the possession or control of either of the Ford respondents by virtue of default on or compromise of a debt obligation.

I. "Financing customer" means a purchaser of a vehicle from a dealership by means of a retail installment contract.

J. "Disposition" or "dispose" refers to a dealership's sale or lease of a repossessed vehicle previously sold by that dealership and returned to it by or for a financing institution pursuant to a repurchase agreement. Such sale or lease includes only transactions with an independent third party; *i.e.*, it does not include a sale or lease to the financing institution, the dealership or their representatives, or to a person or firm liable under a guaranty, endorsement, or repurchase agreement covering the repossessed vehicle. Disposition or dispose shall not refer to the repurchase of a repossessed vehicle by a dealership pursuant to a repurchase agreement, or refer to a sale subsequent to a judicial sale in Louisiana.

K. "Proceeds" means whatever is received upon disposition of the repossessed vehicle, but exclusive of sales taxes, service contracts or separately priced warranties.

L. "Allowable expenses" means commercially reasonable expenses allowable under applicable state law. The expenses must be reasonable and directly resulting from the repossessing, holding, preparing for sale and reselling of the vehicle, and not otherwise reimbursed to the dealership.

M. "Contract balance" means (1) the unpaid balance as of the date of repossession less applicable finance charge and insurance premium rebates deducted by the financing institution, plus (2) other charges authorized by contract or law and actually assessed prior to repossession.

N. "Surplus" means the excess of (1) the proceeds plus applicable insurance or warranty reimbursements received by the dealership or financing institution plus any other applicable rebates or credits not deducted by the financing institution, over (2) the contract balance, allowable expenses, and amounts paid to discharge any security interest provided for by law.

O. "Pay" or "paid," in reference to payment of a surplus, means a commercially reasonable attempt to pay.

II

*It is further ordered* that Ford shall provide to all dealers within 60 days of the effective date of this modified order, and to each new dealer within 30 days of entering into a sales and service agreement, a "repossession guide." The repossession guide shall be made part of the Ford Manual of Dealer Accounting Procedures and shall state that:

1. Each surplus should be determined according to Paragraphs I.J through I.N of this order and paid to the repurchase financing customer within a reasonable period of time;

2. Expenses other than allowable expenses should not be deducted in calculating surpluses and deficiencies sought;

3. Dispositions should be commercially reasonable, which in practice means that the dealer should make the same efforts to obtain the best available price for a repossessed vehicle as would be made for a comparable used vehicle except that a dealer is not required to offer a warranty without extra charge even though such warranties are provided on other used vehicles;

4. If any rebate owing to the repurchase financing customer's account has not been received at the time the Ford accounting form is completed, such rebate should be applied for promptly;

5. If any rebate is received after completion of the Ford accounting form, any surplus or deficiency should be redetermined and any remaining surplus paid within a reasonable time of disposition or within a reasonable time of receiving the rebate, whichever is later;

6. An accounting form should be prepared by the dealer for each disposition of a repossessed vehicle and:

a. Should set forth the calculation of each surplus, and of each deficiency upon which collection is attempted;

b. Should be signed by a person authorized to sign retail installment contracts on behalf of the dealership;

c. A copy of the form should be sent with the surplus payment to each repurchase financing customer to whom a surplus is paid and to each repurchase financing customer from whom a deficiency is sought; and

d. Should be retained by the dealer, together with all relevant underlying documentation, for at least two years from the date of disposition;

7. Dealers should not obtain waivers of surplus or redemption rights from repurchase financing customers except as allowable under applicable state law.

8. Failure to account for and pay surpluses to customers may expose the dealer to legal action.

III

*It is further ordered* that Ford shall require each Ford employee who is a director of an equity dealership to:

1. Provide the repossession guide described in Part II of this order to each such dealership; and

2. Vote for resolutions so that each such dealership handles repossessions in accordance with applicable state law.

IV

*It is further ordered* that Ford Credit:

A. Shall incorporate provisions to the following effect into the "Retail Plan" Section of its "Automotive Finance Plans for Ford Motor Company Dealers," and into any subsequent edition of that document or any comparable successor document:

1. Dealers are to permit redemption by the customer whose vehicle has been repossessed, at any time until there is a binding agreement for disposition;

2. Dealers are to permit redemption in accordance with the post-repossession notice sent by Ford Credit to the customer;

3. Dealers are to determine whether a surplus exists on a repurchase financing repossession according to the repossession guide described in Part II of this order;

4. In determining surpluses and deficiencies, dealers are not to deduct expenses other than allowable expenses;

5. Dealers are to account for and pay each surplus within a reasonable period of time of disposition.

B. Shall develop and distribute to all dealers who use Ford Credit's form of retail installment contract, revised Ford Credit retail installment contract forms that include a clear, concise statement in lay language that, in the event of repossession:

1. No expenses other than commercially reasonable expenses incurred as a direct result of repossessing (including, where permitted, attorney's fees and court costs), holding, preparing for sale and selling the vehicle may be deducted from the proceeds in determining a surplus or deficiency; and

2. Any surplus realized on the resale or other disposition of the vehicle is to be paid to the customer.

C. Shall include the following information in clear lay language in at least one notice sent prior to repossession to every Ford Credit repurchase financing customer to whom a notice of intent to repossess is sent:

1. The total amount past due at the time the notice is mailed;

2. In transactions where the customer is entitled to reinstatement of the contract, the customer will have an absolute right to such reinstatement and to regain possession of the vehicle by paying all past due installments and by paying such other amounts and fulfilling such other conditions as provided by law;

3. That the customer will have an absolute right to redeem the vehicle at any time prior to a binding agreement for its disposition, and that this right can be exercised by paying the contract balance plus all expenses incurred as a direct result of repossessing, holding and preparing the vehicle for sale;

4. The date or interval of time prior to which the vehicle will not be sold;

5. That if the vehicle is not redeemed or the contract reinstated, the customer will be entitled to a refund of any surplus within a reasonable period of time;

6. That failure to account for and refund a surplus will give the customer a right to sue for the amount of the surplus and, except in California and Louisiana, for statutory penalties as provided by state law.

D. Shall establish and follow a procedure for uniformly sending a written notice ("post-repossession notice") to Ford Credit financing customers as soon as practicable after repossession. Ford Credit shall periodically examine its branches' files, in accordance with its usual monitoring procedures, to determine whether the post-repossession notices have been and are being sent, and shall institute appropriate actions to assure that this procedure is adhered to. The post-repossession notice shall specify in clear, lay language:

1. The name, address and telephone number of the dealership to which the vehicle has been or will be returned for disposition, if applicable, and the address and telephone number of the Ford Credit branch office to be contacted;

2. The date or interval of time within which the customer may reinstate the contract in states where the creditor is required to permit reinstatement of the contract;

3. The net amount necessary to redeem the vehicle, and, in transactions where the customer is entitled to reinstatement, the amount necessary to reinstate the contract, at the time the notice is sent;

4. The date or interval of time prior to which the vehicle will not be sold;

5. That the vehicle can be redeemed at any time prior to a binding agreement for its disposition;

6. That additional expenses incurred as a direct result of holding and preparing the vehicle for sale may increase the amount necessary to redeem the vehicle if redemption is delayed;

7. That Ford Credit should be contacted to reinstate the contract in

states where the customer is entitled to reinstatement;

8. That Ford Credit should be contacted for further information about redemption, including the procedure for redeeming the vehicle;

9. That, where the vehicle has been returned to the dealer and is not redeemed or the contract is not reinstated, any surplus must be paid to the customer within a reasonable period of time after disposition (the notice also may state that a contract between the dealer and Ford Credit provides that the dealer is to pay any surplus);

10. That failure to account for and refund a surplus will give the customer a right to sue for the amount of the surplus and, except in California and Louisiana, for statutory penalties as provided by state law;

11. That the customer may be liable for a deficiency or that state law prohibits Ford Credit and the dealer from collecting any deficiency (the notice is to include the applicable language only);

12. That the customer has the right to direct the dealer to apply for a rebate of any unearned premiums payable by any insurance carrier or agent from whom the dealer has, on behalf of the customer, obtained a credit life, accident and health or collision insurance policy.

E. Shall obtain no waivers of redemption or surplus rights from financing customers, except as allowable under applicable state law.

F. Shall, commencing three months and to be completed no later than twelve months after the effective date of this order, revise all pertinent Ford Credit forms, form letters, notices and internal written procedures to be consistent with the provisions of this order.

V

It is further ordered that:

A. In the event the Federal Trade Commission issues a final Trade Regulation Rule establishing standards less restrictive on automobile manufacturers, financing companies or vehicle dealerships than a corresponding provision or provisions of this order relative to (1) the disposition of repossessed vehicles, (2) the determination, calculation or communication of the existence of or the amount of surpluses, or the time or manner of paying or accounting for surpluses, or (3) the determination or communication of reinstatement or redemption rights (including their duration and/or the amount necessary to reinstate or redeem), then such less restrictive standards shall, on the effective date of the Rule, supersede and replace the corresponding provision(s) of this order. The enumeration of subject matter contained in clauses (1), (2) and (3) of this Paragraph is exclusive. *Provided, however,* that the Ford respondents shall advise the Commission of their intention to rely upon any provision of a Trade Regulation Rule as having superseded any provision of this order 30 days in advance of reliance thereon. *Provided further* that this Paragraph shall not be construed as exempting the Ford respondents from any Trade Regulation Rule, or as limiting in any way their legal right or standing to challenge or otherwise contest any Trade Regulation Rule.

B. In the event any of the proceedings presently bearing Docket Nos. 9072, 9073, or 9074 results in a final adjudicated or consent order prescribing standards less restrictive than a corresponding provision or provisions of this order relative to (1) the disposition of repossessed vehicles, (2) the determination, calculation or communication of the existence of or the amount of surpluses, or the time or manner of paying or accounting for surpluses, or (3) the determination or communication of reinstatement or redemption rights (including their duration and/or the amount necessary to reinstate or redeem), then the Commission shall, within 120 days of a Ford respondent's petition pursuant to Section 3.72 of the Commission's Rules of Practice, reopen this proceeding and order modifications of this order or other relief as necessary and appropriate to conform this order to such less restrictive standards prescribed in the other order(s). The enumeration of subject matter contained in clauses (1), (2) and (3) of this Paragraph is exclusive.

C. In the event a Ford respondent is of the opinion that changed conditions of law require that this order be altered or modified, the Ford respondent may, pursuant to § 3.72(b)(2) of the Commission's Rules of Practice, file a petition requesting a reopening of this proceeding for that purpose.

VI

*It is further ordered* that:

A. The Ford respondents shall maintain complete business records relative to the manner and form of their continuing compliance with this order, including but not limited to copies of notices sent to financing customers pursuant to Paragraphs IV.C and D above. The Ford respondents shall retain all such records for at least three years and shall, upon reasonable notice, make them available for inspection and photocopying by authorized representatives of the Federal Trade Commission.

B. Ford shall forthwith distribute a copy of this order to its Ford, Lincoln-Mercury and Parts and Services divisions, and to the Dealer Development activity, and Ford Credit shall forthwith distribute a copy of this order to each of its Regions.

C. Each of the Ford respondents shall notify the Commission at least thirty days prior to any proposed corporate change such as dissolution, assignment or sale resulting in the emergence of a successor corporation or corporations, the creation or dissolution of subsidiaries, the discontinuance of Ford's present program for investing in equity dealerships, or any other change which may affect compliance obligations arising out of this order.

By direction of the Commission.

Issue date: April 3, 1987.

Emily H. Rock,

*Secretary.*

[FR Doc. 87-9983 Filed 5-1-87; 8:45 am]

BILLING CODE 6750-01-M

## DELAWARE RIVER BASIN COMMISSION

## 18 CFR Part 410

## Amendment of Comprehensive Plan and Water Code of the Delaware River Basin

**AGENCY:** Delaware River Basin Commission.

**ACTION:** Final rule.

**SUMMARY:** At its April 22, 1987 business meeting the Delaware River Basin Commission amended its Comprehensive Plan and Article 2 of the Water Code in relation to leak detection and repair and service metering. The leak detection and repair amendment requires all purveyors in the Basin distributing water supplies in excess of 100,000 gallons per day during any 30-day period to undertake leak detection and repair. The service metering amendment, which applies to the same group of purveyors, expands Commission policy on service metering to cover existing connections. Installation of meters of existing unmetered connections is to be completed within ten years.

**EFFECTIVE DATE:** April 22, 1987.

**ADDRESS:** Copies of the Commission's Water Code are available from the Delaware River Basin Commission, P.O.

Box 7360, West Trenton, New Jersey 08628.

**FOR FURTHER INFORMATION CONTACT:** Susan M. Weisman, Commission Secretary, Delaware River Basin Commission: Telephone (609) 883-9500.

**SUPPLEMENTARY INFORMATION:** The Commission held a hearing on these amendments on February 25, 1987 as noticed in the January 16, 1987 and February 19, 1987 issues of the **Federal Register**. Based upon testimony received and further deliberation, the Commission has amended its Comprehensive Plan and Water Code.

**List of Subjects in 18 CFR Part 410**

Water pollution control.

**PART 401—[AMENDED]**

1. The authority citation for 18 CFR Part 410 continues to read as follows:

Authority: Delaware River Basin Compact (75 Stat. 688).

2. The Commission's Comprehensive Plan and Article 2 of the *Water Code of the Delaware River Basin* which are referenced in 18 CFR Part 410 are amended by the addition of a new subsection 2.1.6., to read as follows:

2.1.6 *Leak detection and repair.*

(1) Owners of water supply systems serving the public (purveyors) in the Delaware River Basin that distribute water supplies in excess of an average of 100,000 gallons per day (gpd) during any 30-day period shall develop and undertake a systematic program to monitor and control leakage within their water supply system. Such a program shall at a minimum include: periodic surveys to monitor leakage, enumerate unaccounted-for water, and determine the current status of system infrastructure; recommendations to monitor and control leakage; and a schedule for the implementation of such recommendations. Each purveyor's program shall be subject to review and approval by the designated agency in the state where the system is located.

"Unaccounted-for water" is defined as the difference between the "metered ratio" and 100 percent. The metered ratio is the amount of water delivered through service meters divided by the amount of water entering the distribution system. The designated state agencies are: Delaware Department of Natural Resources and Environmental Control; New Jersey Department of Environmental Protection; New York Department of Environmental Conservation, and Pennsylvania Department of Environmental Resources.

(2) Each purveyor that distributes in excess of one million gallons per day (mgd) shall submit its initial program to monitor and control leakage to the appropriate designated agency within two years and each purveyor that distributes between 100,000 gpd and 1 mgd shall submit its initial program to monitor and control leakage to the appropriate designated agency within five years of the effective date of this regulation or at such earlier date as shall be fixed by the designated state agency. Each purveyor shall prepare and submit a revised and updated program to monitor and control leakage every three years thereafter or at such earlier date as shall be required by the designated state agency. The designated state agency may require more frequent program submission from purveyors with unaccounted-for water that is in excess of 15 percent.

(3) Any project approvals hereafter granted pursuant to Section 3.8 of the DRBC Compact or any renewal of a project approval shall be subject to the provisions of this regulation.

(4) To avoid duplication of effort and to insure proper enforcement of this regulation, the Executive Director shall enter into administrative agreements with each of the designated agencies authorizing such agencies to administer and enforce the provisions of this regulation to the extent practicable and to adopt such rules and regulations of procedure as may be necessary to insure to proper administration and enforcement of this regulation.

(5) This regulation shall be effective immediately.

3. The Commission's Comprehensive Plan and Article 2 of the *Water Code of the Delaware River Basin*, referenced in 18 CFR Part 410, are amended by the revision of subsection 2.50.1, to read as follows:

2.50.1 *Service metering.*

(1) Owners of water supply systems serving the public (purveyors) in the Basin that distribute water supplies in excess of an average of 100,000 gallons per day during any 30-day period shall install, or require to be installed, water meters incident to the provision or maintenance of service at the retail level.

(2) (a) Meters shall be installed so as to record water use at all service connections. (b) Water furnished for fire suppression purposes shall be exempt from metering provided that fire suppression (sprinkler) systems are equipped with detector check or flow detection devices. (c) Water removed from fire hydrants shall be exempt from metering unless otherwise required by a purveyor, or state or local government.

(3) Water use shall be recorded or measured by means of a metering device that conforms to the performance specifications of the American Water Works Association. Purveyors shall adopt and implement a program for periodic maintenance, calibration, and replacement of meters to ensure meter accuracy.

(4) Water charges collected by purveyors shall be based in part on metered usage.

(5) It is recommended that, at least once a year, each purveyor: (a) provide each metered residential customer with information on savings available through water conservation; and (b) explain different methods of residential water conservation and their cost-effectiveness, and the availability of water conservation devices.

(6) Installation of meters at existing unmetered connections shall be completed within ten years of the effective date of this regulation.

(7) To avoid duplication of effort and to insure proper enforcement of this regulation, the Executive Director shall enter into administrative agreements with the Delaware Department of Natural Resources and Environmental Control, New Jersey Department of Environmental Protection, New York Department of Environmental Conservation, Pennsylvania Department of Environmental Resources, and other state agencies where appropriate, authorizing such agencies to administer and enforce the provisions of this regulation to the extent practicable and to adopt such rules and regulations of procedure as may be necessary to insure the proper administration and enforcement of this regulation.

(8) This regulation shall be effective immediately.

(Delaware River Basin Compact, 75 Stat. 688)

Susan M. Weisman,

*Secretary.*

April 27, 1987.

[FR Doc. 87-10004 Filed 5-1-87; 8:45 am]

BILLING CODE 6360-01-M

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**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Food and Drug Administration**

**21 CFR Part 558**

**New Animal Drugs for Use in Animal Feeds; Lasalocid**

**AGENCY:** Food and Drug Administration.

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Hoffmann-La Roche, Inc., providing for use of Type C lasalocid feeds in dairy and beef heifers in addition to their currently approved use in other classes of pasture cattle (i.e., slaughter, stocker, and feeder).

**EFFECTIVE DATE:** May 4, 1987.

**FOR FURTHER INFORMATION CONTACT:** Jack Taylor, Center for Veterinary Medicine (HFV-126), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-5247.

**SUPPLEMENTARY INFORMATION:** Hoffmann-La Roche, Inc., Nutley, NJ 07110, is sponsor of NADA 96-298 which provides for feeding Type C lasalocid feeds to slaughter, stocker, and feeder cattle on pasture for increased rate of weight gain. The drug is provided at 60 to 200 milligrams per head daily in at least 1 pound of supplemental feed or in a free-choice, self-limiting supplemental feed. The firm has submitted a supplement to the NADA providing for inclusion of dairy and beef replacement heifers to the classes of pasture cattle that can safely be fed lasalocid. Based on data and information submitted, the supplemental NADA is approved. Therefore, the firm is authorized to make the requested labeling revisions and 21 CFR 558.311 is amended accordingly.

In accordance with the freedom of information provisions of Part 20 (21 CFR Part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Managment Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

The agency has carefully considered the potential environmental effects of this action and has concluded that the action will not have a significant impact on the human environment and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday. This action was considered under FDA's final rule implementing the National Environmental Policy Act (21 CFR Part 25).

### List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, Part 558 is amended as follows:

## PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

1. The authority citation for 21 CFR Part 558 continues to read as follows:

**Authority:** Sec. 512, 82 Stat. 343-351 (21 U.S.C. 360b); 21 CFR 5.10 and 5.83.

**§ 558.311 [Amended]**

2. Section 558.311 *Lasalocid* is amended in paragraphs (d)(5) (i) and (ii) by revising the last sentence in each paragraph to read "Safety of lasalocid for use in unapproved species has not been established." and in paragraph (e) in the table in items (9) and (11), under the "Limitations" column by revising the beginning phrase to read "For pasture cattle (slaughter, stocker, feeder cattle, and dairy and beef replacement heifers) only; * * *."

Dated: April 24, 1987.

**Richard A. Carnevale,**

*Acting Associate Director for Scientific Evaluation, Center for Veterinary Medicine.*

[FR Doc. 87-9992 Filed 5-1-87; 8:45 am]

BILLING CODE 4160-01-M

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## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

### Office of the Assistant Secretary for Housing-Federal Housing Commissioner

### 24 CFR Part 255

**[Docket No. R-87-1334; FR-2267]**

### Coinsurance for the Purchase or Refinancing of Existing Multifamily Housing Projects; Technical Amendment

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

**ACTION:** Final rule—technical amendment.

**SUMMARY:** This rule corrects several erroneous cross references and typographical errors in the text of 24 CFR Part 255—Coinsurance for the Purchase or Refinancing of Existing Multifamily Housing Projects.

**EFFECTIVE DATE:** June 5, 1987.

**FOR FURTHER INFORMATION CONTACT:** Grady J. Norris, Assistant General Counsel for Regulations, Office of the General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 755-7055. (This is not a toll-free number.)

**SUPPLEMENTARY INFORMATION:** This rule corrects a number of erroneous cross references and typographical errors contained in 24 CFR Part 255. These corrections are technical in nature and are not intended to have any substantive effect.

Erroneous cross references found in §§ 255.107(c), 255.406, 255.801(a)(2), 255.801(b)(2), 255.820(a), and 255.824(b) of Part 255 are corrected. Typographical errors found in §§ 255.503(i)(2), 255.705(i)(3) and 255.706(g) of that part are also corrected.

### Procedural Requirements

This rule does not constitute a "major rule" as that term is defined in section 1(b) of Executive Order 12291 on Federal Regulation issued by the President on February 17, 1981. Analysis of the rule indicates that it does not: (1) Have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This rule was listed as item H-35-86 (Sequence No. 965) under the Office of Housing in the Department's Semiannual Agenda of Regulations published on April 27, 1987 (52 FR 14362, 14388), under Executive Order 12291 and the Regulatory Flexibility Act.

The Catalog of Federal Domestic Assistance program number is 14.173.

Under 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the Undersigned hereby certifies that this rule would not have a significant economic impact on a substantial number of small entities. The

rule is technical and changes no program requirements.

**List of Subjects in 24 CFR Part 255**

Mortgage insurance, Coinsurance of multifamily mortgages.

Accordingly, 24 CFR Part 255 is amended as set forth below:

## PART 255—COINSURANCE FOR THE PURCHASE OR REFINANCING OF EXISTING MULTIFAMILY HOUSING PROJECTS

1. The authority citation for 24 CFR Part 255 continues to read as follows:

Authority: Sec. 7(d), Department of HUD Act (42 U.S.C. 3535(d)); sec. 211, National Housing Act (12 U.S.C. 1715(b)); sec. 244, National Housing Act (12 U.S.C. 1715z9).

**§ 255.107, 255.801, 255.820, 255.824 [Amended]**

2. In the list below, for each section in the left column remove the reference indicated in the middle column wherever it appears in the section, and insert in its place the reference indicated in the right column:

| Section | Remove | Add |
|---|---|---|
| 255.107(c) | 255.823 | 255.824 |
| 255.801 | 255.803 | 255.804 |
| 255.820 | 255.821 | 255.823 |
| 255.824 | 255.820(a) | 255.822(a) |
| 255.824 | 255.821 | 255.823 |
| 255.824 | 255.821(b) | 255.823(b) |

**§ 255.406 [Redesignated as 255.405]**

3. Section 255.406 is redesignated as § 255.405.

4. In § 255.706, paragraph (g) is revised to read as follows:

**§ 255.706 Project management.**

* * * * *

(g) Furnish the lender and the Commissioner with a financial report on the project's operations within 60 days following the end of each fiscal year, unless the lender authorizes the Mortgagor to submit the report on a later date. Unless the Commissioner authorizes the lender to accept an unaudited report, the report must be made by an independent certified public accountant or by an independent public accountant licensed by a State or other political subdivision on or before December 30, 1970.

* * * * *

Dated: April 27, 1987.

**Thomas T. Demery,**

*Assistant Secretary for Housing-Federal Housing Commissioner.*

[FR Doc. 87-9980 Filed 5-01-87; 8:45 am]

BILLING CODE 4210-27-M

## DEPARTMENT OF LABOR

## Occupational Safety and Health Administration

## 29 CFR Part 1910

## Hazardous Waste Operations and Emergency Response; Corrections

**AGENCY:** Occupational Safety and Health Administration; Labor.

**ACTION:** Interim Final Rule; Corrections.

**SUMMARY:** This notice makes corrections to the interim final rule on Hazardous Waste Operations and Emergency Response issued by OSHA which appeared in the **Federal Register** on December 19, 1986 at 51 FR 45654.

**EFFECTIVE DATE:** May 4, 1987.

**FOR FURTHER INFORMATION CONTACT:** Mr. James F. Foster, OSHA Office of Information and Consumer Affairs, Room S-4220, 200 Constitution Ave., NW., Washington, DC 20210. Tel: (202) 523-8151.

**SUPPLEMENTARY INFORMATION:** On December 19, 1986 OSHA published at 51 FR 45654 an interim final rule in the **Federal Register** titled Hazardous Wastes Operations and Emergency Response. This document added a new § 1910.120 to 29 CFR principally to cover employee protection at hazardous waste operations and emergency response. This document corrects errors and incorrect citations, and clarifies ambiguities in both the regulatory text and the preamble.

## PART 1910—[CORRECTED]

Accordingly 51 FR 45654-75 (FR DOC. 86-28471) and 29 CFR 1910.120 are corrected as follows:

1. On page 45658, column 3, line 40, the word "employer's" is corrected to read "employee's".

2. On page 45655, column 1, line 64, the word "exiting" is corrected to read "existing".

3. On page 45659, column 2, lines 30 and 31, are corrected to read "requirements of paragraphs (g)(3)(iii) and (g)(3)(iv) which require positive".

4. On page 45659, column 2, line 66, is corrected to read "(g)(3)(v) of the standard. (In certain".

5. On page 45661, column 1, the first full paragraph is revised to read as follows:

"Employers whose employees will be responding to hazardous substance emergency incidents away from their regular work location or duty station, such as a fire department, public works department, police department, fire brigade or emergency medical service, are also required to have an emergency response plan by paragraph (1)(1). These activities, where employees may be called upon to respond to hazardous substance emergency incidents involving a railroad tank car, motor carrier tank truck or to a plant location, are considered off-site emergency response activities under this section. On-site emergency response activities are those covered by paragraphs (a)(1)(i), (a)(1)(ii) and (a)(1)(iv). All other emergency response activities are considered off-site. Emergency response employees face the possibility of greater risk of exposure to hazardous substances than do employees at on-site hazardous waste operations because of unidentified hazards. Careful advance planning is required in both cases to minimize risk to employees and the planning requirements are similar.".

6. On page 45661, column 1, lines 29 and 30, are corrected to read "*operations, on-site emergency response,* OSHA sets forth additional requirements for on-site emergency response. OSHA is requiring on-site".

7. On page 45661, column 1, the third full paragraph is revised to read as follows:

"In paragraph (1)(3), *Off-Site emergency response,* OSHA is setting forth requirements additional to the plan for off-site emergency response. OSHA is mandating that employers, such as fire departments, emergency medical and first-aid squads, fire brigades, etc., conduct monthly training sessions for their emergency response employees totalling 24 hours annually.".

8. On page 45661, column 2, line 38, is corrected to read "teams to stop or control spills and leaks off-site and therefore involved in intimate contact with".

9. On page 45661, column 2, line 53, is corrected to read "paragraph (f) of this section. It should be noted that employees at on-site hazardous waste operations engaged in those activities are given these and other protections by other provisions of this standard.".

10. On page 45661, column 2, line 66, is corrected to read "the initial emergency incident. The risks at post emergency response cleanups are similar to the risks at cleanups at other CERCLA sites and there is time to take additional precautions as the emergency stage is over.".

11. On page 45663, column 2, paragraph 1, line 11, is corrected to read "552(a), 553) and Secretary of Labor's Order 9-".

**§ 1910.120 [Corrected]**

12. On page 45663, column 3, paragraph (a)(2)(iii), line 2 is corrected

to read "paragraph (o) and paragraph (1) of this section apply to".

13. On page 45663, column 3, paragraph (a)(3), the definition of "emergency response" is corrected to read "means a coordinated response effort by employees from outside the immediate release area or by outside responders (i.e., mutual aid groups, local fire departments, etc.) to an occurrence which results, or is likely to result, in an uncontrolled release of a hazardous substance. Responses to incidental releases that can be absorbed, neutralized, or otherwise controlled at the time of release by employees in the immediate release area are not considered to be emergency responses within the scope of this standard. Responses to releases of hazardous substances where the concentration of hazardous substance is below the established permissible exposure limits are not considered to be emergency responses."

14. On page 45664, column 1, definition of "Hazardous substance", lines 8–10 are corrected to read "(ii) any biologic agent and other disease causing agent as defined in section 101(33) of CERCLA,".

15. On page 45664, column 2, first full paragraph, definition of "IDLH," line 2, is corrected to read "*life or health*" means any atmospheric condition that".

16. On page 45665, column 3, paragraph (e) *Training*, line 2, is corrected to read "as but not limited to equipment operators and general".

17. On page 45666, column 1, paragraph (e)(6), line 9, the word "or" is corrected to read "nor".

18. On page 45666, column 1, paragraph (e)(6), line 10, is corrected to read "paragraph (e)(9) of this section shall be".

19. On page 45666, column 1, paragraph (e)(9), line 8, is corrected to read "requirements of those paragraphs as to that employee.".

20. On page 45666, column 1, paragraph (f)(1), line 4 is corrected to read "by the employer for the following employees:".

21. On page 45666, column 1, paragraph (f)(1)(i), line 7, is corrected to read "more a year;".

22. On page 45666, column 1, paragraph (f)(1)(ii), line 2, is corrected to read "respirator for 30 days or more a year and".

23. On page 45666, column 1, paragraph (f)(1)(iii), is revised to read: "(iii) HAZMAT employees specified in paragraph (1)(4) of this section.".

24. On page 45666, column 1, paragraph (f)(1)(iv), is deleted.

25. On page 45666, column 2, paragraph (f)(2), line 4 is corrected to read "shall be made available by the".

26. On page 45666, column 2, paragraph (f)(2)(iv) is revised to read: "(iv) As soon as possible upon notification by an employee that the employee has developed signs or symptoms indicating possible overexposure to hazardous substances or health hazards or that an unprotected employee has been exposed in an emergency situation.".

27. On page 45666, column 2, paragraph (f)(3)(i), line 7, is corrected to read "handling of hazardous substances and health hazards and".

28. On page 45666, column 3, paragraph (f)(6)(i)(B), line 6, is corrected to read "health from work in hazardous waste operations or emergency response.".

29. On page 45666, column 3, paragraph (f)(7)(i), line 3, is corrected to read "Required by paragraph (f) of this".

30. On page 45666, column 3, paragraph (f)(7)(ii), line 2, is corrected to read "(f)(7)(i) of this section shall include at".

31. On page 45666, column 3, paragraph (f)(7)(ii)(B), is revised to read "Physicians' written opinions, recommended limitations and results of examinations and tests;".

32. On page 45666, column 3, paragraph (f)(7)(ii)(D), lines 1 and 2 are corrected to read "(D) A copy of the information provided to the examining".

33. On page 45666, column 3, paragraph (f)(7)(iii) is deleted.

34. On page 45666, column 3, paragraph (g)(1)(i), line 5, is corrected to read "*and PPE for substances regulated in Subpart Z.* (i) Engineering controls and".

35. On page 45666, column 3, paragraph (g)(1)(i), line 9, is corrected to read "limits of substances".

36. On page 45667, column 1, paragraph (g)(1)(ii), is revised to read: "(ii) whenever engineering controls and work practices are not feasible, PPE shall be used to reduce and maintain exposures to or below the permissible exposure limits of substances regulated by 29 CFR Part 1910, Subpart Z."

37. On page 45667, column 1, paragraph (g)(2), line 10, is corrected to read "exposure limit for hazardous substances and health hazards".

38. On page 45667, column 1, paragraph (g)(2), line 12, is corrected to read "Subpart Z.".

39. On page 45667, column 1, paragraph (g)(3)(v), line 5, the word "exposure" is corrected to read "exposures" and on line 7, the word "substance" is corrected to read "substances".

40. On page 45667, column 2, paragraph (h), line 3, is corrected to read "airborne levels of hazardous substances and health hazards".

41. On page 45667, column 2, paragraph (h)(4) is revised to read as follows:

"After hazardous waste cleanup operations commence, the employer shall monitor those employees likely to have the highest potential exposures to those hazardous substances and health hazards most likely to be present above established permissible exposure limits. The employer shall sample frequently in order to characterize employee exposure. The employer may utilize a representative sampling approach by documenting that the employees and chemicals chosen for monitoring are based on the criteria stated in the first sentence of this paragraph. Employers are not required to monitor employees engaged in site characterization operations covered by paragraph (c) of this section unless such work involves possible exposure to hazardous substances or health hazards.".

42. On page 45668, column 1, paragraph (j)(1), a new paragraph (j)(1)(xii) is added to read as follows:

"(xii) When there is a reasonable possibility of flammable atmosphere being present, material handling equipment and hand tools shall be of the type to prevent sources of ignition.".

43. On page 45668, column 2, paragraph (j)(2)(v) is deleted, and paragraphs (j)(2) (vi) and (vii) are renumbered "(v)" and "(vi)".

44. On page 45668, column 3, paragraph (j)(5)(iv), line 3, is corrected to read "and the site safety and health officer or command".

45. On page 45669, columns 1 and 2, paragraph (1)(1)(i), is revised to read as follows:

"(1) *Emergency Response*—(1) *General.* (i) An emergency response plan shall be developed and implemented by employers to handle anticipated emergencies prior to the commencement of hazardous waste operations".

46. On page 45669, column 2, paragraph (1)(1)(ii), lines 1 to 6, are revised to read as follows:

"(ii) *Elements of an emergency response plan.* The emergency response plan for on-site and off-site emergencies shall address, as a minimum, the following:"

47. On page 45669, column 2, paragraph (1)(2)(i), lines 1 and 2 are corrected to read "(2) *Hazardous waste operations, on-site emergency response*—(i) *Training.* Training for on-site emergency".

48. On page 45669, column 2, paragraph (1)(2)(ii)(A), line 6, the word "site" is corrected to read "on-site" and also in paragraphs (1)(2)(ii) (B), (C), (D), and (E), the first line of each paragraph, the word "site" is corrected to read "on-site".

49. On page 45669, column 3, paragraph (1)(3)(i), line 2, is corrected to read "*Training.* Training for handling off-site".

50. On page 45669, column 3, paragraph (1)(3)(ii)(D), is revised to read as follows:

"(D) Self-contained breathing apparatus shall be worn at all times by persons having possible exposure to hazardous substances or health hazards during initial emergency response operations. After one year from the date of publication of this rule only positive pressure self-contained respirators shall be used. The individual in charge of the ICS may decrease the level of respiratory protection worn by employees if it is determined by air monitoring or other documentation that decreasing protection will not result in hazardous exposures to employees.".

51. On page 45670, column 1, paragraph (1)(3)(ii), a new paragraph (J) is added to read as follows:

"(J) Approved self-contained compressed air breathing apparatus may be used with approved cylinders from other approved self-contained compressed air breathing apparatus provided that such cylinders are of the same capacity and pressure rating. All compressed air cylinders used with self-contained breathing apparatus shall meet U.S. Department of Transportation and National Institute for Occupational Safety and Health criteria.".

52. On page 45670, column 1, paragraph (1)(4)(i), line 3 is corrected to read "members of a HAZMAT team, defined as".

53. On page 45670, column 1, paragraph (1)(4)(ii) is revised to read:

"(ii) Members of HAZMAT teams shall receive physical examinations meeting the requirements of paragraph (f) of this section.".

54. On page 45670, column 1 paragraph (1)(4)(iv) is deleted.

55. On page 45670, column 3, paragraph (n)(6) lines 7, 8, 9 and 10 are corrected to read "the worksite, in areas where exposures are below established permissible exposure limits and which are under the control of the employer, and shall be so equipped as to enable employees to remove hazardous substances from themselves.".

56. On page 45670, column 3, paragraph (o), line 5, is corrected to read "specified in paragraph (a)(2)(iii) of this".

57. On page 45670, column 3, paragraph (o)(3), line 6, 7 and 8 are corrected to read "health hazards in their facilities for the purpose of employee protection and provide for emergency response meeting the requirements of paragraph (1) of this section;".

58. On page 45671, column 1, paragraph (o)(5), line 10, is corrected to read "hours annually of this paragraph as to that employee. Employers who can show by an employee's work experience and/or training that the employee has had initial training equivalent to the initial training required by this paragraph, shall be considered as meeting the initial training of this paragraph as to that employee."

59. On page 45671, column 1, paragraph (p)(4) line 3, is corrected to read "paragraph (i)(2) of this section and the emergency response plan required by paragraph (1)(1) of this section shall be".

60. On page 45671, column 2, line 4 of the note is corrected to read as follows: "*the appropriate requirements of this section except that protection equivalent to protection afforded by level A and level B personal protective equipment specified in Appendix B are required in certain circumstances by paragraphs 1910.120 (c)(4)(iii) and (g)(3)(iv) of this section*".

### Appendix A—[Corrected]

61. On page 45672, column 2, paragraph 3.1 of Appendix A, line 1, is corrected to read "3.1 The volume of concentrated aqueous ammonia solution (ammonia hydroxide, $NH_4$ OH)".

62. On page 45672, column 2, paragraph 3.1 of Appendix A, lines 7, 8 and 9 are corrected to read "(either a self-contained breathing apparatus or a supplied air respirator) and worn inside the enclosed test room. The concentrated aqueous ammonia solution is taken by the".

63. On page 45672, column 3, paragraph 5.1 of Appendix A, is revised to read as follows: "5.1 concentrated aqueous ammonia is a corrosive volatile liquid requiring eye, skin, and respiratory protection. The persons conducting test shall review the MSDS for aqueous ammonia.".

64. On page 45672, column 3, paragraph 5.2 of Appendix A, lines 2 and 3, are corrected to read "ammonia is 25 ppm, only persons wearing a self contained breathing apparatus or a supplied air respirator shall be in".

65. On page 45672, column 3, paragraph 5.2 of Appendix A, line 8, is corrected to read "a supplied air respirator, available to".

66. On page 45672, column 3, paragraph 6.1.1 of Appendix A, line 4 is corrected to read "milliliters of concentrated aqueous ammonia per cubic foot of test" and line 6 is corrected to read "volume of concentrated aqueous ammonia required to generate 1000".

Signed at Washington, D.C., this 27th day of April, 1987.

**John A. Pendergrass,**

*Assistant Secretary of Labor for Occupational Safety and Health.*

[FR Doc. 87-9764 Filed 5-1-87; 8:45 am]

BILLING CODE 4510-26-M

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[A-10-FRL-3163-1]

### Approval and Promulgation of State Implementation Plan; Washington

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** EPA today approves portions of the Washington State Visibility Protection Program which were submitted by the Washington Department of Ecology (Ecology) on April 27, 1979, September 6, 1983, January 5, 1984, and April 1, 1985, as revisions to the Washington State Implementation Plan (SIP). However, EPA today disapproves the new source review provisions relating to visibility, submitted on September 6, 1983, January 5, 1984, and April 1, 1985. EPA has previously promulgated federal visibility new source review provisions for Washington (see 51 FR 23228, June 26, 1986). The submitted revisions and EPA promulgation satisfy the requirements of section 110 (Implementation Plans) and section 169A (Visibility Protection) of the Clean Air Act (hereinafter the Act).

**EFFECTIVE DATE:** July 6, 1987.

**ADDRESSES:** Copies of the materials submitted to EPA may be examined during normal business hours at:

Public Information, Reference Unit, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460

Air Programs Branch (10A-83-9), Environmental Protection Agency, Region 10, 1200 Sixth Avenue, Seattle, Washington 98101

State of Washington, Department of Ecology, 4224 6th Avenue SE., Rowe Six, Building #4, Lacey, Washington 98504

**FOR FURTHER INFORMATION CONTACT:** David C. Bray, Air Programs Branch, M/S 532, Environmental Protection Agency, 1200 Sixth Avenue, Seattle, Washington 98101, Telephone: (206) 442-4253, FTS: 399-4253.

**SUPPLEMENTARY INFORMATION:**

## I. Background

On September 6, 1983, the State of Washington Department of Ecology (Ecology) submitted visibility provisions for new major sources and major modifications (WAC 173-403-050(9)), WAC 173-403-090 "RETROFIT REQUIREMENTS FOR VISIBILITY PROTECTION," and certain definitions in WAC 173-403-030. On January 5, 1984, Ecology submitted "WASHINGTON STATE'S VISIBILITY PROTECTION PROGRAM." On April 1, 1985, Ecology submitted revised visibility provisions for new major sources and major modifications (WAC 173-403-050(9) and certain definitions in WAC 173-403-030). On May 9, 1986 (51 FR 17208) EPA proposed to approve the provisions relating to existing sources and to disapprove the provisions relating to new major sources and major modifications. Refer to the May 9, 1986, Federal Register for a full description of the State's submittal and EPA's proposed actions.

## II. Response to Comments

EPA received a comment from the Oregon Department of Environmental Quality (ODEQ) regarding the interstate visibility protection elements of the Washington visibility protection program. Specifically, ODEQ requested that EPA approve the Washington program conditional upon the satisfactory completion of the interstate visibility protection strategy in order to provide a comparable level of protection to Oregon's Class I areas as provided for Washington's Class I areas under the "Oregon Visibility Protection Plan." The "Interstate Coordination" section of the "Washington State Visibility Protection Program" indicates that such interstate protection provisions will be added during the first periodic review and update of the Washington visibility SIP following the adoption of the "Oregon Visibility Protection Plan." EPA considers this approach an acceptable component of the long-term strategy and today approves the Washington visibility program based on Ecology's commitment to add measures to protect Oregon's Class I areas in the next periodic update of the visibility SIP.

## III. Summary of Action

EPA has determined that the regulations for visibility new source review do not satisfy the requirements of 40 CFR 51.307 (see the May 9, 1986, Federal Register for details). EPA, therefore, disapproves the regulations and provisions related to visibility new source review. Specifically, EPA disapproves WAC 173-403-050(9), submitted on September 6, 1983, and April 1, 1985, and SECTION V.B. *New Source Review* and APPENDIX B—PROPOSED NEW SOURCE REVIEW REGULATIONS of "WASHINGTON STATE'S VISIBILITY PROTECTION PROGRAM," submitted on January 5, 1984. EPA is deferring action at this time on the definitions in WAC 173-403-030 which relate to new source review. EPA will be taking action on this section in the near future as part of an action on the remainder of that regulation (WAC 173-403).

The provisions for existing sources, however, do satisfy the EPA requirements. Therefore, EPA approves the following provisions:

"WASHINGTON STATE'S VISIBILITY PROTECTION PROGRAM," submitted on January 5, 1984, except for SECTION V.B. *New Source Review* and APPENDIX B—PROPOSED NEW SOURCE REVIEW REGULATIONS as discussed above, and APPENDIX A—PROPOSED BEST AVAILABLE RETROFIT TECHNOLOGY REGULATION. This program is consistent with the requirements of 40 CFR 51.301 through 306. EPA is taking no action on APPENDIX A as it contains only the proposed regulation and not the actual adopted regulation (WAC 173-403-090) which was submitted on September 6, 1983 (see below).

Definitions of the terms "adverse impact on visibility" (-030)(2)), "best available retrofit technology (BART)" (-030(9)), "class I area" (-030(11)), "integral vista" (-030(24)), "land manager" (-030(25)), "natural conditions" (-030(31)), "reasonably attributable" (-030(42)), "significant visibility impairment" (-030(46)), "visibility impairment" (-030(51)), and "visibility impairment of a Class I area" (-030(52)) in WAC 173-403-030 "DEFINITIONS", submitted on April 1, 1985. These definitions are consistent with those in 40 CFR 51.301.

WAC 173-403-090 "RETROFIT REQUIREMENTS FOR VISIBILITY PROTECTION," submitted on September 6, 1983. This regulation requires the application of best available retrofit technology (BART) for sources which may reasonably be anticipated to cause or contribute to impairment of visibility in any mandatory Class I area, thereby satisfying the requirements of 40 CFR 51.303.

The State of Washington Department of Natural Resources "SMOKE MANAGEMENT PLAN" (Appendix K of the Washington SIP), submitted on April 27, 1979, and amended by Section V.C. of Washington State's Visibility Protection Program, submitted on January 5, 1984. This is the State's program for managing the smoke generated from the prescribed burning of agriculture residues. This smoke management plan fulfills one of the requirements of 40 CFR 51.306.

It is important to note that the submitted revisions do not contain visibility provisions for sources under the jurisdiction of the State of Washington Energy Facility Site Evaluation Council (EFSEC) or Indian Governing bodies. (EFSEC has sole permitting authority for new or modified energy facilities.) EPA, therefore, approves Washington State's current visibility protection program only to the extent that it applies to sources under the Department of Ecology's and Department of Natural Resources' jurisdictions. However, there are no sources under EFSEC's jurisdiction or located on Indian reservations which are known to cause or contribute to existing visibility impairment in a mandatory federal Class I area. EPA has promulgated federal new source review provisions for all sources including those under EFSEC's jurisdiction and sources which would locate on Indian reservations in order to prevent future visibility impairment from such sources.

Finally, 40 CFR 51.306(a)(2) requires a long-term strategy for each mandatory Class I federal area located outside the State which may be affected by sources within the State. However, the current Ecology program does not yet contain specific control strategies for existing sources affecting Class I areas in adjacent states. Rather, the "Interstate Cooperation" section indicates that such provisions will be added during the periodic review and update of the visibility SIP, provided the adjacent states have identified sources of visibility impairment and have defined the visibility objectives for affected Class I areas. EPA considers this approach as an acceptable component of the long-term strategy and approves the strategy based upon the commitment to add measures, as needed, to address Oregon's Class I areas in the next periodic update of the visibility SIP.

In summary, EPA is today approving the following submittals as revisions to the Washington SIP:

(1) Washington State's Visibility Protection Program, except SECTION V.B. *New Source Review*, APPENDIX

A—PROPOSED BEST AVAILABLE RETROFIT TECHNOLOGY REGULATION and APPENDIX B—PROPOSED NEW SOURCE REVIEW REGULATIONS, submitted on January 5, 1984;

(2) Certain provisions of 173-403 WAC Implementation of Regulations for Air Contaminant Sources, specifically, WAC 173-403-030(2), (9), (11), (24), (25), (31), (42), (46), (51), and (52), submitted on April 1, 1985, and WAC 173-403-090, submitted on September 6, 1983; and

(3) The Smoke Management Program, submitted on April 27, 1979 and amended on January 5, 1984.

EPA today disapproves the visibility new source review provisions of WAC 173-403, specifically, WAC 173-403-050(9), submitted on September 6, 1983, and April 1, 1985, and Section V.B. and APPENDIX B of Washington State's Visibility Protection Program, submitted on January 5, 1984. EPA promulgated federal visibility new source review provisions for Washington on June 26, 1986 (51 FR 23228).

Finally, EPA approves the Washington visibility protection program only for sources under the jurisdictions of the Department of Ecology and the Department of Natural Resources, and not for sources on Indian reservations or under the jurisdiction of the Energy Facility Site Evaluation Council. Note that EPA has promulgated federal visibility new source review provisions for new sources on Indian reservations and under the jurisdiction of the Energy Facility Site Evaluation Council.

Under Executive Order 12291, this action is not "major." It has been submitted to the Office of Management and Budget (OMB) for review.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 6, 1987. This action may not be challenged later in proceedings to enforce its requirements (See section 307(b)(2)).

**List of Subjects in 40 CFR Part 52**

Air pollution control, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide, Hydrocarbons, Incorporation by reference.

**Note.**—Incorporation by reference of the Implementation Plan for the State of Washington was approved by the Director of the Office of Federal Register on July 1, 1982.

Dated: March 20, 1987.

**Lee M. Thomas,**

*Administrator.*

## PART 52—[AMENDED]

### Subpart WW—Washington

Title 40, Part 52 of the Code of Federal Regulations is amended as follows:

1. The authority citation for Part 52 continues to read as follows:

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

2. Section 52.2470 is amended by adding paragraph (c)(36) as follows:

**§ 52.2470 Identification of plan.**

* * * * *

(c) * * *

(36) Washington State's Visibility Protection Program, except SECTION V. B. *New Source Review*, APPENDIX A—PROPOSED BEST AVAILABLE RETROFIT TECHNOLOGY REGULATION and APPENDIX B—PROPOSED NEW SOURCE REVIEW REGULATIONS, submitted by the Director of the Washington Department of Ecology on January 5, 1984; certain provisions of 173-403 WAC Implementation of Regulations for Air Contaminant Sources, specifically, WAC 173-403-030(2), (9), (11), (24), (25), (31), (42), (46), (51), and (52), submitted by the Director of the Washington Department of Ecology on April 1, 1985; WAC 173-403-090, submitted by the Director of the Washington Department of Ecology on September 6, 1983; and the State of Washington Department of Natural Resources Smoke Management Program, submitted by the Director of the Washington Department of Ecology on April 27, 1979 and January 5, 1984.

(i) *Incorporation by reference.*

(A) Letter dated April 1, 1985, from the Director of the State of Washington Department of Ecology to EPA. Provisions of WAC 173-403-030 (Definitions) introductory text, (2), (9), (11), (24), (25), (31), (42), (46), (51), and (52), adopted by the State of Washington Department of Ecology on February 14, 1985.

(B) Letter dated September 6, 1983, from the Director of the State of Washington Department of Ecology to EPA. WAC 173-403-090 ("Retrofit Requirements for Visibility Protection"), adopted by the State of Washington Department of Ecology on August 25, 1983.

(C) Letter dated January 5, 1984, from the Director of the State of Washington Department of Ecology to EPA. "Washington State's Visibility Protection Program (10/3/83)," except SECTION V. B. *"New Source Review,"* APPENDIX A—"PROPOSED BEST AVAILABLE RETROFIT TECHNOLOGY REGULATION" and APPENDIX B—"PROPOSED NEW SOURCE REVIEW REGULATIONS" adopted by the State of Washington Department of Ecology on January 5, 1984;

(D) Appendix K ("The State of Washington Department of Natural Resources Air Quality-Prescribed Burning Smoke Management Program") revised June 1975.

3. Section 52.2479 is revised to read as follows:

**§ 52.2479 Rules and regulations.**

The following table identifies the State and local regulations which have been submitted to, and approved by, EPA as revisions to the State of Washington Implementation Plan.

TABLE 52.2479.—WASHINGTON SIP REGULATIONS

| Citation | Title | Applicable sections | Date of sections | Date of EPA approval | Federal Register Citation |
|---|---|---|---|---|---|
| WAC 173-400 | General Regulations for Air Pollution Sources. | -010 | Apr. 26, 1979 | June 5, 1980 | 45 FR 37835 |
| | | -160 | Apr. 26, 1979 | Aug. 14, 1981 | 46 FR 41054 |
| | | -020; -030; -040 (except (13)); -050; -060; -070; -090; -100; -120. | Aug. 20, 1980 | Sept. 14, 1981 | 46 FR 45609 |
| | | -110 | Dec. 17, 1980 | Sept. 14, 1981 | 46 FR 45609 |
| WAC 173-402 | Civil Sanctions under Washington Clean Air Act. | All | June 24, 1980 | Sept. 14, 1981 | 46 FR 45609 |
| WAC 173-403 | Implementation of Regulations for Air Contaminant Sources. | -030(2), (9), (11), (24), (25), (31), (42), (46), (51), and (52) | March 6, 1985 | (today's date) | (citation) |
| | | -090 | Aug. 26, 1983 | (today's date) | (citation) |
| WAC 173-405 | Kraft Pulping Mills | -012; -021; -040(1), (2), (3), (4), (5), (6), (17); -072(1), (4), (5); -077; -086; -101. | Aug. 20, 1980 | Sept. 14, 1981 | 46 FR 45609 |
| WAC 173-410 | Sulfite Pulping Mills | -012; -021; -040(1), (2), (3), (5), (16); -062(1), (2), (3); -067; -086; -090; -091. | Aug. 20, 1980 | Sept. 14, 1981 | 46 FR 45609 |

TABLE 52.2479.—WASHINGTON SIP REGULATIONS—Continued

| Citation | Title | Applicable sections | Date of sections | Date of EPA approval | Federal Register Citation |
|---|---|---|---|---|---|
| WAC 173-415 | Primary Aluminum Plants | -010; -020; -030(2)(b), (4), (5), (7), (11); -050; -060(1)(c), 2); -070; -090. | Aug. 14, 1980 | Sept. 14, 1981 | 46 FR 45609 |
| WAC 173-420 | State Jurisdiction over Motor vehicles | All | Mar. 29, 1977 | June 5, 1980 | 45 FR 37835 |
| WAC 173-422 | Motor Vehicle Emission Inspection | All | Dec. 31, 1981 | Feb. 28, 1983 | 48 FR 8274 |
| WAC 173-425 | Open Burning | All | Oct. 24, 1977 | June 5, 1980 | 45 FR 37835 |
| WAC 173-490 | Emission standards and Controls for Sources Emitting Volatile Organic Compounds. | -090; -120; -130; -135; -140 | Apr. 26, 1979 | June 5, 1980 | 45 FR 37835 |
| | | -010; -030; -070; -071 | Aug. 20, 1980 | Sept. 14, 1981 | 46 FR 45607 |
| | | -200; -201; -202; 207 | Aug. 20, 1980 | Apr. 14, 1982 | 47 FR 16019 |
| | | -020; -025; -040; -080; -203; -204; -205; -208 | June 29, 1982 | Dec. 17, 1982 | 47 FR 56498 |
| WAC 463-39 | General Regulations for Air Pollution Sources. | -010; -020; -030 (except (4), (7), (10), (24), (25), (30), (35), (36)); -040 (except introductory paragraph); -050; -060; -080; -100; -110 (except (1), first two sentences of (3)(b), (3)(c), (3)(d), (3)(e)); -120; -130; -135; -150; -170. | July 23, 1979 | Feb. 23, 1982 | 47 FR 7840 |
| WAC 18-04 | General Regulations for Air Pollution Sources. | -080; -130; -140 | Jan. 22, 1973 | May 22, 1975 | 40 FR 22254 |
| WAC 18-08 | Emergency Episode Plan | All | Undated | May 31, 1972 | 37 FR 10900 |
| WAC 18-16 | Grass Seed Field Burning | All | Undated | May 31, 1972 | 37 FR 10900 |
| Puget Sound Air Pollution Control Agency. | Regulation I | Article 9.07(c) | Aug. 12, 1970 | May 31, 1972 | 37 FR 10900 |
| | | Article 9.02A | Oct 10, 1973 | Oct. 29, 1975 | 40 FR 50266 |
| | | Article 1 (except 1.07(s), 1.07(rr), and 1.07(xx)); Article 3; and Article 6 (except 6.07(b)(7) and 6.08). | Dec. 1974 | June 5, 1980 | 45 FR 37835 |
| | | Articles 9.02, 9.03, 9.04, 9.05, 9.06, 9.07(d), 9.07(e), 9.09 | Jan. 1977 | June 5, 1980 | 45 FR 37835 |
| | | Articles 1.07(s), 1.07(rr), 1.07(xx), 6.07(b)(7), and 6.08 | Oct. 11 1983 | April 22, 1985 | 50 FR 15746 |
| Puget Sound Air Pollution Control Agency. | Regulation II | Article 1 (except 1.02, Article 2 (except 2.13), Article 3 (except 3.11), and Article 4 (except 4.02). | Apr. 8, 1982 | Feb. 28, 1983 | 48 FR 8274 |
| | | Article 1, Section 1.02, Article 2, Section 2.13, Article 3, Section 3.11, and Article 4, Section 4.02. | Dec. 13 1984 | | |
| Northwest Air Pollution Authority. | Regulations | 455.11 | Aug. 9, 1978 | June 5, 1980 | 45 FR 37835 |
| Spokane County Air Pollution Control Authority. | Regulation II | Article IV, Section 4.01 | Apr. 26, 1979 | June 5, 1980 | 45 FR 37835 |

[FR Doc. 87-6713 Filed 5-1-87; 8:45 am]

BILLING CODE 6560-50-M

## 40 CFR Part 52

**[A-5-FRL-3179-5]**

## Approval and Promulgation of Implementation Plans; Michigan

**AGENCY:** U.S. Environmental Protection Agency (USEPA).

**ACTION:** Final rulemaking.

**SUMMARY:** USEPA is approving a site-specific revision to the total suspended particulates (TSP) portion of the Michigan State Implementation (SIP). This revision establishes alternative opacity limitations for a bark boiler owned by the Packaging Corporation of America (PCA) in Filer City, Michigan.

USEPA is today approving this revision containing alternative opacity limits, because USEPA believes these opacity limits represent the best consistently attainable opacity levels for the PCA boiler when it is controlled to a level consistent with the application of reasonably available control technology (RACT).

**EFFECTIVE DATE:** This action will be effective June 3, 1987.

**ADDRESSES:** Copies of this revision to the Michigan SIP are available for inspection at the following addresses:

U.S. Environmental Protection Agency, Air and Radiation Branch (5AR-26), 230 South Dearborn Street, Chicago, Illinois 60604

U.S. Environmental Protection Agency, Public Information Reference Unit, 401 M Street SW., Washington, DC 20460

Michigan Department of Natural Resources, Air Quality Division, Stevens T. Mason Building, 530 W. Allegan, Lansing, Michigan 48909

**FOR FURTHER INFORMATION CONTACT:** Ms. Toni Lesser, Michigan Regulatory Specialist, U.S. Environmental Protection Agency, Region V, Air and Radiation Branch (5AR-26), 230 South Dearborn Street, Chicago, Illinois 60604, (312) 886-6037.

**SUPPLEMENTARY INFORMATION:** On September 16, 1985, the State of Michigan submitted a SIP revision requesting alternate opacity limits for the PCA's bark boiler. The request is in the form of a Stipulation for Entry of Consent Order and Final Order (No. 23-1984). The Consent Order contains an extended schedule for the PCA's bark boiler to comply with Michigan's Rule 336.1301.

Michigan's Rule 336.1301 requires boilers not to exceed visible emissions of more than 20 percent opacity except in the following instances:

1. A visible air contaminant with a density of not more than 40 percent opacity may be emitted for not more than 3 minutes in any 60-minute period, but this emission shall not be permitted on more than 3 occasions during any 24-hour period.

2. When the presence of uncombined water vapor is the only reason for failure of an emission to meet the requirements of R336.1301.

3. When permitted by the Commission in a case where compliance with R336.1301 is not technically and economically feasible and all other requirements are being met.

Consent Order No. 23-1984 for PCA contains the following elements:

1. Until December 31, 1989, when fired with 100 percent bark as fuel, the maximum 6 minute average opacity shall be limited to 40 percent, except for ten 6 minute averages per day of not more than 60 percent opacity during periods of start-up, shutdown and ash removal, as determined by Test Method 9, Appendix A to 40 CFR Part 60 (July 1, 1980).

2. Until December 31, 1989, when fired with a combination of bark and wood chips as fuel, the maximum 6 minute average opacity shall be limited to 35

percent, except for ten 6 minute averages per day of not more than 60 percent opacity during periods of start-up, shutdown and ash removal, as determined by Test Method 9, Appendix A to 40 CFR Part 60 (July 1, 1980).

3. After December 31, 1989, visible emissions from the bark boiler shall not exceed 20 percent opacity except as provided in Michigan's Rule 336.1301.

On July 17, 1986 (51 FR 25902), USEPA proposed approval of Consent Order No. 23–1984 for the PCA plant in Filer City. During the 30-day comment period only one comment was received.

**Comment**

The commenter asked USEPA to acknowledge that the rules in effect in the State of Michigan differ from those which are federally approved and stated that the proposed Packaging Corporation of America SIP revision should be evaluated on the basis of the rules currently in effect in the State as well as those currently having Federal approval.

**Response**

This comment is predicated on an inaccurate understanding of the USEPA's SIP review responsibilities under the Clear Air Act. USEPA is legally bound to make compliance determinations based upon the federally approved SIP, which is required by national law (the Clean Air Act) and subject to Federal enforcement. State rules which differ from the federally approved SIP are enforceable on the State level, but lack Federal enforceability. Thus, evaluation by USEPA based upon State rules not contained in the federally approved SIP would be invalid. The State of Michigan, in effect, recognized the need for approval of State SIP revisions at the Federal level by its submission to Region V of the requested SIP revision for PCA.

USEPA has reviewed Consent Order No. 23–1984 for the State of Michigan's PCA plant in Filer City, and is approving the alternative opacity limits contained in the Consent Order as a revision to Michigan's TSP SIP, because USEPA believes these limits represent the best consistently attainable opacity levels for this source when it is controlled to a RACT level.

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

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 6, 1987. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

**List of Subjects in 40 CFR Part 52**

Air pollution control, Particulate matter, Intergovernmental relations, Incorporation by reference.

**Note:** Incorporation by Reference of the State Implementation Plan for the State of Michigan was approved by the Director of the Federal Register on July 1, 1982.

Dated: March 24, 1987.

**Lee M. Thomas,**

*Administrator.*

## PART 52—APPROVAL PROMULGATION OF IMPLEMENTATION PLANS; MICHIGAN

Title 40 of the Code of Federal Regulations, Chapter I, Part 52 is amended as follows:

1. The authority citation for Part 52 continues to read as follows:

**Authority:** 42 U.S.C. 7401–7642.

2. Section 52.1170 is amended by adding a new paragraph (c)(83) to read as follows:

**§ 52.1170 Identification of Plan.**

* * * * *

(c) * * *

(83) On September 16, 1985, the State of Michigan submitted a SIP revision requesting alternate opacity limits for the Packaging Corporation of America (PCA) bark boiler. The request is in the form of a Stipulation for Entry of Consent Order and Final Order (No. 23–1984). The Consent Order contains an extended schedule for the PCA's bark boiler to comply with Michigan's Rule 336.1301.

(i) *Incorporation by Reference.* (A) Stipulation for Entry of Consent Order and Final Order No. 23–1984 for the Packaging Corporation of America, approved on July 8, 1985.

[FR Doc. 87–10045 Filed 5–1–87; 8:45 am]

BILLING CODE 6560–50–M

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**40 CFR Part 65**

**[A–5–FRL–3192–8]**

## Delayed Compliance Order for General Motors Corp., Truck and Bus Group, Pontiac West Assembly Plant, Pontiac MI

**AGENCY:** U.S. Environmental Protection Agency (USEPA).

**ACTION:** Final rulemaking.

**SUMMARY:** The Administrator of USEPA hereby issues a Delayed Compliance Order (DCO) to General Motors Corporation, Truck and Bus Group, Pontiac West Assembly Plant located in Pontiac, Michigan. The Order requires the Company by August 1, 1987, to bring volatile organic compound (VOC) emissions from topcoating lines at its plant into compliance with the limits established by Michigan Rule R336.1610, which is a part of the federally approved State Implementation Plan (SIP).

**EFFECTIVE DATE:** This final rulemaking becomes effective May 4, 1987.

**FOR FURTHER INFORMATION CONTACT:** Ann Pontius, U.S. Environmental Protection Agency, Air Compliance Branch (5AC–26), Chicago, Illinois 60604, (312) 353–4364.

**SUPPLEMENTARY INFORMATION:** On January 29, 1987, the USEPA published a notice in the **Federal Register** (52 FR 2952) setting forth provisions of a proposed Delayed Compliance Order for General Motors Corporation, Truck and Bus Group, Pontiac West Assembly Plant. This Order deals with the emission of VOC's from topcoating lines at the facility. It requires final compliance by August 1, 1987, with Michigan Administrative Code 1980 AACS, R336.1610, which is part of the Federally approved Michigan SIP.

General Motors has consented to the terms of the Order. The notice of proposed rulemaking asked that public comments be received by March 2, 1987. No public comments were received. Therefore, a Delayed Compliance Order, effective today's date, is issued to General Motors Corporation, Truck and Bus Group, Pontiac West Assembly Plant, located in Pontiac, Michigan. Source compliance with the Order precludes suits under the federal enforcement and citizen suit provision of the Clean Air Act.

Under section 307(b) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 6, 1987. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

**List of Subjects in 40 CFR Part 65**

Intergovernmental relations, Air pollution control.

Dated: April 23, 1987.

**Lee M. Thomas,**

*Administrator.*

## PART 65—DELAYED COMPLIANCE ORDER

Chapter I of Title 40 of the Code of Federal Regulations is amended as follows:

1. The authority citation for Part 65 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

2. Section 65.271 is amended by revising the entry to the table for "Barker and Sons Finishing Co., Inc." and by adding the following entry to the table in alphabetical order:

**§ 65.271 EPA approval of State delayed compliance orders issued to major stationary sources.**

* * * * *

| Source | Location | Order No. | SIP regulation(s) involved | Date of FEDERAL REGISTER proposal | Final compliance date |
|---|---|---|---|---|---|
| Barker and Sons Finishing Co., Inc. | Otsego, MI | To be assigned | Code 1980 AACS R336.1621 | Sept. 25, 1983 | June 30, 1985 |
| General Motors Corporation, Truck and Bus Group, Pontiac West Assembly Plant | Pontiac, MI | To be assigned | Code 1980 AACS R336.1610 | Jan. 29, 1987 | Aug. 1, 1987 |

[FR Doc. 87–9775 Filed 5–1–87; 8:45 am]

BILLING CODE 6560–50–M

## DEPARTMENT OF THE INTERIOR

## Bureau of Land Management

## 43 CFR Public Land Order 6642

[AK–960–07–4220–10; AA–2864]

## Partial Revocation of Executive Order No. 6269 for Selection of Lands by the State of Alaska

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Public Land Order.

**SUMMARY:** This order partially revokes an Executive order, insofar as it affects 1.59 acres of public land withdrawn for use by the Washington-Alaska Military Cable and Telegraph System. This action will also classify this land as suitable for selection by the State of Alaska, if the land is otherwise available. The land has been and will remain closed to all other forms of appropriation and disposition under the public land laws, including the mining and mineral leasing laws by an overlapping withdrawal.

**EFFECTIVE DATE:** May 4, 1987.

**FOR FURTHER INFORMATION CONTACT:** Sue A. Wolf, BLM Alaska State Office, 701 C Street, Box 13, Anchorage, Alaska 99513, 907–271–5477.

By virtue of the authority vested in the Secretary of the Interior by section 204(a) of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, and by section 17(d)(1) of the Alaska Native Claims Settlement Act of December 18, 1971, 85 Stat. 708 and 709; 43 U.S.C. 1616(d)(1)), it is ordered as follows:

1. Executive Order No. 6269, dated September 6, 1933, which withdrew land for use by the Washington-Alaska Military Cable and Telegraph System, is hereby revoked as to the following described land:

Copper River Meridian

A portion of lot 5B, U.S. Survey No. 1079, Alaska, more particularly described as follows:

Beginning at corner No. 1 of this description and identical with corner No. 3 of lot 5B, U.S. Survey No. 1079;

thence S. 64°01′ E. a distance of 5.42 chains to corner No. 2 and identical with corner No. 4 of lot 5B, U.S. Survey No. 1079;

thence, S. 24°04′ W. a distance of 1.00 chain to corner No. 3 and identical with corner No. 5 of lot 5B, U.S. Survey No. 1079;

thence, with meanders of the mean high water line along the shore line of Tongrass Narrows, N. 69°53′ W. 2.175 chains, N. 47°06′ W. 1.39 chains, N. 80°01′ W. 1.11 chains, N. 76°02′ W. 3.40 chains, N 60°18′ W. 0.324 chains to corner No. 4 and identical with corner No. 6 of lot 5B, U.S. Survey No. 1079;

thence, N. 24°04′ E. a distance of 0.882 chains to corner No. 5 and identical with corner No. 7 of lot 5B, U.S. Survey No. 1079;

thence, N. 64°11′ W. a distance of 6.04 chains to corner No. 6 and identical with corner No. 8 of lot 5B, U.S. Survey No. 1079;

thence, N. 24°04′ E. a distance of 0.91 chains to corner No. 7 and identical with corner No. 9 of lot 5B, U.S. Survey No. 1079;

thence, S. 64°11′ E. a distance of 3.643 chains to corner No. 8 and identical with corner No. 10 of lot 5B, U.S. Survey No. 1079;

thence, S. 63°57′44″ E. a distance of 5.2331 chains to corner No. 1, the point of beginning of this description and identical with corner No. 3 of lot 5B, U.S. Survey No. 1079.

The area described contains 1.59 acres.

2. Subject to valid existing rights, the land described above is hereby classified as suitable for and open to selection by the State of Alaska under either the Alaska Statehood Act of July 7, 1958, 72 Stat. 339, et seq.; 48 U.S.C. prec. 21, or section 906(b) of the Alaska National Interest Lands Conservation Act of December 2, 1980, 94 Stat. 2437–2438; 43 U.S.C. 1635.

3. As provided by subsection 6(g) of the Alaska Statehood Act, the State of Alaska is provided a preference right of selection for the land herein described for a period of ninety-one (91) days from the date of publication of this order, if such land is otherwise available. Any land described herein that is not selected by the State of Alaska will continue to be subject to the terms and conditions of Public Land Order No. 5187, as amended, and any other withdrawals of record.

**J. Steven Griles,**

*Assistant Secretary of the Interior.*

April 23, 1987.

[FR Doc. 87–10055 Filed 5–1–87; 8:45 am]

BILLING CODE 4310–JA–M

## 43 CFR Public Land Order 6643

[AK–960–07–4220–10; AA–41940]

## Partial Revocation of Public Land Order No. 567 for Selection of Lands by the State of Alaska

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Public Land Order.

**SUMMARY:** This order revokes a public land order insofar as it affects 13.49 acres of public land reserved for use by the Forest Service, Department of Agriculture, as the Juneau Administrative Site. This action will also classify this land as suitable for selection by the State of Alaska, if the land is otherwise available. If the land is not selected by the State, this order opens the lands to metalliferous mining.

**EFFECTIVE DATE:** May 4, 1987.

**FOR FURTHER INFORMATION CONTACT:** Sue A. Wolf, BLM Alaska State Office, 701 C Street, Box 13, Anchorage, Alaska 99513, 907–271–5477.

By virtue of the authority vested in the Secretary of the Interior by section 204(a) of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, and by section 17(d)(1) of the Alaska Native Claims Settlement Act of December 18, 1971, 85 Stat. 708 and 709; 43 U.S.C. 1616(d)(1)), it is ordered as follows:

1. Public Land Order No. 567, dated March 4, 1949, which withdrew land for use by the Forest Service, Department of Agriculture, as the Juneau Administrative Site, is hereby revoked insofar as to the following described land:

Lot 2, U.S. Survey No. 2306, Alaska.

The area described contains 13.49 acres.

2. Subject to valid existing rights, the land described above is hereby classified as suitable for and open to selection by the State of Alaska under either the Alaska Statehood Act of July 7, 1958, 72 Stat. 339, et seq.; 48 U.S.C. prec. 21, or section 906(b) of the Alaska National Interest Lands Conservation Act of December 2, 1980, 94 Stat. 2437–2438; 43 U.S.C. 1635.

3. As provided by subsection 6(g) of the Alaska Statehood Act, the State of Alaska is provided a preference right of selection for the land herein described for a period of ninety-one (91) days from the date of publication of this order, if such land is otherwise available. Any land described herein that is not selected by the State of Alaska will continue to be subject to the terms and conditions of Public Land Order No. 5180, as amended, and any other withdrawals of record.

4. At 10 a.m. on August 3, 1987, subject to valid existing rights, the provisions of existing withdrawals and the requirement of applicable laws, the land described in paragraph 1 above will be opened to location and entry under the United States mining laws for metalliferous minerals. Appropriation of any land described in this order under the general mining laws for metalliferous minerals prior to the date and the time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38, shall vest no rights against the United States. Acts required to establish location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local Courts.

J. Steven Griles,

*Assistant Secretary of the Interior.*

April 24, 1987.

[FR Doc. 87-10054 Filed 5-1-87; 8:45 am]

BILING CODE 4310-JA-M

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 1

[Gen. Docket No. 84-533; FCC 87-108]

### Enforcement of Nondiscrimination on the Basis of Handicap in Federal Communications Commission Programs

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** These regulations require that the Federal Communications Commission operate all of its programs and activities to ensure nondiscrimination against qualified individuals with handicaps. It sets forth standards for what constitutes discrimination on the basis of physical or mental handicap, provides definitions for the terms individual with handicaps and qualified individual with handicaps, and establishes a complaint mechanism for resolving allegations of discrimination. These regulations are issued under the authority of section 504 of the Rehabilitation Act of 1973, as amended, which prohibits discrimination on the basis of handicap, in programs or activities conducted by Federal executive agencies.

**EFFECTIVE DATE:** July 6, 1987.

**ADDRESS:** Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554. Copies of these regulations are available on tape for persons with visual impairments and can be obtained from the Consumer Assistance Office at this same address.

**FOR FURTHER INFORMATION CONTACT:**

Sharon B. Kelley, Office of General Counsel, (202) 632-6990.

Consumer Assistance Office, Office of Public Affairs, (202) 632-6999 (TDD), (202) 632-7260 (VOICE).

**SUPPLEMENTARY INFORMATION:**

### List of Subjects in 47 CFR Part 1

Blind, Civil rights, Deaf, Disabled, Discrimination against individuals with handicaps, Equal employment opportunity, Federal buildings and facilities, Individuals with Handicaps, Nondiscrimination, Physically handicapped.

### Report and Order

In the matter of amendment of Part 1 of the Commission's rules to implement section 504 of the Rehabilitation Act of 1973, as Amended, 29 U.S.C. 794; Gen. Docket No. 84-533.

Adopted: March 27, 1987.
Released: April 15, 1987.
By the Commission.

1. This *Report and Order* terminates a proceeding directed at promulgating rules to implement section 504 of the Rehabilitation Act of 1973 (section 504), as amended, 29 U.S.C. 794. Members of the public were requested to comment on all aspects of this proposal.[1]

[1] References appear at the end of this section.

2. As explained in our *NPRM*, section 504 of the Rehabilitation Act as enacted in 1973 prohibits discrimination on the basis of handicap in federally assisted programs. Neither the Commission nor its licensees are subject to the 1973 legislation.[2] The Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978 (1978 amendments) extended the nondiscrimination mandate of section 504 to programs and activities conducted by agencies of the Federal Government and the United States Postal Service.[3] The legislative history of the 1978 amendments indicates that Congress intended the amendments to apply to all federal agencies, including independent regulatory agencies like the FCC.[4] Programs or activities of entities that are licensed or certified by the Commission are not, however, covered by the 1978 amendments or these implementing regulations.[5]

3. Under Executive Order 12250,[6] the Attorney General has authority to coordinate the implementation and enforcement of various nondiscrimination statutes, including section 504. To assist agencies in developing rules to implement the 1978 amendments, the Department of Justice drafted prototype regulations which were distributed to affected agencies.[7] As authorized by Executive Order 12067,[8] the Equal Employment Opportunity Commission also reviewed the DOJ prototype. In 1984, the Commission issued an *NPRM* seeking comment on the proposed regulations.

4. After careful consideration of the comments, the Commission has decided to adopt the *Final Rules* attached hereto. The rules, with minor modifications, conform to the prototype regulations developed by the Department of Justice and approved by the Equal Employment Opportunity Commission.[9] *Appendex A* contains a section-by-section analysis of the rules and a detailed discussion of the comments received in response to our *NPRM*.[10]

5. Briefly, the rules prohibit discrimination on the basis of handicap in programs or activities conducted by the Federal Communications Commission. The rules thus affect Commission practices with respect to employment, access to FCC facilities, procurement policies, participation by individuals with handicaps in agency proceedings, and licensing policies for individuals with handicaps. The regulations set forth standards for what constitutes discrimination on the basis of physical or mental handicap, provide

definitions for the terms individual with handicaps and qualified individual with handicaps, and establish a complaint mechanism for resolving allegations of discrimination.

6. Section 504 requires that regulations that apply to the programs and activities of the Federal executive agencies shall be submitted to the appropriate authorizing committees of Congress and that such regulations may take effect no earlier than the thirtieth day after they have been submitted. Within thirty (30) days of the release of this *Order*, the Commission will submit these regulations to the Senate Committee on Education and Labor and its Subcommittee on Education and Labor and it Subcommittee on Select Education.

7. Pursuant to section 605 of the Regulatory Flexibility Act, 5 U.S.C. 605, the Commission certified in its *NPRM* that the action proposed will not have a significant impact on a substantial number of small entities. The regulations impose no obligations or requirements upon private entities but place substantive obligations upon the Federal Communications Commission to prohibit discrimination on the basis of handicap in programs or activities it conducts.

8. Copies of this *Report and Order* will be available on tape for those with impaired vision and may be obtained from the Consumer Assistance Office, Office of Congressional and Public Affairs, Federal Communications Commission, 1919 M Street, NW., Room 254, Washington, DC 20554.

9. Accordingly, it is ordered that, under the authority contained in sections 4(i) and 303 of the Communications Act, 47 U.S.C. 154(i) and 303, and section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794, Part 1 of the Commission's rules is amended, as shown below. It is further ordered that this proceeding is terminated.

Federal Communications Commission

**William J. Tricarico,**

*Secretary.*

**References**

[1] *See Notice ot Proposed Rulemaking (NPRM)*, 50 FR 35262 (1984).

[2] In *Community Television of Southern California* v. *Gottfried*, 459 U.S. 498 (1983), the Supreme Court held that the Federal Communications Commission is not a funding agency and therefore has no responsibility to enforce the section 504 nondiscrimination mandate with respect to federally assisted programs.

[3] Pub. L. No. 95-602, section 119, 92 Stat. 2982 (1978).

[4] *See* 124 Cong. Rec. 13,901 (1978) (remarks of Rep. Jeffords, the sponsor); 124 Cong. Rec. E 2668, E 2670 (daily ed. May 17, 1978) *id.;* 124 Cong. Rec. 13,897 (remarks of Rep. Brademas) *id.* at 38,552 (remarks of Rep. Sarasin).

[5] *See* § 1.1602 of the Commission's rules and the discussion of § 1.1630(b)(6) in the section-by-section analysis contained in *Appendix B.*

[6] 45 FR 72995, 3 CFR, 1980 Comp., p. 298.

[7] The DOJ prototype generally parallels the nondiscrimination obligations established by federal regulation for "federally assisted programs." *See* para. 2, *supra;* 28 CFR Part 41 (section 504 coordination regulation for federally assisted programs).

[8] 43 FR 28967, 3 CFR, 1978 Comp., p. 206.

[9] *See* DOJ's final regulations at 49 FR 35724 (1984); Joint Publication of twenty Federal agencies at 51 FR 22880 (1986).

[10] Comments were filed by the following entities: California Association of the Physically Handicapped (CAPH); The Center for Law and Social Policy (CLSP); Eastern Paralyzed Veterans Association (EPVA); Minnesota State Council for the Handicapped (MSCH); Paralyzed Veterans of America (PVA), State of Connecticut, Office of Protection and Advocacy for Handicapped and Developmentally Disabled Persons (OPAHDDP). CLSP also included a copy of the comments it sent to the Department of Justice in response to DOJ's *NPRM*, 48 FR 55996 (1983) and *Supplemental NPRM*, 49 FR 7792 (1984).

## Appendix A

### *Background*

The purpose of these final rules is to provide for the enforcement of section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794, as it applies to programs and activities conducted by the Federal Communications Commission. As amended by the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978, section 119, Pub. L. 95-602, 92 Stat. 2982, and Rehabilitation Act Amendments of 1986, section 103(d), Pub. L. 99-506, 100 Stat. 1810, section 504 of the Rehabilitation Act of 1973 states that:

> No otherwise qualified individual with handicaps in the United States, . . . shall, solely by reason of his handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance *or under any program or activity conducted by any Executive agency or by the United States Postal Service. The head of each such agency shall promulgate such regulations as may be necessary to carry out the amendments to this section made by the Rehabilitation, Comprehensive Services, and Developmental Disabilities Act of 1978. Copies of any proposed regulation shall be submitted to appropriate authorizing committees of the Congress, and such regulation may take effect no earlier than the thirtieth day after the date on which such regulation is so submitted to such committees.*

29 U.S.C. 794 (1978 amendment italicized).

The nondiscrimination obligations of the Commission, as set forth in these final rules, are identical, for the most part, to those established by federal regulations for programs or activities receiving federal financial assistance. *See* 28 CFR Part 41 (section 504 coordination regulation for federally assisted programs). This general parallelism is in accord with the intent expressed by supporters of the 1978 amendment in floor debate, including its sponsor, Rep. James M. Jeffords, that the Federal Government should have the same section 504 obligations as recipients of federal financial assistance. 124 Cong. Rec. 13901 (1978) (remarks of Rep. Jeffords); 124 Cong. Rec. E 2668, E 2670 (daily ed. May 17, 1978) *id.;* 124 Cong. Rec. 13897 (remarks of Rep. Brademas); *id.* at 38552 (remarks of Rep. Sarasin).

There are, however, some language differences between these final rules and the Federal Government's section 504 regulations for federally assisted programs. These changes are based on the Supreme Court's decision in *Southeast Community College* v. *Davis*, 442 U.S. 397 (1979), and the subsequent circuit court decisions interpreting *Davis* and section 504. *See Dopico* v. *Goldschmidt*, 687 F.2d 644 (2d Cir. 1982); *American Public Transit Association* v. *Lewis (APTA)*, 655 F.2d 1272 (D.C. Cir. 1981); *see also Rhode Island Handicapped Action Committee* v. *Rhode Island Public Transit Authority*, 718 F.2d 490 (1st Cir. 1983).

The language of the final regulations is also supported by the recent decision of the Supreme Court in *Alexander* v. *Choate*, 469 U.S. 287 (1985), where the Court held that the regulations for federally assisted programs did not require a recipient to modify its durational limitation on Medicaid coverage of inpatient hospital care for individuals with handicaps. Clarifying its *Davis* decision, the Court explained that section 504 requires only "reasonable" modifications, *see* 469 U.S. 301, and explicitly noted that "[t]he regulations implementing section 504 [for federally assisted programs] are consistent with the view that *reasonable* adjustments in the nature of the benefit offered must at times be made to assure meaningful success." *Id.* at n. 21 (emphasis added).

Incorporation of these changes, therefore, makes these section 504 federally conducted regulations consistent with the Federal Government's section 504 federally assisted regulations, as interpreted by

the Supreme Court. Many of the federally assisted regulations were issued prior to the judicial interpretations of *Davis*, subsequent lower court cases interpreting *Davis*, and *Alexander*; therefore their language does not reflect the interpretation of section 504 provided by the Supreme Court and by the various circuit courts. Of course, the federally assisted regulations must be interpreted to reflect the holdings of the Federal judiciary. Hence, the Commission believes that there are no significant differences between these final rules for federally conducted programs and the Federal Government's interpretation of section 504 regulations for federally assisted programs.

**Section-by-Section Analysis**

*Section 1.1801 Purpose.*

Section 1.1801 states the purpose of these rules, which is to effectuate section 119 of the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978, as it amended section 504 of the Rehabilitation Act of 1973, to prohibit discrimination on the basis of handicap in programs or activities conducted by Executive agencies or the United States Postal Service.

No comments were received on this section and it remains unchanged from our proposed rules.

*Section 1.1802 Application.*

These regulations apply to all programs or activities conducted by the Federal Communications Commission. The programs or activities of entities that are licensed or certified by the Federal Communications Commission are not covered by these regulations.

In its comments, CLSP objected to the phrase "[t]o the extent authorized by law and not inconsistent with the Commission's law enforcement responsibilities," as used in our proposed rules. They argued that because this phrase does not "provide a meaningful articulation of intent" under the Administrative Procedure Act, it does not put licensees "on notice as to how the FCC plans to apply section 504." To resolve this issue, the Commission has omitted this phrase from its final regulations.

Comments which objected to the statement that these rules do not affect entities that are licensed or certified by the Commission are addressed in the discussion of § 1.1830, *infra*.

*Section 1.1803 Definitions.*

"Assistant Attorney General." "Assistant Attorney General" refers to the Assistant Attorney General, Civil Rights Division, United States Department of Justice.

"Auxiliary aids." "Auxiliary aids" means services or devices that enable persons with impaired sensory, manual, or speaking skills to have an equal opportunity to participate in and enjoy the benefits of the Commission's programs or activities. The definition provides examples of commonly used auxiliary aids. Auxiliary aids are addressed in § 1.1860(a)(1). Comments on the definition of "auxiliary aids" are discussed in connection with that section.

In its comments, PVA suggested that the Commission change the name of this section to "Aids for reasonable accommodation," because the term "auxiliary aids" implies "something that is extra or discretionary." To avoid confusion in terminology, however, the Commission has declined this proposal and adopted the language in the DOJ prototype and final regulations. CLSP noted that auxiliary aids are required explicitly only by § 1.1860(a)(1), the section involving communications, and suggested that the Commission's rules should specify that auxiliary aids should include aids for the physically impaired, such as attendant services. The Commission will not adopt this proposal, *see* discussion, *infra*, of § 1.1860.

"Commission." For purposes of these regulations "Commission" means the Federal Communications Commission.

"Complete complaint." The definition of "complete complaint" means all the information necessary to enable the Commission to investigate the complaint and enables the Commission to determine the beginning of its obligation to investigate a complaint (*see § 1.1870(d)*).

"Facility." The term "facility" is used in §§ 1.1849, 1.1850 and 1.1851(f). The definition of "facility" is similar to that in the section 504 coordination regulations for federally assisted programs, 28 CFR 41.3(f), except that the term "rolling stock or other conveyances" has been added and the phrase "or interest in such property" has been deleted to clarify its coverage.

In its comments, MSCH objected to the omission of the phrase "or interest in such property" from the definition of "facility." As explained in the section-by-section analysis of our *NPRM*, the term "facility," as used in these regulations, refers to structures and does not include intangible property rights. This phrase has been omitted from the Commission's final rules because the requirement would be a logical absurdity if applied to a lease, life estate, mortgage, or other intangible property interest. However, we emphasize that these regulations apply to all regulations and programs conducted by the Commission regardless of whether the facility in which they are conducted is owned, leased or used on some other basis by the Commission.

"Individual with handicaps." The definition of "individual with handicaps" is identical to the definition of "handicapped person" appearing in the section 504 coordination regulations for federally assisted programs (28 CFR 41.31). Although section 103(d) of the Rehabilitation Act Amendments of 1986 changed the term "handicapped individual" to "individual with handicaps," the legislative history of this amendment indicated that no substantive change was intended. Thus, although the term has been changed in these final regulations to be consistent with the statute as amended, the definition is unchanged. In particular, even though the term as revised refers to "handicaps" in the plural, it does not exclude persons who have only one handicap.

In its comments, MSCH suggested that the Commission's rules should include specific examples under the definition for "physical and mental impairment" because they are "illustrative and serve to clarify." This is unnecessary because § 1.1803 of our proposed rules already contains specific examples and it remains unchanged in our final rules.

"Qualified individual with handicaps." The definition of "qualified individual with handicaps" is a revised version of the definition of "qualified handicapped person" appearing in the section 504 coordination regulation for federally assisted programs (28 CFR 41.32).

CLSP and PVA disagreed with our definition of "qualified handicapped person." Specifically, CLSP urged the Commission to: (1) Eliminate the "fundamental alteration" limitation now present in the definition of "qualified handicapped person" and (2) eliminate the requirement that the disabled person achieve the purpose of the program or activity. Both CLSP and OPAHDD suggested that the Commission's final rules incorporate the requirement that reasonable accommodation be made in determinations on whether a particular individual meets the essential eligibility requirements. Essentially, these commenters are suggesting that we

adopt the same definition as that of "qualified handicapped person" found in the federally assisted rule.

We emphasize, however, that paragraph (1) deviates from existing regulations for federally assisted programs because of intervening court decisions. It defines "qualified individual with handicaps" with regard to any program under which a person is required to perform services or to achieve a level of accomplishment. In such programs, a qualified individual with handicaps is one who can achieve the purpose of the program without modifications in the program that the Commission can demonstrate would result in a fundamental alteration in its nature. This definition reflects the decision of the Supreme Court in *Southeastern Community College* v. *Davis*, 442 U.S. 397 (1979). In that case, the Court ruled that a hearing-impaired applicant to a nursing school was not a "qualified handicapped person" because her hearing impairment would prevent her from participating in the clinical training portion of the program. The Court found that, if the program were modified so as to enable the respondent to participate (by exempting her from the clinical training requirements), "she would not receive even a rough equivalent of the training a nursing program normally gives." *Id.* at 410.

It also found that "the purpose of [the] program was to train persons who could serve the nursing profession in all customary ways," *id.* at 413, and that the respondent would be unable, because of her hearing impairment, to perform some functions expected of a registered nurse. It therefore concluded that the school was not required by section 504 to make such modifications that would result in "a fundamental alteration in the nature of the program." *Id.* at 410.

We have thus incorporated the *Davis* Court's language in the definition of "qualified individual with handicaps" in order to make clear that an individual with handicaps must be able to participate in the program offered by the Commission. The Commission is required to make modifications in order to enable an applicant with handicaps to participate, but is not required to offer a program of a fundamentally different nature. The test is whether, with appropriate modifications, the applicant can achieve the purpose of the program offered; not whether the applicant could benefit or obtain results from some other program that the Commission does not offer. Although the revised definition allows exclusion of some individuals with handicaps from some programs, it requires that an individual with handicaps who is capable of achieving the purpose of the program must be accommodated, provided that the modifications do not fundamentally alter the nature of the program.

The Commission has the burden of demonstrating that a proposed modification would constitute a fundamental alteration in the nature of its program or activity. Furthermore, in demonstrating that a modification would result in such an alteration, the Commission must follow the procedures established in §§ 1.1850(a) and 1.1860(d), which are discussed below, for demonstrating that an action would result in undue financial and administrative burdens. That is, the decision must be made by the Managing Director in writing after consideration of all resources available for the program or activity and must be accompanied by an explanation of the reasons for the decision. If the Managing Director determines that an action would result in a fundamental alteration, the Commission must consider options that would enable the individual with handicaps to achieve the purpose of the program but would not result in such an alteration. For programs or activities that do not fall under the first paragraph, paragraph (2) adopts the existing definition of "qualified individual with handicaps" with respect to services (28 CFR 41.32(b)) in the coordination regulation for programs receiving Federal financial assistance. Under this definition, a qualified individual with handicaps is one who meets the essential eligibility requirements for participation in the program or activity.

A new paragraph (4) has been added to make clear that "qualified individual with handicaps" is defined for purposes of employment in 29 CFR 1613.702(f), which is made applicable to this part by § 1.1840. Nothing in this part changes existing regulations applicable to employment.

"Section 504." This definition makes clear that, as used in these regulations, "section 504" applies only to programs or activities conducted by the Commission.

*Section 1.1810 Self-evaluation.*

The section requires that the Commission conduct a self-evaluation of its compliance with section 504 within one year of the effective date of these regulations. The self-evaluation requirement is present in the existing section 504 coordination regulations for programs or activities receiving Federal financial assistance (28 CFR 41.5(b)(2)).

The final rules use the same provision adopted by the Department of Justice in its final rules implementing section 504 for its federally conducted programs. *See* 28 CFR 39.110. The Department of Justice determined that this regulatory language was appropriate after it had analyzed the Federal Advisory Committee Act, 5 U.S.C. app., Executive Order 12024, and 41 CFR Part 101-6, the regulations of the General Services Administration implementing the Act.

The final rules provide that the Commission shall provide an opportunity for interested persons, including individuals with handicaps or organizations representing individuals with handicaps, to participate in the self-evaluation process and development of transition plans, *see* § 1.1850(d), by submitting comments (both oral and written).

CLSP was in favor of the requirement in this section of our proposed rules that the Commission maintain a list of interested persons consulted. However, retention of this requirement is unnecessary since, in the final rules, all those interested in the conduct of the Commission's self-evaluation will have an opportunity to submit written comments that will be available for public inspection.

In addition to the self-evaluation and notice provisions, PVA recommended that the Commission consider including the following in its final rules: (1) An assurance to be submitted by the Commission with its self-evaluation that the effects of the discriminatory policy will be eliminated; (2) a transition plan for compliance; and (3) specific modification requirements, especially those that affect persons with impaired vision and hearing. We think it is unnecessary to include these provisions in the rules. The very purpose of the self-evaluation procedure is to enable the agency to improve its responsiveness to the needs of individuals with handicaps. In full compliance with this purpose, we intend to take all necessary and appropriate measures to correct any deficiencies disclosed by the self-evaluation process. In addition, depending upon the circumstances, such measures may well include provisions for "transition plans" and other programs suggested by the commenters.

*Section 1.1811 Notice.*

Section 1.1811 requires the Commission to disseminate sufficient information to employees, applicants, participants, beneficiaries, and other interested persons to apprise them of rights and protections afforded by the 1978 amendments to section 504 and these regulations. Methods of providing

this information include, for example, the publication of information in handbooks, manuals, and pamphlets that are distributed to the public to describe the Commission's programs and activities; the display of informative posters in service centers and other public places; or the broadcast of information by television or radio."

CLSP indicated in its comments that this list of methods of providing information "is very helpful" and recommended that the Commission's regulations specifically require that information "effectively" apprise persons of their rights and protections against discrimination. According to CLSP, the addition of this language will ensure that the Commission will test the methods that it selects to accomplish the purposes of notification and take action that will have the desired impact. The Commission believes it is unnecessary to include this language change in the rules. The self-evaluation process, *see* § 1.1810, should ensure that Commission policies implementing the 1978 amendments are effective.

PVA suggested that "[n]otification of Commission policy regarding nondiscrimination should also be specifically distributed in recruitment materials." While we think this is an excellent suggestion, incorporation of this requirement in the final rules is unnecessary since the following statement is currently contained in item 16 of all Commission vacancy announcements: "all candidates will be considered without regard to political affiliation, marital status, race, color, sex, national origin, *nondisqualifying physical or mental handicap*, age, or other nonmerit factor (emphasis added)." *See* FCC Form A-179-A (January 1986). A similar statement is also included in all paid advertising for employment at the Commission.

*Section 1.1830 General prohibitions against discrimination.*

Section 1.1830 is an adaptation of the corresponding section of the section 504 coordination regulations for programs or activities receiving Federal financial assistance (28 CFR 41.51).

Paragraph (a) restates the nondiscrimination mandate of section 504. The remaining paragraphs in § 1.1830 establish the general principles for analyzing whether any particular action of the Commission violates this mandate. These principles serve as the analytical foundation for the remaining sections of the regulation. If the Commission violates a provision in any of the subsequent sections, it has also violated one of the general prohibitions found in § 1.1830. When there is no applicable subsequent provision, the general prohibitions stated in this section apply.

Paragraph (b) prohibits overt denials of equal treatment of individuals with handicaps. The Commission may not refuse to provide an individual with handicaps with an equal opportunity to participate in or benefit from its programs simply because the individual is handicapped. Such blatantly exclusionary practices often result from the use of irrebuttable presumptions that absolutely exclude certain classes of individuals with handicaps (*e.g.*, epileptics, hearing-impaired persons, persons with heart ailments) from participation in programs or activities without regard to an individual's actual ability to participate. In its comments, MSCH stated that the use of an irrebuttable presumption is "never" justified and questioned the expertise of those who would make these decisions. The Commission believes that the use of an irrebuttable presumption is permissible only in extremely limited circumstances, such as when a physical condition by its very nature would prevent an individual from meeting the essential eligibility requirements for participation in the activity in question.

In addition, section 504 prohibits more than just the most obvious denials of equal treatment. It is not enough to admit persons in wheelchairs to a program if the facilities in which the program is conducted are inaccessible. Paragraph (b)(1)(iii), therefore, requires that the opportunity to participate or benefit afforded to an individual with handicaps be as effective as that afforded to others. The later sections on program accessibility (§§ 1.1849-1.1851) and communications (§ 1.1860) are specific applications of this principle. Despite the mandate of paragraph (d) that the Commission administer its programs and activities in the most integrated setting appropriate to the needs of qualified individuals with handicaps, paragraph (b)(1)(iv), in conjunction with paragraph (d), permits the Commission to develop separate or different aids, benefits, or services when necessary to provide individuals with handicaps with an equal opportunity to participate in or benefit from the Commission's programs or activities. Paragraph (b)(1)(iv) requires that different or separate aids, benefits, or services be provided only when necessary to ensure that the aids, benefits, or services are as effective as those provided to others. Even when separate or different aids, benefits, or services would be more effective, paragraph (b)(2) provides that a qualified individual with handicaps still has the right to choose to participate in the program that is not designed to accommodate individuals with handicaps.

Paragraph (b)(1)(v) prohibits the Commission from denying a qualified individual with handicaps the opportunity to participate as a member of a planning or advisory board. Paragraph (b)(1)(vi) prohibits the Commission from limiting a qualified individual with handicaps in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving any aid, benefit, or service.

Paragraph (b)(3) prohibits the Commission from utilizing criteria or methods of administration that deny individuals with handicaps access to the Commission's programs or activities. The phrase "criteria or methods of administration" refers to official written Commission policies and the actual practices of the Commission. This paragraph prohibits both blatantly exclusionary policies or practices and nonessential policies and practices that are neutral on their face, but deny individuals with handicaps an effective opportunity to participate.

Paragraph (b)(4) specifically applies the prohibition enunciated in § 1.1830(b)(3) to the process of selecting sites for construction of new facilities or selecting existing facilities to be used by the Commission. Although MSCH disagreed with the interpretation that paragraph (b)(4) does not apply to construction of additional buildings at an existing site, this interpretation conforms to DOJ guidelines concerning the prototype regulations, and we think it is reasonable.

Paragraph (b)(5) prohibits the Commission, in the selection of procurement contractors, from using criteria that subject qualified individuals with handicaps to discrimination on the basis of handicap.

Paragraph (b)(6) prohibits the Commission from discriminating against qualified individuals with handicaps on the basis of handicap in the granting of licenses or certification. A person is a "qualified handicapped person" with respect to licensing or certification, if he or she can meet the essential eligibility requirements for receiving the license or certification (*see* section 1.1803).

In addition, the Commission may not establish requirements for the programs or activities of licensees or certified entities that subject qualified individuals with handicaps to discrimination on the basis of handicap. For example, the Commission must comply with these nondiscrimination

requirements when establishing safety standards for the operations of licensees. Thus, the Commission must ensure that standards that it promulgates do not discriminate against the employment of qualified individuals with handicaps in an impermissible manner.

Paragraph (b)(6) does not extend section 504 directly to the programs or activities of licensees or certified entities themselves. The programs or activities of Federal licensees or certified entities are not themselves federally conducted programs or activities nor are they programs or activities receiving Federal financial assistance merely by virtue of the Federal license or certificate. However, as noted above, section 504 may affect the content of the rules established by the agency for the operation of the program or activity of the licensee or certified entity, and thereby indirectly affect limited aspects of their operations.

CLSP, CAPH and PVA disagreed with our statement that the 1978 amendments do not extend the nondiscrimination mandate of section 504 to the programs or activities of entities that are licensed or certified by the Commission. Specifically, they argued that broadcast licensees are subject to the 1978 amendments. Although the 1978 amendments extended the section 504 nondiscrimination mandate to "any program or activity conducted by an Executive agency," the programming or activity of a broadcaster licensed by the Commission is not a "program or activity conducted by" the Commission itself and is thus unaffected by the 1978 amendments. *See* 124 Cong. Rec. 13901, 38551 (1978) (remarks of Rep. Jeffords, author of the 1978 amendments). DOJ's final regulations and the most recent DOJ approved joint publication of regulations to enforce the 1978 amendments to section 504 specifically acknowledge that "[s]ection 504 does not of itself extend an agency's regulatory authority to the activities of licensees or certified entities." *See* 49 FR 35728; 51 FR 22884.

In addition, according to PVA, the Commission is "empowered with broad authority to regulate the communications industry, especially where it 'would be consistent with the public interest,' " citing *U.S.* v. *Southwestern Cable*, 392 U.S. 158, 167–68 (1968). PVA therefore concluded that the Commission has "a duty to ensure that the licensee, as a public trustee, acts in the public interest and does not discriminate against handicapped persons."

Similarly, CAPH argued that these regulations should extend to the activities broadcast licensees because regulating them is the primary activity of the Commission under sections 301 and 303 of the Communications Act, 47 U.S.C. 301, 303. Specifically, CAPH suggested that broadcast licensees should be required to provide closed-captioning for the hearing-impaired and equal employment opportunities to their employees with handicaps similar to those afforded minorities and women. CLSP recommends that the Commission delete the language in § 1.1802 that exempts licensees from the scope of these regulations and publish a second *NPRM* in which the government articulates the manner in which it proposes to apply section 504 to its licensees.

Although the proposals made by PVA and CAPH would clearly be beyond the scope of this proceeding, we note that these same arguments have been raised repeatedly before the Commission, the courts of appeals and the Supreme Court and have been rejected in every instance as without legal basis. *See, e.g., License Renewal Applications—Los Angeles*, 69 FCC 2d 451 (1978), *reconsid. denied*, 72 FCC 2d 273 (1979), *aff'd in part and vacated in part, Gottfried* v. *FCC*, 210 U.S. App. D.C. 184, 655 F.2d 297 (1981), *rev'd in part, Community Television of Southern Calif.* v. *Gottfried*, 459 U.S. 498 (1983) and *cert. denied, Gottfried* v. *FCC*, 454 U.S. 1144 (1982); *See also In re: Amendment of Broadcast Equal Opportunity Rules and FCC Form 395*, 76 FCC 2d 86 (1980), *reconsid. denied*, 80 FCC 2d 299 (1980), *aff'd, California Ass'n of the Physically Handicapped (CAPH)* v. *FCC*, 721 F.2d 667 (9th Cir. 1983), *cert. denied*, 469 U.S. 832 (1984), *aff'g, California Paralyzed Veteran's Ass'n* v. *FCC*, 496 F. Supp. 125 (C.D. Cal. 1980). In *Gottfried, supra*, the Supreme Court concluded that Congress had not "intended the Rehabilitation Act of 1983 to impose any new enforcement obligations on the Federal Communications Commission." 459 U.S. at 509. The Court stated that the public interest standard of the Communications Act was insufficient to create any obligations to enforce section 504 or incorporate that section's standards with the Communications Act 459 U.S. at 509, n. 14.

Because there is no specific requirement in the Communications Act that licensees caption all or any part of their programming, the Commission has concluded that, except for emergency messages, the general public interest standard of the Communications Act does not require captioning by licensees. *See generally, Use of Telecasts to Inform and Alert Viewers With Impaired Hearing*, 26 FCC 2d 917 (1970); *Captioning of Emergency Messages*, 61 FCC 2d 18 (1976), *modified on reconsid.*, 62 FCC 2d 565 (1977); *Captioning for the Deaf*, 41 FR 5834 (1976); *Captioning for the Deaf*, 63 FCC 2d 378 (1976); *Teletext Transmissions*, 53 P&F 2d 1309, 1315–16, 1328–29 (1983), *reconsid. denied*, 57 P&F 2d 842 (1985), *pet. for reh. denied, TRAC* v. *FCC*, 806 F.2d 1115 (D.C. Cir. 1986), *petition for cert. filed*, No. 86–1371 (February 20, 1987). Although the Commission has encouraged captioning and has adopted rules to facilitate the development and implementation of captioning technology, it has concluded that because of technological and financial problems, it should rely on voluntary initiatives in this area except with respect to emergency announcements.

In addition, the Communications Act contains no provision requiring the FCC to adopt regulations governing employment of individuals with handicaps in the broadcasting industry or requiring broadcasters to employ any special procedures for employment of individuals with handicaps. In a rulemaking proceeding, the Commission has considered the question of whether we should adopt regulations governing television stations' employment of individuals with handicaps as we have done for minorities and women. The Commission rejected the idea on the basis that: (1) The public interest standard of the Communications Act did not require the adoption of such regulations; (2) the need for such a program had not been demonstrated; and (3) it did not believe that we could effectively administer such a program. *Broadcast Equal Opportunity Rules, supra*, 76 FCC 2d at 94. The Ninth Circuit Court of Appeals affirmed this decision, concluding that there was no statutory basis in the Rehabilitation Act or Communications Act to extend the Commission's EEO rules to individuals with handicaps and that the Equal Protection Clause of the Constitution also did not require such action. *CAPH* v. *FCC, supra*, 721 F.2d at 667.

PVA suggested that this part be revised to be consistent with the federally assisted rule, which includes a prohibition on federal agencies' providing significant assistance to an agency, organization, or person that discriminates on the basis of handicap. The Commission did not adopt this suggestion. Not only would this provision be inappropriate in regulations applying only to federally conducted programs or activities, but it is clearly

inapplicable to the FCC, which is not a "funding agency." *See Gottfried, supra.*

Paragraph (c) provides that programs conducted pursuant to Federal statute or Executive order that are designed to benefit only individuals with handicaps or a given class of individuals with handicaps may be limited to those individuals with handicaps.

Paragraph (d) provides that the Commission must administer programs and activities in the most integrated setting appropriate to the needs of the qualified individuals with handicaps.

*Section 1.1840 Employment.*

Section 1.1840 prohibits discrimination on the basis of handicap in employment by the Commission. Courts have held that section 504, as amended in 1978, covers the employment practices of Executive agencies. *Gardner* v. *Morris*, 752 F.2d 1271, 1277 (8th Cir. 1985); *Smith* v. *United States Postal Service*, 742 F.2d 257, 259–60 (6th Cir. 1984); *Prewitt* v. *United States Postal Service*, 662 F.2d 292, 302–04 (5th Cir. 1981); *Contra McGuiness* v. *United States Postal Service*, 744 F.2d 1318, 1320–21 (7th Cir. 1984); *Boyd* v. *United States Postal Service*, 752 F.2d 410, 413–14 (9th Cir. 1985).

Courts uniformly have held that, in order to give effect to section 501 of the Rehabilitation Act, which covers Federal employment, the administrative procedures of section 501 must be followed in processing complaints of employment discrimination under section 504. *Smith*, 742 F.2d at 262; *Prewitt*, 662 F.2d at 304. Accordingly, section 1.1640 (Employment) of these rules, adopts the definitions, requirements, and procedures of section 501 as established in regulations, of the Equal Employment Opportunity Commission (EEOC) at 29 CFR Part 1613. In addition, § 1.1870(b) specifies that the Commission will use the existing EEOC procedures to resolve allegations of employment discrimination. These final rules have not been changed except that a reference to the Equal Employment Opportunity Commission has been added. Responsibility for coordinating enforcement of Federal laws prohibiting discrimination in employment is assigned to the EEOC by Executive Order 12067 (3 CFR, 1978 Comp., p. 206). Under this authority, the EEOC establishes government-wide standards on nondiscrimination in employment on the basis of handicap.

In its comments, MSCH argued that this whole section needs clarification because no reference is made to recruitment and hiring, making reasonable accommodation and review of pre-employment examinations, inquiries and tests. While this rule could define terms with respect to employment and enumerate what practices are covered and what requirements apply, the Commission has adopted EEOC's recommendation that to avoid duplicative, competing or conflicting standards with respect to Federal employment, reference in these regulations to the government-wide EEOC rules is sufficient. The class of Federal employees and applicants for employment covered by section 504 is identical to or subsumed within that covered by section 501. To apply different or lesser standards to persons alleging violations of section 504 could lead unnecessarily to confusion in the enforcement of the Rehabilitation Act with respect to Federal employment.

*Section 1.1849 Program accessibility: Discrimination prohibited.*

Section 1.1849 states the general nondiscrimination principle underlying the program accessibility requirements of §§ 1.1850 and 1.1851.

*Section 1.1850 Program accessibility: Existing facilities.*

These regulations adopt the program accessibility concept found in the existing section 504 coordination regulation for programs or activities receiving Federal financial assistance (28 CFR 41.56–41.58), with certain modifications. Thus, § 1.1850 requires that the Commission's program or activity, when viewed in its entirety, be readily accessible to and usable by individuals with handicaps. These regulations also make clear that the Commission is not required to make each of its existing facilities accessible (§ 1.1850(a)(1)). However, § 1.1850, unlike 28 CFR 41.56–41.57, places explicit limits on the Commission's obligation to ensure program accessibility (§ 1.1850(a)(2)).

In their comments to this section, MSCH and CLSP suggested that the Commission has misinterpreted the *Davis* decision. Paragraph (a)(2) generally codifies recent case law that defines the scope of the Commission's obligation to ensure program accessibility. This paragraph provides that in meeting the program accessibility requirement the Commission is not required to take any action that would result in a fundamental alteration in the nature of its program or activity or in undue financial and administrative burdens. A similar limitation is provided in § 1.1860(d). This provision is based on the Supreme Court's holding in *Southeastern Community College* v. *Davis*, 442 U.S. 397 (1979), that section 504 does not require program modifications that result in a fundamental alteration in the nature of a program, and on the Court's statement that section 504 does not require modifications that would result in "undue financial and administrative burdens." 442 U.S. at 412. Since *Davis*, circuit courts have applied this limitation on a showing that only one of the two "undue burdens" would be created as a result of the modification sought to be imposed under section 504. *See, e.g., Dopico* v. *Goldschmidt, supra; American Public Transit Association* v. *Lewis (APTA), supra.*

This interpretation is also supported by the Supreme Court's recent decision in *Alexander* v. *Choate*, 469 U.S. 287 (1985). *Alexander* involved a challenge to the State of Tennessee's reduction of inpatient hospital care coverage under Medicaid from 20 to 14 days per year. Plaintiffs argued that this reduction violated section 504 because it had an adverse impact on individuals with handicaps. The Court assumed, without deciding, that section 504 reaches at least some conduct that has an unjustifiable disparate impact on individuals with handicaps, but held that the reduction was not "the sort of disparate impact" discrimination that might be prohibited by section 504 or its implementing regulation (*id.* at 299).

Relying on *Davis*, the Court said that section 504 guarantees qualified individuals with handicaps "meaningful access to the benefits that the grantee offers" (*id.* at 301) and that "*reasonable adjustments* in the nature of the benefit being offered must at times be made to assure meaningful access." *Id.* at n. 21 (emphasis added). However, section 504 does not require " 'changes,' 'adjustments' or 'modifications' to existing programs that would be 'substantial'. . . or that would constitute 'fundamental alteration(s) in the nature of the program' " (469 U.S. at 300, n. 20) (citations omitted).

*Alexander* supports the position, based on *Davis* and the earlier, lower court decisions, that in some situations, certain accommodations for an individual with handicaps may so alter an agency's program or activity, or entail such extensive costs and administrative burdens that the refusal to undertake the accommodations is not discriminatory. Thus, failure to include such an "undue burdens" provision could lead to judicial invalidation of these regulations or reversal of a particular enforcement action taken pursuant to these regulations. This

provision is therefore unchanged from the proposed rules.

In their comments, EPVA and PVA asserted that the holding in *Davis* that the plaintiff was not a qualified individual with handicaps and that the subsequent reference to "undue financial and administrative burdens" was mere *dicta*. This view overlooks the interpretations of *Davis* provided by the Federal circuit court cases mentioned above. The *APTA* and *Dopico* decisions make it clear that financial burdens can limit the obligation to comply with section 504. *See also New Mexico Association for Retarded Citizens* v. *New Mexico*, 678 F.2d 847 (10th Cir. 1982). In addition, the Court in *Alexander* held that the "administrative costs" of subjecting any action affecting Medicaid recipients to a detailed analysis of its effects on an individual with handicaps "would be well beyond the accommodations that are required under *Davis*." 469 U.S. at 308.

In its comments, PVA expressed difficulty with the undue burdens defense, based on the assumption that the Commission's regulations are substantively inconsistent with the regulations for federally assisted programs. This assumption is incorrect. Judicial interpretations have established that neither section 504 nor the regulations for federally assisted programs establish an unlimited obligation to modify programs or activities to accommodate individuals with handicaps.

It has been argued that *APTA* is no longer good law, in view of the Supreme Court's decision in *Consolidated Rail Corp.* v. *Darrone (Conrail)*, 465 U.S. 624 (1984), in which the Court said that Congress intended, through the 1978 amendments to the statute, to codify the HEW regulations. It has also been suggested that *Conrail* prohibits departures from the language of the federally assisted regulations. The *Conrail* decision addressed only the question of employment coverage under the Statute and cannot be read to mean that Congress "codified" other parts of the regulations. Furthermore, the undue burdens defense is not inconsistent with the HEW regulations; in fact, the employment provisions of the HEW regulations—those addressed in *Conrail*—do include an "undue hardship" defense. This position is confirmed by the Supreme Court's decision in *Alexander*. There the Court referred to its previous recognition in *Conrail* of the regulations as "an important source of guidance on the meaning of section 504," *Alexander*, 469 U.S. at 304, n. 24, and at the same time, as discussed above, emphasized that section 504 does not mandate extensive costs and administrative burdens.

The Commission is adopting the language in its proposed rules relating to procedural requirements for application of the "fundamental alteration" and "undue financial and administrative burdens." The Commission believes, that, in most cases, making a Commission program accessible will not result in undue burdens. In determining whether financial and administrative burdens are undue, all Commission resources available for use in the funding and operation of the conducted program or activity should be considered. The burden of proving that compliance with § 1.1850(a) would fundamentally alter the nature of a program or activity or would result in undue financial and administrative burdens rests with the Commission. The decision that compliance would result in such alteration or burdens must be made by the Commission's Managing Director and must be accompanied by a written statement of the reasons for reaching that conclusion. Any person who believes that he or she or any specific class of persons has been injured by the Managing Director's decision or failure to make a decision may file a complaint under the compliance procedures established in § 1.1870. Finally, even if there is a determination that making a program accessible will fundamentally alter the nature of the program, or will result in undue financial and administrative burdens, the Commission must still take action, short of that outer limit, that will open participation in the Commission program to individuals with handicaps to the fullest extent possible.

EPVA, PVA and CLSP also argued that the decision that an action would result in undue burdens should be based on the resources of the Commission as a whole. The Commission believes that its entire budget is an inappropriate touchstone for making determinations as to undue financial and administrative burdens. Parts of the Commission's budget may be earmarked for specific purposes and are simply not available for use in making the Commission's programs accessible to individuals with handicaps. In its comments, MSCH suggested that the Commission should substitute the more specific, positive and less discriminatory term "undue hardship" for "burden". To avoid creating unnecessary confusion as to terminology, the Commission declined to make this change. In its comments, CLSP suggested that the Commission's regulations, like the Department of Labor's regulations, should specifically provide for input from the applicant/beneficiary on the question of costs, funding and resources, based on the rationale that the person to be accommodated is often the best source of information for developing effective and low-cost accommodations. The Commission believes it is unnecesary to adopt this as part of its final regulations; we fully expect that persons requesting services will make their views known, and, in cases of adverse decisions by the Managing Director, they will have a full opportunity to challenge his decisions through the complaint process.

Paragraph (b)(1) sets forth a number of means by which program accessibility may be achieved, including redesign of equipment, reassignment of services to accessible buildings, and provision of aides. In choosing among methods, the Commission shall give priority consideration to those that will be consistent with provision of services in the most integrated setting appropriate to the needs of individuals with handicaps. Structural changes in existing facilities are required only when there is no other feasible way to make the Commission's program accessible. The Commission may comply with the program accessibility requirement by delivering services at alternate accessible sites or making home visits as appropriate.

Paragraphs (c) and (d) establish time periods for complying with the program accessibility requirement. As currently required for federally assisted programs by 28 CFR 41.57(b), the Commission must make any necessary structural changes in facilities as soon as practicable, but in no event later than three years after the effective date of these regulations. Where structural modifications are required, a transition plan shall be developed within six months of the effective date of these regulations. Aside from structural changes, all other necessary steps to achieve compliance shall be taken within sixty days.

*Section 1.1851 Program accessibility: New construction and alterations.*

Overlapping coverage exists with respect to new construction under section 504, section 502 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 792), and the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151–4157). Section 1.1851 provides that those buildings that are constructed or altered by, on behalf of, or for the use of the Commission shall be designed, constructed, or altered to be readily accessible to and usable by

individuals with handicaps in accordance with 41 CFR 101-19.600 to 101-19.607. This standard was promulgated pursuant to the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151-4157). We believe that it is appropriate to adopt the existing Architectural Barriers Act standard for section 504 compliance because new and altered buildings subject to these regulations are also subject to the Architectural Barriers Act and because adoption of the standard will avoid duplicative and possibly inconsistent standards.

MSCH took issue in its comments with the fact that existing buildings leased by the Commission after the effective date of these regulations are not required by these regulations to meet accessibility standards simply by virtue of being leased. They are subject, however, to the program accessibility standard for existing facilities in § 1.1850. To the extent the buildings are newly constructed or altered, they must also meet the new construction and alteration requirements of § 1.1851.

In any event, Federal practice under section 504 has always treated newly leased buildings as subject to existing facility program accessibility standard. Unlike the construction of new buildings where architectural barriers can be avoided at little or no cost, the application of new construction standards to an existing building being leased raises the same prospect of retrofitting as the use of an existing Federal facility, and the Commission believes the same accessibility standard should apply to both owned and leased existing buildings.

In *Rose v. United States Postal Service*, 774 F.2d 1355 (9th Cir. 1985), the Ninth Circuit held that the Architectural Barriers Act requires accessibility at the time of lease. The *Rose* court did not address the issue of whether section 504 likewise requires accessibility as a condition of lease, and the case was remanded to the District Court for, among other things, consideration of the issue. In its comments, CLSP suggested that, in accordance with *Rose*, the Commission's final regulations should clarify that "leased buildings are required to comply with the Architectural Barriers Act . . . [in order to] reflect an accepted practice and prevent confusion about the reach of the Barriers Act." We believe it more appropriate, however, to provide more specific guidance on section 504 requirements for leased buildings after the litigation is completed.

*Section 1.1860 Communications.*

Section 1.1860 requires the Commission to take appropriate steps to ensure effective communication with personnel of other federal entities, applicants, participants, and members of the public. These steps shall include procedures for determining when auxiliary aids are necessary under § 1.1860(a)(1) to afford an individual with handicaps an equal opportunity to participate in, and enjoy the benefits of, the Commission's program or activity. They shall also include an opportunity for individuals with handicaps to request the auxiliary aids of their choice. This expressed choice shall be given primary consideration by the Commission (section 1.1860(a)(1)(i)). The Commission shall honor the choice unless it can demonstrate that another effective means of communication exists or that use of the means chosen would not be required under § 1.1860(d). That paragraph limits the obligation of the Commission to ensure effective communication in accordance with *Davis* and the circuit court opinions interpreting it (*see* section-by-section analysis of § 1.1850(a)(2), *supra*). Unless not required by § 1.1860(d), the Commission shall provide auxiliary aids at no cost to the individual with handicaps.

In their comments, CLSP and PVA suggested that the definition of auxiliary aids should include attendant services that may be needed to aid individuals with handicaps to travel to meetings. Like the Department of Justice, the Commission declined to adopt this proposal on the basis that such services are generally personal in nature and not directly related to the federally conducted programs. To the extent that the services of an attendant are not directly related to a federally conducted program or activity, it would be inappropriate to require them at Federal expense. *See* 49 FR 35732 (1984).

In some circumstances, a notepad and written materials may be sufficient to permit effective communication with a hearing-impaired person. In many circumstances, however, they may not be, particularly when the information being communicated is complex or exchanged for a lengthy period of time (*e.g.*, a meeting) where the hearing-impaired applicant or participant is not skilled in spoken or written language. Then, a sign language interpreter may be appropriate. For vision-impaired persons, effective communication might be achieved by several means, including readers and audio recordings. In general, the Commission intends to make clear to the public: (1) The communications services it offers to afford individuals with handicaps an equal opportunity to participate in or benefit from its programs or activities; (2) that an individual with handicaps may request a particular mode of communication; and (3) the Commission's preferences regarding auxiliary aids if it can demonstrate that several different modes are effective.

In its comments, CLSP commended the Commission's efforts to encourage captioning and recommended that the Commission add a provision to this section of its regulations that "[t]he agency shall make efforts to provide captioning for hearing-impaired people in training films and video tapes." Although captioning is an option that the Commission may choose, our reliance on an alternative, effective method of communication; *i.e.*, sign language interpreters, would be consistent with this section of our regulations, the DOJ prototype and final regulations. Therefore, the Commission did not adopt this proposal.

The Commission shall ensure effective communication with vision-impaired and hearing-impaired persons involved in hearings conducted by the Commission. Auxiliary aids must be afforded where necessary to ensure effective communication at these proceedings. When sign language interpreters are necessary, the Commission may require that it be given reasonable notice prior to the proceeding of the need for an interpreter. Moreover, the Commission need not provide individually prescribed devices, readers for personal use or study, or other devices of a personal nature (section 1.1860(a)(i)(ii)). For example, the Commission need not provide eye glasses or hearing aids to applicants or participants in its programs. Similarly, these regulations do not require the Commission to provide wheelchairs to persons with mobility impairments. In its comments, MSCH suggested adding the following language to § 1.1860 of the Commission's rules: "[i]t is always advisable to have a number of wheelchairs on hand to accommodate a disabled or elderly or weary person." The Commission will not adopt this suggestion as part of its final regulations; however, the Commission has a wheelchair available for emergency situations in the office of its public health nurse.

Paragraph (b) requires the Commission to provide information to individuals with handicaps concerning accessible services, activities, and facilities. Paragraph (c) requires the Commission to provide signage at

inaccessible facilities that directs users to locations with information about accessible facilities.

*Section 1.1870 Compliance procedures.*

Paragraph (a) specifies that paragraphs (c) through (l) of this section establish the procedures for processing complaints other than employment complaints. Paragraph (b) provides that the Commission will process employment complaints according to procedures established in existing regulations of the EEOC (29 CFR Part 1613) pursuant to section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791).

In its comments, CLSP noted that the Commission's "proposed rules fail to inform complainants of the address to which complaints should be sent." We have adopted this suggestion in the Commission's final regulations. The Commission's Managing Director shall be responsible for coordinating implementation of this section (section 1.1870(c)). Complaints may be sent to the Handicapped Coordinator, Office of Managing Director, Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

The Commission is required to accept and investigate all complete complaints (§ 1.1870(d)). If it determines that it does not have jurisdiction over a complaint, it shall promptly notify the complainant and make reasonable efforts to refer the complaint to the appropriate entity of the Federal Government (§ 1.1870(e)).

In its comments, CLSP proposed that the Commission's rules should provide that any complainant who files an incomplete complaint will be notified within thirty (30) days of receipt of the incomplete complaint that additional information is needed. If the complainant fails to complete the complaint within thirty (30) days of receipt of such notice, the Commission shall dismiss the complaint without prejudice. This is fully consistent with the Department of Justice's final regulations. *See* 28 CFR 39.170(f)(2). The Commission adopted this suggestion in this section of its final regulations.

CLSP also suggested in connection with the compliance procedures suggested that the Commission should be required to refer a complaint to the appropriate agency when it does not have jurisdiction over it. The proposed rules merely required the Commission to make reasonable efforts to do so. The Commission has not adopted this suggestion because of several possible circumstances in which the Commission might not be able to successfully refer a complaint. For example, the Commission might receive a complaint that no Federal agency would have jurisdiction over or that did not contain sufficient information to identify the appropriate agency.

In addition, CLSP proposed that once the Managing Director has decided that a specific accommodation cannot be provided, like the Department of Labor's regulations, this decision should be made to represent the Commission's final decision so that the applicant or beneficiary can proceed directly to court to challenge the Managing Director's decision. The Commission has not adopted this approach because we believe it is based on a faulty premise. The Commission does not find it "unlikely" that an administrative appeal of this decision will produce a different result. Indeed, the Commission has, on numerous occasion, reversed the decisions made by its Review Board and the various Bureau and Office Chiefs, and firmly rejects the suggestion that it would "rubber-stamp" any of these decisions. As a result, this section of our final rules will remain consistent with the Department of Justice prototype.

Paragraph (f) requires the Commission to notify the Architectural and Transportation Barriers Compliance Board upon receipt of a complaint alleging that a building or facility subject to the Architectural Barriers Act was designed, constructed, or altered in a manner that does not provide ready access to and use by individuals with handicaps.

Paragraph (g) requires the Commission to provide to the complainant, in writing, findings of fact and conclusions of law, the relief granted if noncompliance is found, and notice of the right to appeal (section 1.1870(g)). One appeal within the Commission shall be provided (section 1.1870(i)). The appeal will not be heard by the same person who made the initial determination of compliance or noncompliance (section 1.1870(i)).

Paragraph (l) permits the Commission to delegate its authority for investigating complaints to other federal agencies. However, the statutory obligation of the Commission to make a final determination of compliance or noncompliance may not be delegated.

PVA also suggested that this section of the Commission's rules include a specific provision for judicial review. CLSP expressed concern that the existence of an internal compliance procedure somehow curtails the complainant's right to a *de novo* review. In their final regulations, the Department of Justice addressed this argument as follows:

> It is beyond our jurisdiction to specify that *de novo* review is available to complainants seeking judicial review of final agency decisions. This issue is for the courts to decide. That is also true for the issue of the availability of a private right of action, either without invoking our compliance procedures or after the issuance of letters of findings.

*See* 49 FR 35733. Accordingly, the Commission does not include a specific provision for judicial review in its final regulations.

PVA also suggested that this section include: (1) A provision to ensure that all other regulation forms and directives by the FCC are superseded by the nondiscrimination requirement of this regulation; (2) a provision for the availability of attorneys fees in administrative proceedings; and (3) a provision for the availability of compensation to the prevailing party. The Commission believes that forms and directives can be more appropriately dealt with through internal guidelines. With respect to attorneys fees, the Commission agrees with the Department's finding that "[n]othing contained in title V of the Rehabilitation Act provides for the agency award of attorneys fees in administrative proceedings other than those involving Federal employment." *Id.* at 35733. Similarly, the statute does not provide for compensation to prevailing parties, and we will not include such a provision in the regulations.

**Final Rules**

## PART 1—[AMENDED]

Part 1 of Title 47 of the Code of Federal Regulations is amended as follows:

Subpart N is added to 47 CFR Part 1 to read as follows:

### Subpart N—Enforcement of Nondiscrimination on the Basis of Handicap in Programs or Activities Conducted by the Federal Communications Commission

Sec.

1.1801 Purpose.
1.1802 Application.
1.1803 Definitions.
1.1804–1.1809 [Reserved]
1.1810 Self-evaluations.
1.1811 Notice.
1.1812–1.1829 [Reserved]
1.1830 General prohibitions against discrimination.
1.1831–1.1839 [Reserved]
1.1840 Employment.
1.1841–1.1848 [Reserved]
1.1849 Program accessibility: Discrimination prohibited.
1.1850 Program accessibility: Existing facilities.
1.1851 Program accessibility: New construction and alterations.
1.1852–1.1859 [Reserved]

Sec.
1.1806 Communications.
1.1861–1.1869 [Reserved]
1.1870 Compliance procedures.
1.1871–1.1899 [Reserved]

## Subpart N—Enforcement of Nondiscrimination on the Basis of Handicap in Programs or Activities Conducted by the Federal Communications Commission

Authority: 29 U.S.C. 794.

### § 1.1801 Purpose.

The purpose of this part is to effectuate section 119 of the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978, which amended section 504 of the Rehabilitation Act of 1973 to prohibit discrimination on the basis of handicap in programs or activities conducted by Executive agencies or the United States Postal Service.

### § 1.1802 Applications.

This part applies to all programs or activities conducted by the Federal Communications Commission. The programs or activities of entities that are licensed or certified by the Federal Communications Commission are not covered by these regulations.

### § 1.1803 Definitions.

For purposes of this part, the term——

"Assistant Attorney General" means the Assistant Attorney General, Civil Rights Division, United States Department of Justice.

"Auxiliary aids" means services or devices that enable persons with impaired sensory, manual, or speaking skills to have an equal opportunity to participate in, and enjoy the benefits of, programs or activities conducted by the Commission. For example, auxiliary aids useful for persons with impaired vision include readers, Brailled materials, audio recordings, and other similar services and devices. Auxiliary aids useful for persons with impaired hearing include telephone handset amplifiers, telephones compatible with hearing aids, telecommunication devices for deaf persons (TDD's), interpreters, notetakers, written materials, and other similar services and devices.

"Commission" means Federal Communications Commission.

"Complete complaint" means a written statement that contains the complainant's name and address and describes the Commission's alleged discriminatory action in sufficient detail to inform the Commission of the nature and date of the alleged violation of section 504. It shall be signed by the complainant or by someone authorized to do so on his or her behalf. Complaints filed on behalf of classes or third parties shall describe or identify (by name, if possible) the alleged victims of discrimination.

"Facility" means all or any portion of buildings, structures, equipment, roads, walks, parking lots, rolling stock or other conveyances, or other real or personal property.

"Individual with handicaps" means any individual who has a physical or mental impairment that substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment. As used in this definition, the phrase:

(1) "Physical or mental impairment" includes—

(i) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: Neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin; and endocrine; or

(ii) Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The term "physical or mental impairment" includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech, and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, and drug addiction and alcoholism.

(2) "Major life activities" includes functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

(3) "Has a record of such an impairment" means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

(4) "Is regarded as having an impairment" means—

(i) Has a physical or mental impairment that does not substantially limit major life activities but is treated by the Commission as constituting such a limitation;

(ii) Has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; or

(iii) Has none of the impairments defined in paragraph (1) of this definition but is treated by the Commission as having such an impairment.

"Qualified individual with handicaps" means—

(1) With respect to any Commission program or activity under which an individual is required to perform services or to achieve a level of accomplishment, an individual with handicaps who meets the essential eligibility requirements and who can achieve the purpose of the program or activity without modifications in the program or activity that the Commission can demonstrate would result in a fundamental alteration in its nature; and

(2) With respect to any other program or activity, an individual with handicaps who meets the essential eligibility requirements for participation in, or receipt of benefits from, that program or activity; and

(3) "Qualified handicapped person" as that term is defined for purposes of employment in 29 CFR 1613.702(f), which is made applicable to this part by § 1.1840.

"Section 504" means section 504 of the Rehabilitation Act of 1973, Pub. L. 93–112, 87 Stat. 394, 29 U.S.C. 794, as amended by the Rehabilitation Act Amendments of 1974, Pub. L. 93–516, 88 Stat. 1617, and the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978, Pub. L. 95–602, 92 Stat. 2955, and the Rehabilitation Act Amendments of 1986, sec. 103(d), Pub. L. 99–506, 100 Stat. 1810. As used in this part, section 504 applies only to programs or activities conducted by Executive agencies and not to federally assisted programs.

### §§ 1.1804–1.1809 [Reserved]

### § 1.1810 Self-evaluation.

(a) The Commission shall, within one year of the effective date of this part, evaluate its current policies and practices, and the effects thereof, that do not or may not meet the requirements of this part, and, to the extent modification of any such policies and practices is required, the Commission shall proceed to make the necessary modifications.

(b) The Commission shall provide an opportunity to interested persons, including individuals with handicaps or organizations representing individuals with handicaps, to participate in the self-evaluation process by submitting comments (both oral and written).

(c) The Commission shall, until three years following completion of the self-

evaluation, maintain on file and make available for public inspection—

(1) A description of areas examined and any problems identified; and

(2) A description of any modifications made.

**§ 1.1811 Notice.**

The Commission shall make available to employees, applicants, participants, beneficiaries, and other interested persons such information regarding the provisions of this part and its applicability to the programs or activities conducted by the Commission, and make such information available to them in such manner as the Managing Director finds necessary to apprise such persons of the protections against discrimination assured them by section 504 and these regulations.

**§§ 1.1812-1.1829 [Reserved]**

**§ 1.1830 General prohibitions against discrimination.**

(a) No qualified individual with handicaps shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity conducted by the Commission.

(b)(1) The Commission, in providing any aid, benefit, or service, may not, directly or through contractual, licensing, or other arrangements, on the basis of handicap—

(i) Deny a qualified individual with handicaps the opportunity to participate in or benefit from the aid, benefit, or service;

(ii) Afford a qualified individual with handicaps an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others;

(iii) Provide a qualified individual with handicaps with an aid, benefit, or service that is not as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others;

(iv) Provide different or separate aid, benefits, or services to individuals with handicaps or to any class of individuals with handicaps than is provided to others unless such action is necessary to provide qualified individuals with handicaps with aid, benefits, or services that are as effective as those provided to others;

(v) Deny a qualified individual with handicaps the opportunity to participate as a member of planning or advisory boards; or

(vi) Otherwise limit a qualified individual with handicaps in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving the aid, benefit, or service.

(2) The Commission may not deny a qualified individual with handicaps the opportunity to participate in programs or activities that are not separate or different, despite the existence of permissibly separate or different programs or activities.

(3) The Commission may not, directly or through contractual or other arrangements, utilize criteria or methods of administration the purpose or effect of which would—

(i) Subject qualified individuals with handicaps to discrimination on the basis of handicap; or

(ii) Defeat or substantially impair accomplishment of the objectives of a program or activity with respect to individuals with handicaps.

(4) The Commission may not, in determining the site or location of a facility, make selections the purpose or effect of which would—

(i) Exclude individuals with handicaps from, deny them the benefits of, or otherwise subject them to discrimination under any program or activity conducted by the Commission; or

(ii) Defeat or substantially impair the accomplishment of the objectives of a program or activity with respect to individuals with handicaps.

(5) The Commission, in the selection of procurement contractors, may not use criteria that subject qualified individuals with handicaps to discrimination on the basis of handicap.

(6) The Commission may not administer a licensing or certification program in a manner that subjects qualified individuals with handicaps to discrimination on the basis of handicap, nor may the Commission establish requirements for the programs or activities of licensees or certified entities that subject qualified individuals with handicaps to discrimination on the basis of handicap. However, the programs or activities of entities that are licensed or certified by the Commission are not, themselves, covered by this part.

(c) The exclusion of nonhandicapped persons from the benefits of a program limited by Federal statute or Executive order to individuals with handicaps or the exclusion of a specific class of individuals with handicaps from a program limited by Federal statute or Executive order to a different class of individuals with handicaps is not prohibited by this part.

(d) The Commission shall administer programs and activities in the most integrated setting appropriate to the needs of qualified individuals with handicaps.

**§§ 1.1831-1.1839 [Reserved]**

**§ 1.1840 Employment.**

No qualified individual with handicaps shall, on the basis of handicap, be subjected to discrimination in employment under any program or activity conducted by the Commission. The definitions, requirements and procedures of section 501 of the Rehabilitation Act of 1973, 29 U.S.C. 791, as established by the Equal Employment Opportunity Commission in 29 CFR Part 1613, as well as the procedures set forth in the Basic Negotiations Agreement Between the Federal Communications Commission and National Treasury Employees Union (effective June 22, 1982) and Subchapter III of the Civil Service Reform Act of 1978, 5 U.S.C. 7121(d), shall apply to employment in federally conducted programs or activities.

**§§ 1.1841-1.1848 [Reserved]**

**§ 1.1849 Program accessibility: Discrimination prohibited.**

Except as otherwise provided in § 1.1850, no qualified individual with handicaps shall, because the Commission's facilities are inaccessible to or unusable by individuals with handicaps, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity conducted by the Commission.

**§ 1.1850 Program accessibility: Existing facilities.**

(a) *General.* The Commission shall operate each program or activity so that the program or activity, when viewed in its entirety, is readily accessible to and usable by individuals with handicaps. This paragraph does not—

(1) Necessarily require the Commission to make each of its existing facilities accessible to and usable by individuals with handicaps;

(2) Require the Commission to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. In those circumstances where Commission personnel believe that the proposed action would fundamentally alter the program or activity or would result in undue financial and administrative burdens, the Commission has the burden of proving that compliance with § 1.1850(a) would result in such alteration or burdens. The decision that compliance would result in

such alteration or burdens must be made by the Managing Director after considering all Commission resources available for use in the funding and operation of the conducted program or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action would result in such an alteration or such burdens, the Commission shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that individuals with handicaps receive the benefits and services of the program or activity.

(b) *Methods.* The Commission may comply with the requirements of this section through such means as redesign of equipment, reassignment of services to accessible buildings, assignment of aides to beneficiaries, home visits, delivery of services at alternate accessible sites, alteration of existing facilities and construction of new facilities, use of accessible rolling stock, or any other methods that result in making its programs or activities readily accessible to and usable by individuals with handicaps. The Commission is not required to make structural changes in existing facilities where other methods are effective in achieving compliance with this section. The Commission, in making alterations to existing buildings, shall meet accessibility requirements to the extent compelled by the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151–4157), and any regulations implementing it. In choosing among available methods for meeting the requirements of this section, the Commission shall give priority to those methods that offer programs and activities to qualified individuals with handicaps in the most integrated setting appropriate.

(c) *Time period for compliance.* The Commission shall comply with the obligations established under this section within sixty (60) days of the effective date of this part except that where structural changes in facilities are undertaken, such changes shall be made within three (3) years of the effective date of this part, but in any event as expeditiously as possible.

(d) *Transition plan.* In the event that structural changes to facilities will be undertaken to achieve program accessibility, the Commission shall develop, within six (6) months of the effective date of this part, a transition plan setting forth the steps necessary to complete such changes. The Commission shall provide an opportunity to interested persons, including individuals with handicaps or organizations representing individuals with handicaps, to participate in the development of the transition plan by submitting comments (both oral and written). A copy of the transition plan shall be made available for public inspection. The plan shall, at a minimum—

(1) Identify physical obstacles in the Commission's facilities that limit the accessibility of its programs or activities to individuals with handicaps;

(2) Describe in detail the methods that will be used to make the facilities accessible;

(3) Specify the schedule for taking the steps necessary to achieve compliance with this section and, if the time period of the transition plan is longer than one (1) year, identify steps that will be taken during each year of the transition period;

(4) Indicate the official responsible for implementation of the plan.

**§ 1.1851 Program accessibility: New construction and alterations.**

Each building or part of a building that is constructed or altered by, on behalf of, or for the use of the Commission shall be designed, constructed, or altered so as to be readily accessible to and usable by individuals with handicaps. The definitions, requirements and standards of the Architectural Barriers Act, 42 U.S.C. 4151–4157, as established in 41 CFR 101–19.600 to 101–19.607, apply to buildings covered by this section.

**§§ 1.1852–1.1859 [Reserved]**

**§ 1.1860 Communications.**

(a) The Commission shall take appropriate steps to ensure effective communication with applicants, participants, personnel of other federal entities, and members of the public.

(1) The Commission shall furnish appropriate auxiliary aids where necessary to afford an individual with handicaps an equal opportunity to participate in, and enjoy the benefits of, a program or activity conducted by the Commission.

(i) In determining what type of auxiliary aid is necessary, the Commission shall give primary consideration to the requests of the individual with handicaps.

(ii) The Commission need not provide individually prescribed devices, readers for personal use or study, or other devices, of a personal nature.

(2) Where the Commission communicates with applicants and beneficiaries by telephone, telecommunications devices for deaf persons (TDD's) or equally effective telecommunications systems shall be used.

(b) The Commission shall ensure that interested persons, including persons with impaired vision or hearing, can obtain information as to the existence and location of accessible services, activities, and facilities.

(c) The Commission shall provide signage at a primary entrance to each of its inaccessible facilities, directing users to a location at which they can obtain information about accessible facilities. The international symbol for accessibility shall be used at each primary entrance of an accessible facility.

(d) This section does not require the Commission to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. In those circumstances where Commission personnel believe that the proposed action would fundamentally alter the program or activity or would result in undue financial and administrative burdens, the Commission has the burden of proving that compliance with § 1.1860 would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the Managing Director after considering all Commission resources available for use in the funding and operation of the conducted program or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action required to comply with this section would result in such an alteration or such burdens, the Commission shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that, to the maximum extent possible, individuals with handicaps receive the benefits and services of the program or activity.

**§§ 1.1861–1.1869 [Reserved]**

**§ 1.1870 Compliance procedures.**

(a) Except as provided in paragraph (b) of this section, this section applies to all allegations of discrimination on the basis of handicap in programs or activities conducted by the Commission.

(b) The Commission shall process complaints alleging violations of section 504 with respect to employment according to the procedures established by the Equal Employment Opportunity Commission in 29 CFR Part 1613 pursuant to section 501 of the Rehabilitation Act of 1973, 29 U.S.C. 791.

(c) The Managing Director shall be responsible for coordinating implementation of this section. Complaints may be sent to the Handicapped Coordinator, Office of Managing Director, Federal Communications Commission, 1919 M Street NW., Room 852, Washington, DC 20554.

(d) *Acceptance of complaint.* (1) The Commission shall accept and investigate all complete complaints for which it has jurisdiction. All complete complaints must be filed within one-hundred eighty (180) days of the alleged act of discrimination. The Commission may extend this time period for good cause.

(2) If the Commission receives a complaint that is not complete, the complainant will be notified within thirty (30) days of receipt of the incomplete complaint that additional information is needed. If the complainant fails to complete the complaint within thirty (30) days of receipt of this notice, the Commission shall dismiss the complaint without prejudice.

(e) If the Commission receives a complaint over which it does not have jurisdiction, it shall promptly notify the complainant and shall make reasonable efforts to refer the complaint to the appropriate government entity.

(f) The Commission shall notify the Architectural and Transportation Barriers Compliance Board upon receipt of any complaint alleging that a building or facility that is subject to the Architectural Barriers Act of 1968, as amended, 42 U.S.C. 4151–4157, is not readily accessible to and usable by individuals with handicaps.

(g) Within one-hundred eighty (180) days of the receipt of a complete complaint for which it has jurisdiction, the Commission shall notify the complainant of the results of the investigation in a letter containing—

(1) Findings of fact and conclusions of law;

(2) A description of a remedy for each violation found; and

(3) A notice of the right to appeal.

(h) Appeals of the findings of fact and conclusions of law or remedies must be filed by the complainant within ninety (90) days of receipt from the Commission of the letter required by § 1.1870(g). The Commission may extend this time for good cause.

(i) Timely appeals shall be accepted and processed by the Office of the Secretary, Federal Communications Commission, 1919 M Street NW., Room 202, Washington, DC 20554.

(j) The Commission shall notify the complainant of the results of the appeal within sixty (60) days of the receipt of the request. If the Commission determines that it needs additional information from the complainant, it shall have sixty (60) days from the date it receives the additional information to make its determination on the appeal.

(k) The time limits cited in (g) and (j) of this section may be extended with the permission of the Assistant Attorney General.

(l) The Commission may delegate its authority for conducting complaint investigations to other federal agencies, except that the authority for making the final determination may not be delegated to another agency.

**§§ 1.1871–1.1899 [Reserved]**

[FR Doc. 87–9952 Filed 5–1–87; 8:45 am]

BILLING CODE 6712-01-M

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## 47 CFR Part 95

## Radio Control Radio Service; Authorized Channels

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rules.

**SUMMARY:** This document adopts rules to clarify the permissible uses of Radio Control (R/C) channels. These rules are being adopted because the current frequency tables may not be sufficiently clear to the reader.

**EFFECTIVE DATE:** These rule amendments are effective May 4, 1987.

**ADDRESS:** Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:** John J. Borkowski, Special Services Division, Private Radio Bureau, (202) 632–4964.

**SUPPLEMENTARY INFORMATION:**

### List of Subjects in 47 CFR Part 95

Radio Control (R/C) Radio Service.

### Order

In the matter of amendment of Subpart C of Part 95 of the Commission's Rules for the Radio Control of Model Aircraft, Boats, Cars and Other Similar Devices.

Adopted: April 2, 1987.
Released: April 13, 1987.

1. This *Order* amends Part 95 by deleting frequency tables in § 95.207(a) and replacing them with textual listings directly associating channels to their permitted uses in order to avoid confusion to the reader.

2. In the Commission's *Report and Order* in General Docket No. 82–181, 47 FR 51875, November 18, 1982, eighty new channels were added to the Radio Control (R/C) Radio Service. Fifty 8 kHz channels were added exclusively for the control of model aircraft devices, starting at 72.01 MHz and proceeding every 20 kHz through 72.99 MHz. Twenty-three 8 kHz channels were added exclusively for the control of model surface craft devices, starting at 75.41 MHz and proceeding every 20 kHz through 75.85 MHz.

3. The current table of R/C frequencies in § 95.207 does not clearly delineate the intended exclusivity of these channels. Nor does it clearly set forth the proper uses of the surviving R/C frequencies, which remained unchanged. This has resulted in confusion on the part of equipment manufacturers and users of the Radio Control Service.

4. Therefore, it is necessary to revise the rules to clarify the proper uses of the respective R/C channels adopted by the FCC. We are doing this by eliminating the frequency tables entirely and listing the frequencies and their proper uses in narrative form.

5. Because these rule amendments which clarify our rules are non-substantive, the notice and comment provisions as well as the effective date requirements of the Administrative Procedure Act are inapplicable.

6. Authority for this action is contained in sections 4(i) and 303(r) of the Communications Act of 1934, as amended (47 U.S.C. 154(i) and 303(r)), and § 0.231(d) of the Commission's rules (47 CFR 0.231(d)).

7. Accordingly, it is ordered, That Part 95 of the Commission's rules (47 CFR Part 95) is amended as set forth below.

8. These rule amendments shall become effective upon publication in the **Federal Register.**

Federal Communications Commission.

**Alan R. McKie,**

*Deputy Managing Director.*

## PART 95—[AMENDED]

Subpart C of Part 95 of Chapter I of Title 47 of the Code of Federal Regulations is amended, as follows:

**Authority:**

1. The authority citation for Part 95 continues to read: Secs. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, unless otherwise noted.

2. Paragraph (a) of § 95.207 is revised, and paragraph (e) of § 95.207 is removed and reserved, as follows:

**§ 95.207 (R/C Rule 7) On what channels may I operate?**

(a) Your R/C station may transmit only on the following channels (frequencies):

(1) The following channels may be used to operate any kind of device (any object or apparatus, except an R/C transmitter), including a model aircraft device (any small imitation of an aircraft) or a model surface craft device (any small imitation of a boat, car or vehicle for carrying people or objects, except aircraft): 26.995, 27.045, 27.095, 27.145, 27.195 and 27.255 MHz.

(2) The following channels may only be used to operate a model aircraft device: 72.01, 72.03, 72.05, 72.07, 72.09, 72.11, 72.13, 72.15, 72.17, 72.19, 72.21, 72.23, 72.25, 72.27, 72.29, 72.31, 72.33, 72.35, 72.37, 72.39, 72.41, 72.43, 72.45, 72.47, 72.49, 72.51, 72.53, 72.55, 72.57, 72.59, 72.61, 72.63, 72.65, 72.67, 72.69, 72.71, 72.73, 72.75, 72.77, 72.79, 72.81, 72.83, 72.85, 72.87, 72.89, 72.91, 79.93, 72.95, 72.97 and 72.99 MHz.

(3) The following channels may only be used to operate a model surface craft devices: 75.41, 75.43, 75.45, 75.47, 75.49, 75.51, 75.53, 75.55, 75.57, 75.59, 75.61, 75.63, 75.65, 75.67, 75.69, 75.71, 75.73, 75.75, 75.77, 75.79, 75.81, 75.83, 75.85, 75.87, 75.89, 75.91, 75.93, 75.95, 75.97 and 75.99 MHz.

(4) Channels 72.16, 72.32 and 72.96 MHz may also be used to operate a model aircraft device or a model surface craft device until December 20, 1987.

(5) Channels 72.08, 72.24, 72.40 and 75.64 MHz may also be used to operate a model aircraft device until December 20, 1987.

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(e) (Reserved.)

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[FR Doc. 87-9784 Filed 5-1-87; 8:45 am]
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**DEPARTMENT OF DEFENSE**

**48 CFR Parts 204, 205, 206, 219 and 252**

## Department of Defense Federal Acquisition Regulation Supplement; Implementation of Section 1207 of Pub. L. 99-661; Set-Asides for Small Disadvantaged Business Concerns

**AGENCY:** Department of Defense (DoD).

**ACTION:** Interim rule and request for comment.

**SUMMARY:** The Defense Acquisition Regulatory (DAR) Council invites public comment concerning an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement section 1207 of the National Defense Authorization Act for Fiscal Year 1987 (Pub. L. 99-661), entitled "Contract Goal for Minorities." The statute permits DoD to enter into contracts using less than full and open competitive procedures, when practical and necessary to facilitate achievement of a goal of awarding 5 percent of contract dollars to small disadvantaged business (SDB) concerns during FY 1987, 1988 and 1989, provided the contract price does not exceed fair market cost by more than 10 percent. The interim rule implements the statute by requiring that contracting officers set aside acquisitions, other than small purchases conducted under procedures of Federal Acquisition Regulation (FAR) Part 13, for exclusive competition among SDB concerns, whenever the contracting officer determines that offers can be anticipated from two or more SDB concerns and that the contract award price will not exceed fair market price by more than 10 percent.

**DATES:** *Effective Date:* June 1, 1987 (effective for all solicitations issued on or after June 1, 1987).

*Comment Date*: Comments concerning the interim rule must be received on or before August 3, 1987, to be considered in formulating a final rule. Please cite DAR Case 87-33 in all correspondence related to these subjects.

**ADDRESS:** Interested parties should submit written comments to: Defense Acquisition Regulatory Council, ATTN: Mr. Charles W. Lloyd, Executive Secretary, ODASD (P) DARS, c/o OASD (P&L) (M&RS), Room 3C841, The Pentagon, Washington, DC 20301-3062.

**FOR FURTHER INFORMATION CONTACT:** Mr. Charles W. Lloyd, Executive Secretary, DAR Council, (202) 697-7266.

**SUPPLEMENTARY INFORMATION:**

### A. Background

As summarized above, section 1207(a), Pub. L. 99-661 established an objective that 5 percent of total combined DoD obligations (i.e., procurement; research, development, test and evaluation; construction; and, operation and maintenance) for contracts and subcontracts awarded during FY 1987 through FY 1989, be entered into with (1) small disadvantaged business (SDB) concerns, (2) historically Black colleges and universities, and (3) minority institutions. To facilitate attainment of that goal, Congress permitted DoD, in Section 1207(e) to use less then full and open competitive procedures in awarding contracts, provided contract prices do not exceed fair market price by more than 10 percent. The scope of the present rule addresses achievement of the goal as it pertains to SDB concerns; other aspects of Section 1207 will be addressed in subsequent issuances.

The interim rule establishes a "rule of two" regarding set-asides for SDB concerns, which is similar in approach to long-standing criteria used to determine whether acquisitions should be set aside for small businesses as a class. Specifically, whenever a contracting officer determines that competition can be expected to result between two or more SDB concerns, and that there is a reasonable expectation that the award price will not exceed fair market price by more than 10 percent, the contracting officer is directed to reserve the acquisition for exclusive competition among such SDB firms. The rule provides guidance concerning *Commerce Business Daily* notices to bidders concerning the SDB set-aside reservation, as well as a "sources sought" announcement to ensure that competition is enhanced while also ensuring that non-SDB concerns are not misled in incurring bid or proposal costs. However, should effective competition not materialize or pricing exceed the 10 percent factor, guidance is provided to the contracting officer concerning withdrawal of the set-aside.

In order to ensure that small businesses as a class are not penalized by the new SDB set-aside procedure, it was decided not to apply SDB set-asides to small purchases conducted under FAR Part 13 procedures, upon which heavy reliance is placed in ensuring that small businesses as a class receive a fair proportion of DoD contract dollars. This approach should tend to reduce impact upon non-SDB small businesses resulting from the new procedure, while facilitating attainment of the goal established by Congress.

### B. Regulatory Flexibility Act

The interim rule may have significant economic impact upon a substantial number of small businesses, within the meaning of the Regulatory Flexibility Act of 1980, 5 U.S.C. 601 et seq., and an Initial Regulatory Flexibility Analysis is deemed necessary. However, as another proposed rule will be issued shortly, affecting the same topic, the DoD has determined that it is necessary to delay preparation of that analysis, under authority of 5 U.S.C. 608, in order that the cumulative impact of both rules might be considered. The initial analysis will be provided to the Chief Counsel for Advocacy, U.S. Small Business Administration, at the time of

publication of the referenced proposed rule. Comments are invited.

Comments from small entities concerning DFARS Subpart 219.8 will also be considered in accordance with Section 610 of the Act. Such comments must be submitted separately and cite DAR Case 87-610D in correspondence.

**C. Paperwork Reduction Act**

The interim rule does not impose information collection requirements within the meaning of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq., and OMB approval of the interim rule is not required pursuant to 5 CFR Part 1320 et seq.

**D. Determination to Issue an Interim Regulation**

In order to achieve the 5 percent goal established by Congress during FY 1987, DoD has determined pursuant to Pub. L. 99-577 that compelling reasons exist to publish interim DFARS changes without prior public comment, inasmuch as present procurement procedures have been determined inadequate to attain the prescribed goal. Comments received in response to this Notice will be evaluated and incorporated in future revisions to this rule.

**List of Subjects in 48 CFR Parts 204, 205, 206, 219 and 252**

Government procurement.

**Charles W. Lloyd,**

*Executive Secretary, Defense Acquisition Regulatory Council.*

Therefore, 48 CFR Parts 204, 205, 206, 219 and 252 are amended as follows:

1. The authority citation for 48 CFR Parts 204, 205, 206, 219 and 252 continues to read as follows:

**Authority:** 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, and DoD FAR Supplement 201.301.

## PART 204—ADMINISTRATIVE MATTERS

2. Section 204.671-5 is amended by adding at the end of the introductory text and before "Code A" in paragraph (d)(9) the sentence "Small Disadvantaged Business set-asides will use Code K-Set-aside."; by changing the period at the end of paragraph (e)(3)(iii) to a comma and adding the words "unless the action is reportable under code 4 or 5 below."; by adding paragraphs (iv) and (v) to paragraph (e)(3); and by revising paragraph (f), to read as follows:

**204.671.5 Instructions for completion of DD Form 350.**

* * * * *

(e) * * *

(3) * * *

(iv) Enter Code 4 if the award was totally set-aside for small disadvantaged businesses pursuant to 219.502-72.

(v) Enter Code 5, if the award was made to a small disadvantaged business pursuant to 19.7001 an award was made based on the application of a price differential. If award was made to a small disadvantaged business concern without the application of a price differential (i.e., the small disadvantaged business was the low offeror without the differential), enter Code 3.

* * * * *

(f) *Part E, DD Form 350.* Data elements E2-E4 shown below are to be reported in accordance with the appropriate departmental or OSD instructions.

(1) *Item E1, Ethnic Group.* If the award was made to a small disadvantaged business firm and the contractor submitted the certification required by 252.219-7005, enter the code below which corresponds to the ethnic group of the contractor.

(i) Enter Code A if the contractor categorizes the firm as being owned by Asian-Indian Americans.

(ii) Enter Code B if the contractor categorizes the firm as being owned by Asian-Pacific Americans.

(iii) Enter Code C if the contractor categorizes the firm as being owned by Black Americans.

(iv) Enter Code D if the contractor categorizes the firm as being owned by Hispanic Americans.

(v) Enter Code E if the contractor categorizes the firm as being owned by Native Americans.

(vi) Enter Code F if the contractor categorizes the firm as being owned by other minority group Americans.

(2) Reserved for OSD.

(3) Reserved for OSD.

(4) Reserved for OSD.

## PART 205—PUBLICIZING CONTRACT ACTIONS

3. Section 205.202 is amended by adding paragraph (a)(4)(S-70) to read as follows:

**205.202 Exceptions.**

(a)(4)(S-70) The exception at FAR 5.202(a)(4) may not be used for contract actions under 206.203-70. (See 205.207(d) (S-72) and (S-73).)

* * * * *

4. Section 205.207 is amended by adding paragraphs (d) (S-72) and (d) (S-73) to read as follows:

**205.207 Preparation and transmittal of synopses.**

* * * * *

(d) (S-72) When the proposed acquisition provides for a total small disadvantaged business (SDB) set-aside under 206.203 (S-72), state: "The proposed contract listed here is a 100 percent small disadvantaged business set-aside. Offers from concerns other than small disadvantaged business concerns are not solicited."

(d) (S-73) When the proposed acquisition is being considered for possible total small disadvantaged business set-aside under 206.203 (S-70), state: "The proposed contract listed here is being considered for 100 percent set-aside for small disadvantaged business (SDB) concerns. Interested SDB concerns should, as early as possible but not later than 15 days of this notice, indicate interest in the acquisition by providing to the contracting office above evidence of capability to perform and a positive statement of eligibility as a small socially and economically disadvantaged business concern. If adequate interest is not received from SDB concerns, the solicitation will be issued as _____ (enter basis for continuing the acquisition, e.g. 100% small business set-aside, unrestricted, 100% small business set-aside with evaluation preference for SDB concerns, etc.) without further notice. Therefore, replies to this notice are requested from _____ (enter all types business to be solicited in the event a SDB set-aside is not made; e.g., all small business concerns, all business concerns, etc.) as well as from SDB concerns."

## PART 206—COMPETITION REQUIREMENTS

5. A new Subpart 206.2, consisting of sections 206.203 and 206.203-70, is added to read as follows:

### Subpart 206.2—Full and Open Competition After Exclusion of Sources

**206.203 Set-aside for small business and labor surplus area concerns.**

**206.203-70 Set-asides for small disadvantaged business concerns.**

(a) To fulfill the objective of section 1207 of Pub. L. 99-661, contracting officers may, for Fiscal Years 1987, 1988, and 1989, set-aside solicitations to allow only small disadvantaged business concerns as defined at 219.001 to compete under the procedures in Subpart 219.5. No separate justification or determination and findings is required under this Part to set-aside a contract action for small disadvantaged business.

## PART 219—SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS

6. Sections 219.000 and 219.001 are added immediately before Subpart 219.1 to read as follows:

**219.000 Scope of part.**

(a) (S-70) This part also implements the provisions of Section 1207, Pub. L. 99-661, which establishes for DoD a five percent goal for dollar awards during Fiscal Years 1987, 1988 and 1989 to small disadvantaged business (SDB) concerns, and which provides certain discretionary authority to the Secretary of Defense for achievement of that objective.

**219.001 Definitions.**

"Asian-Indian American," means a United States citizen whose origins are India, Pakistan, or Bangladesh.

"Asian-Pacific American," means a United States citizen whose origins are in Japan, China, the Philippines, Vietnam, Korea, Samoa, Guam, the U.S. Trust Territory of the Pacific Islands, the Northern Mariana Islands, Laos, Combodia, or Taiwan.

"Economically disadvantaged individuals" means socially disadvantaged individuals whose ability to compete in the free enterprise system is impaired due to diminished opportunities to obtain capital and credit as compared to others in the same line of business who are not socially disadvantaged.

"Fair Market Price." For purposes of this part, fair market price is a price based on reasonable costs under normal competitive conditions and not on lowest possible costs. For methods of determining fair market price see FAR 19.806-2.

"Native American," means American Indians, Eskimos, Aleuts, and native Hawaiians.

"Small business concern," means a concern including its affiliates, that is independently owned and operated, not dominant in the field of operation in which it is bidding on Government contracts, and qualified as a small business under the criteria and size standards in 13 CFR Part 121.

"Small disadvantaged business (SDB) concern," as used in this part, means a small business concern that (a) is at least 51 percent owned by one or more individuals who are both socially and economically disadvantaged, or a publicly owned business having at least 51 percent of its stock owned by one or more socially and economically disadvantaged individuals, (b) has its management and daily business controlled by one or more such individuals, and (c) the majority of the earning of which accrue to such socially and economically disadvantaged individuals.

"Socially disadvantaged individuals" means individuals who have been subjected to racial or ethnic prejudice or cultural bias because of their identity as a member of a group without regard to their qualities as individuals.

7. Section 219.201 is amended by adding paragraph (a) to read as follows:

**219.201 General policy.**

(a) In furtherance of the Government policy of placing a fair proportion of its acquisitions with small business concerns and small disadvantaged business (SDBs) concerns, section 1207 of the FY 1987 National Defense Authorization Act (Pub. L. 99-661) established an objective for the Department of Defense of awarding five percent of its contract dollars during Fiscal Years 1987, 1988, and 1989 to SDBs and of maximizing the number of such concerns participating in Defense prime contracts and subcontracts. It is the policy of the Department of Defense to strive to meet these objectives through the enhanced use of outreach efforts, technical assistance programs, the section 8(a) program, and the special authorities conveyed through section 1207 (e.g., through the creation of a total SDB set-aside). In regard to technical assistance programs, it is the Department's policy to provide SDB concerns technical assistance, to include information about the Department's SDB Program, advice about acquisition procedures, instructions on preparation of proposals, and such other assistance as is consistent with the Department's mission.

* * * * *

8. Section 219.202-5 is amended by designating the existing paragraph as paragraph (a); and by adding a new paragraph (b) to read as follows:

**219.202-5 Data collection and reporting requirements.**

* * * * *

(b) The Contracting Officer shall complete the following report for initial awards of $25,000 or greater, whenever such award is the result of a Total SDB set-aside (219.502-72). This report shall be completed within three days of award and forwarded through channels to the Departmental or Staff Director of Small and Disadvantaged Business Utilization.

Total Small Disadvantaged Business (SDB) Set-Aside

(DFARS 206.203-70)

Individual Contract Action Report

(Over $25,000)

1. Contract Number _____.
2. Action Date _____.

| | Whole dollars |
|---|---|
| 3. Total dollars awarded | _____. |
| 4. Total value of fair market price (See FAR 19.806-2) | _____. |
| 5. Difference ((3) minus (4)) | _____. |

9. A new Subpart 219.3, consisting of sections 219.301, 219.302 and 219.304, is added to read as follows:

## Subpart 219.3—Determination of Status as a Small Business Concern

**219.301 Representation by the offeror.**

(S-70) (1) To be eligible for award under 219.502-72, an offeror must represent in good faith that it is a small disadvantaged business (SDB) at the time of written self certification.

(2) The contracting officer shall accept an offeror's representation in a specific bid or proposal that it is a SDB unless another offeror or interested party challenges the concern's SDB representation, or the contracting officer has reason to question the representation. The contracting officer may presume that socially and economically disadvantaged individuals include Black Americans, Hispanic Americans, Native Americans, Asian Pacific Americans, Asian Indian Americans and other minorities or any other individual found to be disadvantaged by the SBA pursuant to section 8(a) of the Small Business Act. Challenges of the questions concerning the size of the SDB shall be processed in accordance with FAR 19.302. Challenges of and questions concerning the social or economic status of the offeror shall be processed in accordance with 219.302.

**219.302 Protesting a small business representation.**

(S-70) *Protesting a SDB representation.* (1) Any offeror or other interested party may, in connection with a contract involving a SDB set-aside or otherwise involving award to a SDB based on preferential consideration, challenge the disadvantaged business status of any offeror by sending or delivering a protest to the contracting officer responsible for the particular acquisition. The protest shall contain the basis for the challenge together with

specific detailed evidence supporting the protestant's claim.

(2) In order to apply to the acquisition in question, such protest must be filed with and received by the contracting officer prior to the close of business on the fifth business day after the bid opening date for sealed bids. In negotiated acquisitions, the contracting officer shall notify the apparently unsuccessful offerors of the apparently successful SDB offeror(s) in accordance with FAR 15.1001 and establish a deadline date by which any protest on the instant acquisition must be received.

(3) To be considered timely, a protest must be delivered to the contracting officer by hand or telegram within the period allotted or by letter post marked within the period. A protest shall also be considered timely if made orally to the contracting officer within the period allotted, and if the contracting officer thereafter receives a confirming letter postmarked no later than one day after the date of such telephone protest.

(4) Upon receipt of a protest of disadvantaged business status, the contracting officer shall forward the protest to the Small Business Administration (SBA) District Office for the geographical area where the principal office of the SDB concern in question is located. In the event of a protest which is not timely, the contracting officer shall notify the protestor that its protest cannot be considered on the instant acquisition but has been referred to SBA for consideriation in any future acquisition; however, the contracting officer may question the SDB status of an apparently successful offeror at any time. A contracting officer's protest is always timely whether filed before or after award.

(5) The SBA will determine the disadvantaged business status of the questioned offeror and notify the contracting officer and the offeror of its determination. Award will be made on the basis of that determination. This determination is final.

(6) If the SBA determination is not received by the contracting officer within 10 working days after SBA's receipt of the protest, it shall be presumed that the questioned offeror is a SBD concern. This presumption will not be used as a basis for award without first ascertaining when a determination can be expected from SBA, and where practicable, waiting for such determination, unless further delay in award would be disadvantageous to the Government.

**219.304 Solicitation provisions.**

(b) Department of Defense activities shall use the provision at 252.7005, Small Disadvantaged Business Concern Representation, in lieu of the provision at FAR 52.219-2, Small Disadvantaged Business Concern Representation.

10. Section 219.501 is amended by adding paragraph (b); by adding at the end of paragraph (c) the words "The contracting officer is responsible for reviewing acquisitions to determine whether they can be set-aside for SDBs."; by adding at the end of paragraph (d) the words "Actions that have been set-aside for SDBs are not referred to the SBA representative for review."; by adding at the end of paragraph (g) the words "except that the prior successful acquisition of a product or service on the basis of a small business set-aside does not preclude consideration of a SDB set-aside for future requirements for that product or service."; to read as follows:

**219.501 General.**

(b) The determination to make a SDB set-aside is a unilateral determination by the contracting officer.

* * * * *

11. Section 219.501-70 is added to read as follows:

**219.501-70 Small disadvantaged business set-asides.**

As authorized by the provisions of section 1207 of Pub. L. 99-661, a special category of set-asides, identified as SDB set-aside, has been established for Department of Defense acquisitions awarded during Fiscal Years 1987, 1988, and 1989, except those subject to small purchase procedures. The authorization to effect small disadvantaged business set-asides shall remain in effect during these fiscal years, unless specifically revoked by the Secretary of Defense. A "set-aside for SDB" is the reserving of an acquisition exclusively for participation by SDB concerns.

12. Sections 219.502-3 and 219.502-4 are added to read as follows:

**219.502-3 Partial set-asides**

These procedures do not apply to SDB set-asides. SDB set-asides are authorized for use only when the entire amount of an individual acquisition is to be set-aside.

**219.502-4 Methods of conducting set-asides.**

(a) SDB set-asides may be conducted by using sealed bids or competitive proposals.

(b) Offers received on a SDB set-aside from concerns that do not qualify as SDB concerns shall be considered nonresponsive and shall be rejected.

**219.502-70 [Amended]**

13. Section 219.502-70 is amended by inserting in the second sentence of paragraph (b) between the word "others" and the word "when" the words "except SDB set-asides,".

14. Section 219.502-72 is added to read as follows:

**219.502-72 SDB set-aside.**

(a) Except those subject to small purchase procedures, the entire amount of an individual acquisition shall be set-aside for exclusive SDB participation if the contracting officer determines that there is a reasonable expectation that (1) offers will be obtained from at least two responsible SDB concerns offering the supplies or services of different SDB concerns and (2) award will be made at a price not exceeding the fair market price by more than ten percent. In making SDB set-asides for R&D or architect-engineer acquisitions, there must also be a reasonable expectation of obtaining from SDB scientific and technological or architectural talent consistent with the demands of the acquisition.

(b) The contracting officer must make a determination under (a) above when any of the following circumstances are present: (1) the acquisition history shows that within the past 12 month period, a responsive bid or offer of at least one responsible SDB concern was within 10 percent of an award price on a previous procurement and either (i) at least one other responsible SDB source appears on the activity's solicitation mailing list or (ii) a responsible SDB responds to the notice in the Commerce Business Daily; or (2) multiple responsible section 8(a) concerns express an interest in having the acquisition placed in the 8(a) program; or (3) the contracting officer has sufficient factual information, such as the results of capability surveys by DoD technical teams, to be able to identify at least two responsible SDB sources.

(c) If it is necessary to obtain information in accordance with (b)(1) above, the contracting officer will include a notice in the synopsis indicating that the acquisition may be set-aside for exclusive SDB participation if sufficient SDB sources are identified prior to issuance of the solicitation (see 205.207(d) (S-73)). The notice should encourage such firms to make their interest and capabilities known as expeditiously as possible. If prior to synopsis, the determination has been

made to set-aside the acquisition for SDB the synopsis should so indicate (see 205.207(d) (S-72)).

(d) If prior to award under a SDB set-aside, the contracting officer finds that the lowest responsive, responsible offer exceeds the fair market price by more than ten percent, the set-aside will be withdrawn in accordance with 219.506(a).

15. Section 219.503 is amended by adding paragraph (S-70) to read as follows:

**219.503 Setting aside a class of acquisitions.**

* * * * *

(S-70) If the criteria in 219.502-72 have been met for an individual acquisition, the contracting officer may withdraw the acquisition from the class set-aside by giving written notice to SBA procurement center representative (if one is assigned) that the acquisition will be set-aside for SDB.

16. Section 219.504 is amended by adding to paragraph (b) a new paragraph (1) and by redesignating paragraphs (1) through (4) as paragraphs (2) through (5) respectively, to read as follows:

**219.504 Set-aside program order of precedence.**

(b) * * *

(1) Total SDB Set-Aside (219.502-72).

* * * * *

17. Section 219.506 is amended by adding paragraph (a), and by adding at the end of paragraph (b) the words "These procedures do not apply to SDB set-aside.", to read as follows:

**219.506 Withdrawing or modifying set-asides.**

(a) SDB set-aside determinations will not be withdrawn for reasons of price reasonableness unless the low responsive responsible offer exceeds the fair market price by more than ten percent. If the contracting officer finds that the low responsive responsible offer under a SDB set-aside exceeds the fair market price by more than ten percent, the contracting officer shall initiate a withdrawal.

* * * * *

18. Section 219.507 is added to read as follows:

**219.507 Automatic dissolution of a set-aside.**

The dissolution of a SDB set-aside does not preclude subsequent solicitation as a small business set aside.

19. Section 219.508 is amended by adding paragraph (S-71) to read as follows:

**219.508 Solicitation provisions and contract clauses.**

* * * * *

(S-71) The contracting officer shall insert the clause at 252.219-7006, Notice of Total Small Disadvantaged Business Set-Aside, in solicitations and contracts for SDB set-asides (see 219.502-72).

20. A new Subpart 219.8, consisting of sections 219.801 and 219.803, is added to read as follows:

## Subpart 19.8—Contracting with the Small Business Administration (the 8(a) Program)

**219.801 General.**

The Department of Defense, to the greatest extent possible, will award contracts to the SBA under the authority of section 8(a) of the Small Business Act and will actively identify requirements to support the business plans of 8(a) concerns.

**219.803 Selecting acquisitions for the 8(a) Program.**

(c) In cases where SBA requests follow-on support for the incumbent 8(a) firm, the request will be honored, if otherwise appropriate, and will not be placed under a SDB set-aside. When the follow-on requirement is requested for other than the incumbent 8(a) and the conditions at 219.502-72(b)(2) exist, the acquisition may be considered for a SDB set-aside, if appropriate.

21. Section 252.219-7005 and 252.219-7006 are added to read as follows:

**202.219-7005 Small disadvantaged business concern representation.**

As prescribed in 219.304(b), insert the following provision in solicitations (other than those for small purchases), when the contract is to be performed inside the United States, its territories or possessions, Puerto Rico, the Trust Territory of the Pacific Islands, or the District of Columbia:

**Small Disadvantaged Business Concern Representation**

XXX (1987)

(a) *Certification.* The Offeror represents and certifies, as part of its offer, that it

XXX is, not a small disadvantage business concern.

(b) *Representation.* The offeror represents, in terms of section 8(d) of the Small Business Act, that its qualifying ownership falls in the following category:

_____ Asian Indian Americans
_____ Asian-Pacific Americans
_____ Black Americans
_____ Hispanic Americans
_____ Native Americans
_____ Other Minority _____ (Specify)

(End of Provision)

**§ 252.219-7006 Notice of total small disadvantaged business set-aside.**

As prescribed in 219.508-71, insert the following clause in solicitations and contracts involving a small disadvantaged business set-aside.

**Notice of Total Small Disadvantaged Business Set-Aside (_____ 1987)**

(a) *Definitions.*

"Small disadvantaged business concern," as used in this clause, means a small business concern that (1) is at least 51 percent owned by one or more individuals who are both socially and economically disadvantaged, or a publicly owned business having at least 51 percent of its stock owned by one or more socially and economically disadvantaged individuals, (2) has its management and daily business controlled by one or more such individuals and (3) the majority of the earnings of which accrue to such socially and economically disadvantaged individuals.

"Socially disadvantaged individuals" means individuals who have been subjected to racial or ethnic prejudice or cultural bias because of their identity as a member of a group without regard to their qualities as individuals.

"Economically disadvantaged individuals" means socially disadvantaged individuals whose ability to compete in the free enterprise system is impaired due to diminished opportunities to obtain capital and credit as compared to others in the same line of business who are not socially disadvantaged.

(b) *General.*

(1) Offers are solicited only from small disadvantaged business concerns. Offers received from concerns that are not small disadvantaged business concerns shall be considered nonresponsive and will be rejected.

(2) Any award resulting from this solicitation will be made to a small disadvantaged business concern.

(c) *Agreement.* A manufacturer or regular dealer submitting an offer in its own name agrees to furnish, in performing the contract, only end items manufactured or produced by small disadvantaged business concerns in the United States, its territories and possessions, the Commonwealth of Puerto Rico, the U.S. Trust Territory of the Pacific Islands, or the District of Columbia.

(End of clause)

[FR Doc. 87-10099 Filed 5-1-87; 8:45 am]

BILLING CODE 3810-01-M

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 301**

**[Docket No. 70483-7083]**

## Pacific Halibut Fisheries

**AGENCY:** National Marine Fisheries Service (NMFS), NOAA, Commerce.

**ACTION:** Notice of final rule.

**SUMMARY:** The Assistant Administrator for Fisheries, NOAA, on behalf of the International Pacific Halibut Commission, publishes notice of regulations promulgated by that Commission and approved by the United States Government to govern the Pacific halibut fishery. These regulations are intended to enhance the conservation of Pacific halibut stocks in order to help rebuild and sustain them at an adequate level in the northern Pacific Ocean and Bering Sea.

**EFFECTIVE DATE:** April 29, 1987.

**FOR FURTHER INFORMATION CONTACT:** J. Craig Hammond, Special Agent in Charge, Law Enforcement Division, Alaska Region, NMFS, P.O. Box 1668, Juneau, Alaska 99802, telephone 907-586-7225; or Executive Director, International Pacific Halibut Commission, P.O. Box 5009, University Station, Seattle, Washington 98105, telephone 206-624-1838.

**SUPPLEMENTARY INFORMATION:** The International Pacific Halibut Commission (IPHC), under the Convention between the United States of America and Canada for the Preservation of the Halibut Fishery of the Northern Pacific Ocean and Bering Sea (signed at Ottawa, Ontario, on March 2, 1953), as amended by a Protocol Amending the Convention (signed at Washington, DC, on March 29, 1979), has promulgated new regulations governing the Pacific halibut fishery. With one exception, the regulations have been approved by the Secretary of State of the United States of America and by the Governor-General of Canada by Order-in-Council. The IPHC adopted a trip limit of 10,000 pounds for the first 40 percent of the halibut quota in area 4C. The United States and Canada approved the trip limit, but only for the first 25 percent of the area 4C quota. On behalf of the IPHC, these regulations are published in the **Federal Register** to provide notice of their effectiveness, and to inform persons subject to the regulations of their restrictions and requirements.

The substantive changes from the previous regulations, published at 51 FR 16466 (May 2, 1986), are as follows: (1) New halibut fishing seasons and area catch limits are established; (2) fishing periods no longer begin and end based on Pacific standard time; (3) "automatic hook stripper" is defined and designated as unlawful gear; (4) trip limits are established for vessels fishing in Area 4C; (5) the United States is given express authority to suspend, revoke, or modify commercial halibut licenses; (6) certain restrictions on the disposition of sport-caught halibut are established; and (7) sport fishing season dates are changed and a minimum size limit for sport-caught halibut is established in all waters off the coasts of California, Oregon, and Washington. Regulations at § 301.18 replace the emergency rule on sport-caught halibut published by the Secretary of Commerce on March 12, 1987 (52 FR 7582), and at § 301.20 reprint without change (except for renumbering the section heading from § 301.19 to 301.20) the Department of Commerce's emergency interim rule published on April 2, 1987 (52 FR 10759). Section 301.20 is reprinted for the reader's convenience.

Because approval by the Secretary of State of the IPHC regulations is a foreign affairs function, *Jensen v. National Marine Fisheries Service*, 512 F. 2d 1189 (9th Cir. 1975), 5 U.S.C. Section 553 of the Administrative Procedure Act, Executive Order 12291, and the Regulatory Flexibility Act do not apply to this notice of the effectiveness and content of the regulations. These regulations do not contain collection of information requirements subject to the Paperwork Reduction Act.

### List of Subjects in 50 CFR Part 301

Fisheries, Treaties, Reporting and recordkeeping requirements.

Dated: April 29, 1987.

**Joseph W. Angelovic,**

*Deputy Assistant Administrator For Science and Technology National Marine Fisheries Service.*

For the reasons set out in the preamble, 50 CFR Part 301 is revised to read as follows:

## PART 301—PACIFIC HALIBUT FISHERIES

Sec.
301.1 Short title.
301.2 Interpretation.
301.3 Application.
301.4 Regulatory areas.
301.5 Fishing periods.
301.6 Closed periods.
301.7 Closed area.
301.8 Catch limits.
301.9 Trip limits.
301.10 Size limits.
301.11 Licensing of vessels.
301.12 Vessel clearance and hold inspection.
301.13 Logs.
301.14 Receipt and possession of halibut.
301.15 Fishing gear.
301.16 Retention of tagged halibut.
301.17 Supervision of unloading and weighing.
301.18 Sport fishing for halibut.
301.19 Previous regulations superseded.
301.20 United States treaty Indian tribes.
Appendix to Part 301.

Authority: 5 UST 5; TIAS 2900; 16 U.S.C. 773-773k.

### § 301. Short title.

This part may be cited as the Pacific Halibut Fishery Regulations.

### § 301.2 Interpretation.

(a) In this part,

*Automated hook stripper* (commonly known as a crucifier) means a device through which the groundline can be passed during gear retrieval which allows the groundline and hooks to pass freely, but does not allow fish to pass, thereby removing fish from the hooks.

*Charter vessel* means a vessel used for hire in sport fishing for halibut, not including a vessel without a hired operator.

*Commercial fishing* means fishing the resulting catch of which either is or is intended to be sold or bartered.

*Commission* means the International Pacific Halibut Commission.

*Fishing* means the taking, harvesting, or catching of fish; or any activity that can reasonably be expected to result in the taking, harvesting, or catching of fish, including specifically the deployment of any amount or component part of setline gear anywhere in the maritime area.

*Land* with respect to halibut means to bring to shore and to offload.

*License* means a halibut fishing license issued by the Commission pursuant to §§ 301.11 and 301.18 of this part.

*Maritime area*, in respect of the fisheries jurisdiction of a Contracting Party, includes without distinction areas within and seaward of the territorial sea or internal waters of that Party.

*Operator*, with respect to any vessel, means the master or other individual on board and in charge of that vessel.

*Person* includes an individual, corporation, firm, or association.

*Regulatory area* means an area referred to in § 301.4 of this part.

*Setline gear* means one or more stationary, buoyed, and anchored lines with hooks attached.

*Sport fishing* means all fishing other than commercial fishing.

(b) In this part, all bearings are magnetic and all positions are determined by the most recent charts issued by the United States National Ocean Service or the Canadian Hydrographic Service.

**§ 301.3 Application.**

(a) This part applies to persons and vessels fishing for halibut in waters off the west coast of Canada and the United States, including the southern as well as the western coasts of Alaska, within the respective maritime areas in which each of those countries exercises exclusive fisheries jurisdiction as of March 29, 1979.

(b) Sections 301.4 to 301.17 of this part apply only to commercial fishing for halibut.

(c) Section 301.18 of this part applies only to sport fishing for halibut.

(d) This part does not apply to fishing operations authorized or conducted by the Commission for research purposes.

**§ 301.4 Regulatory areas.**

The following areas shall be regulatory areas for the purposes of the Convention:

(a) Area 2A includes all waters off the coasts of the states of California, Oregon, and Washington.

(b) Area 2B includes all waters off the coast of British Columbia.

(c) Area 2C includes all waters off the coast of Alaska that are east of a line running northwest one-quarter west (312°) from Cape Spencer Light (latitude 58°11'57" N., longitude 136°38'18" W.), and south and east of a line running south one-quarter east (177°) from said light.

(d) Area 3A includes all waters between Area 2C and a line extending from the most northerly point on Cape Aklek (latitude 57°41'15" N., longitude 155°35'00" W.) to Cape Ikolik (latitude 57°17'17" N., longitude 154°47'18" W.), then along the Kodiak Island coastline to Cape Trinity (latitude 56°44'50" N., longitude 154°08'44" W.), then southeast by east one-quarter east (121°).

(e) Area 3B includes all waters between Area 3A and a line extending southeast (135°) from Cape Lutke (latitude 54°29'00" N., longitude 164°20'00" W.) and south of latitude 54°49'00" N. in Isanotski Pass.

(f) Area 4A includes all waters in the Gulf of Alaska west of Area 3B and in the Bering Sea west of the closed area defined in § 301.7 of this part that are east of longitude 172°00'00" W. and south of latitude 56°20'00" N.

(g) Area 4B includes all waters in the Bering Sea and the Gulf of Alaska west of Area 4A and south of latitude 56°20'00" N.

(h) Area 4C includes all waters in the Bering Sea north of Area 4A and north of the closed area defined in § 301.7 of this part which are east of longitude 171°00'00" W., south of latitude 58°00'00" N., and west of longitude 168°00'00" W.

(i) Area 4D includes all waters in the Bering Sea north of Areas 4A and 4B, north and west of Area 4C, and west of longitude 168°00'00" W.

(j) Area 4E includes all waters in the Bering Sea north of the closed area defined in § 301.7 of this part, east of longitude 168°00'00" W., and south of latitude 65°34'00" N.

**§ 301.5 Fishing periods.**

(a) The fishing period for each regulatory area are set out in the following table and apply where the catch limits specified in § 301.8 of this part have not been taken.

| | |
|---|---|
| **2A** | |
| 7/10–7/22 | 9/12–9/24 |
| 8/05–8/17 | |
| **2B** | |
| 5/02–5/10 | [1]–8/25 |
| [1]–6/21 | |
| **2C** | |
| 5/04–5/05 | 9/02–9/03 |
| 6/01–6/03 | 9/30–[1] |
| **3A–3B** | |
| 5/04–5/05 | 9/02–9/03 |
| 6/01–6/02 | 9/30–[1] |
| **4A** | |
| 5/04–5/05 | 9/02–9/03 |
| 6/01–6/02 | 9/15–[1] |
| 8/15–8/17 | |
| **4B** | |
| 5/04–5/05 | 9/02–9/03 |
| 6/01–6/02 | 9/15–[1] |
| 8/15–8/19 | |
| **4D** | |
| 8/13–8/20 | 9/15–[1] |
| **4C** | |
| 6/21–6/22 | 7/25–7/26 |
| 6/23–6/24 | 7/27–7/28 |
| 6/25–6/26 | 7/29–7/30 |
| 6/27–6/28 | 7/31–8/01 |
| 6/29–6/30 | 8/02–8/03 |
| 7/01–7/02 | 8/04–8/05 |
| 7/03–7/04 | 8/06–8/07 |
| 7/05–7/06 | 8/08–8/09 |
| 7/07–7/08 | 8/10–8/11 |
| 7/09–7/10 | 8/12–8/13 |
| 7/11–7/12 | 8/14–8/15 |
| 7/13–7/14 | 8/16–8/17 |
| 7/15–7/16 | 8/18–8/19 |
| 7/17–7/18 | 8/20–8/21 |
| 7/19–7/20 | 8/22–8/23 |
| 7/21–7/22 | 8/24–8/25 |
| 7/23–7/24 | 8/26–8/27 |
| 8/28–8/29 | 9/29–9/30 |
| 8/30–8/31 | 10/01–10/02 |
| 9/01–9/02 | 10/03–10/04 |
| 9/03–9/04 | 10/05–10/06 |
| 9/05–9/06 | 10/07–10/08 |
| 9/07–9/08 | 10/09–10/10 |
| 9/09–9/10 | 10/11–10/12 |
| 9/11–9/12 | 10/13–10/14 |
| 9/13–9/14 | 10/15–10/16 |
| 9/15–9/16 | 10/17–10/18 |
| 9/17–9/18 | 10/19–10/20 |
| 9/19–9/20 | 10/21–10/22 |
| 9/21–9/22 | 10/23–10/24 |
| 9/23–9/24 | 10/25–10/26 |
| 9/25–9/26 | 10/27–10/28 |
| 9/27–9/28 | 10/29–10/30 |
| **4E** | |
| 6/01–6/03 | 8/18–8/20 |
| 6/04–6/06 | 8/21–8/23 |
| 6/07–6/09 | 8/24–8/26 |
| 6/10–6/12 | 8/27–8/29 |
| 6/13–6/15 | 8/30–9/01 |
| 6/16–6/18 | 9/02–9/04 |
| 6/19–6/21 | 9/05–9/07 |
| 6/22–6/24 | 9/08–9/10 |
| 6/25–6/27 | 9/11–9/13 |
| 6/28–6/30 | 9/14–9/16 |
| 7/01–7/03 | 9/17–9/19 |
| 7/04–7/06 | 9/20–9/22 |
| 7/07–7/09 | 9/23–9/25 |
| 7/10–7/12 | 9/26–9/28 |
| 7/13–7/15 | 9/29–10/01 |
| 7/16–7/18 | 10/02–10/04 |
| 7/19–7/21 | 10/05–10/07 |
| 7/22–7/24 | 10/08–10/10 |
| 7/25–7/27 | 10/11–10/13 |
| 7/28–7/30 | 10/14–10/16 |
| 7/31–8/02 | 10/17–10/19 |
| 8/03–8/05 | 10/20–10/22 |
| 8/06–8/08 | 10/23–10/25 |
| 8/09–8/11 | 10/26–10/28 |
| 8/12–8/14 | 10/29–10/31 |
| 8/15–8/17 | |

[1] Date to be announced by the Commission.

(b) Each fishing period in Areas 2A and 2B shall begin and terminate at 1200 hours Pacific Daylight Time on the date set out in the table to this section, unless the Commission specifies otherwise.

(c) Each fishing period in Areas 2C, 3A, 3B, 4A, 4B, 4C, 4D, and 4E, prior to October 25, shall begin and terminate at 1200 hours Alaska Daylight Time, and after October 24, shall begin and terminate at 1200 hours Alaska Standard time on the date set out in the table to this section, unless the Commission specifies otherwise.

(d) All commercial fishing for halibut in Areas 2A and 2B shall cease at 1200 hours Pacific Standard Time on October 31.

(e) All commercial fishing for halibut in Areas 2C, 3A, 3B, 4A, 4B, 4C, 4D, and 4E shall cease at 1200 hours Alaska Standard Time on October 31.

**§ 301.6 Closed periods.**

(a) No person shall engage in fishing for halibut in any regulatory area other than during the fishing periods set out in § 301.5 of this part in respect of that area.

(b) No person shall land or otherwise retain halibut caught outside a fishing

period applicable to the regulatory area where the halibut was taken.

(c) Subject to § 301.15 (f) and (g) of this part, this part does not prohibit fishing for any species of fish other than halibut during the closed periods.

(d) Notwithstanding paragraph (c) of this section, no person shall have halibut in his possession while fishing for any other species of fish during the closed periods.

(e) No person shall retrieve any halibut fishing gear from a closed area if the vessel has any halibut on board.

(f) A vessel that has no halibut on board may retrieve any halibut fishing gear in a closed area after notifying a fishery officer or representative of the Commission prior to that retrieval.

(g) After retrieval of halibut gear in accordance with paragraph (f) of this section, the vessel shall submit to a hold inspection at the discretion of the fishery officer or representative of the Commission.

(h) No person shall retain any halibut caught on gear retrieved under paragraph (f) of this section.

**§ 301.7 Closed area.**

All waters in the Bering Sea that are east of a line from Cape Sarichef Light (latitude 54°36'00" N., longitude 164°55'42" W.) to a point at latitude 56°20'00" N., longitude 168°30'00" W., south of a line from the latter point to Cape Newenham (latitude 58°39'00" N., longitude 162°10'25" W.), and north of latitude 54°49'00" N. in Isanotski Pass are closed to halibut fishing no person shall fish for halibut therein or have halibut in his possession while in those waters except in the course of continuous transit across those waters.

**§ 301.8 Catch limits.**

(a) The total allowable catch of halibut to be taken during the halibut fishing periods specified in § 301.5 of this part shall be limited to the weight expressed in pounds or metric tons shown in the following table:

| Regulatory area | Catch limits | |
|---|---|---|
| | Pounds | Metric tons |
| 2A | 550,000 | 249 |
| 2B | 11,500,000 | 5,216 |
| 2C | 11,500,000 | 5,216 |
| 3A | 31,000,000 | 14,062 |
| 3B | 9,500,000 | 4,309 |
| 4A | 1,750,000 | 794 |
| 4B | 1,750,000 | 794 |
| 4C | 600,000 | 272 |
| 4D | 600,000 | 272 |
| 4E | 75,000 | 34 |

(b) The weights in each catch limit shall be computed on the basis that the heads of the fish are off and their entrails removed.

(c) The Commission shall determine and announce to the public the date on which the catch limit for each regulatory area will be taken and the specific dates during which fishing will be allowed in each regualtory area.

(d) If the Commission determines that the catch limit specified in paragraph (a) of this section would be exceeded in a 24-hour fishing period in any regulatory area, the catch limit for that area shall be considered to have been taken.

(e) Notwithstanding paragraph (a) of this section, Areas 3A and 3B shall both be closed if the catch limit of 40,500,000 pounds (18,371 metric tons) for the combined areas is taken.

(f) Notwithstanding paragraph (a) of this section, Areas 4A and 4B shall both be closed if the catch limit of 3,500,000 pounds (1,588 metric tons) for the combined areas is taken.

(g) When under paragraphs (c), (d), (e), or (f) of this section the Commission has announced a date on which the catch limit for a regulatory area will be taken, no person shall fish for halibut in that area after that date for the rest of the year, unless the Commission has announced the reopening of that area for halibut fishing.

(h) The Commission will make announcements under this section by providing notice of closures and modifications to scheduled fishing periods to major halibut processors; Federal, State, and Provincial fisheries officials; and the media.

**§ 301.9 Trip limits.**

Vessels fishing in Area 4C shall be limited to a maximum catch of 10,000 pounds (4.5 metric tons) of halibut per fishing period until 25 percent (150,000 pounds) of the catch limit specified in § 301.8(a) has been taken.

**§ 301.10 Size limits.**

(a) No persons shall take or possess any halibut that.

(1) With the head on, is less than 32 inches (81.3 cm) as measured in a straight line, passing over the pectoral fin from the tip of the lower jaw with the mouth closed, to the extreme end of the middle of the tail, as illustrated in the appendix following § 301.20 of this part, or

(2) With the head removed, is less than 24 inches (61.0 cm) as measured from the base of the pectoral fin at its most anterior point to the extreme end of the middle of the tail, as illustrated in the appendix following § 301.20 of this part.

(b) No person shall fillet, mutilate, or otherwise disfigure a halibut in any manner that prevents the determination of the minimum size of the halibut for the purpose of paragraph (a) of this section.

**§ 301.11 Licensing of vessels.**

(a) The Commission may issue a license in respect of a vessel used for halibut fishing.

(b) No person shall fish for halibut from a vessel or possess halibut caught from a vessel, unless the Commission has issued a license in respect of that vessel and such license is aboard such vessel.

(c) A license issued in respect of a vessel referred to in paragraph (b) of this section must be carried on that vessel at all times and the holder of it shall permit its inspection by customs and fishery officers of the Contracting Parties.

(d) A license shall be issued without fee by the Commission from its office in Seattle, Washington, upon receipt of a completed "Application for Vessel License for the Halibut Fishery" form.

(e) Application forms may be obtained from customs or fishery officers of either Contracting Party, or from the Commission.

(f) Licenses issued under this section shall be valid only during the year in which they are issued.

(g) A new license is required for a vessel that is sold, transferred, renamed, or redocumented.

(h) No person shall

(1) Fish for halibut while on board a vessel in respect of which the Commission has issued a license while that vessel is in an area where commercial fishing for halibut is not permitted under this part; or

(2) Possess halibut while on board a vessel referred to in paragraph (h)(1) of this section in an area referred to in that paragraph unless that vessel is in transit to or within a port in which that halibut may be lawfully sold.

(i) The license required under this section is in addition to any license, however designated, that is required under the laws of Canada or any of its Provinces or the United States or any of its States.

(j) The United States may suspend, revoke, or modify any permit issued under this section under policies and procedures in 15 CFR Part 904.

**§ 301.12 Vessel clearance and hold inspection.**

(a) No person other than a person who lands his total annual halibut catch at ports within Areas 4A, 4B, 4C, 4D, 4E, or the closed area defined in § 301.7 of this part shall fish for halibut in Areas 4A, 4B, or 4D from any vessel, unless the operator of that vessel obtains a vessel

clearance and hold inspection both before such fishing and before the unloading of any halibut caught in Areas 4A, 4B, or 4D.

(b) No person other than a person who lands his total annual halibut catch at a port within Area 4C may fish for halibut in Area 4C from any vessel, unless the operator of that vessel obtains a vessel clearance and hold inspection both before such fishing in each fishing period that applies to Area 4C and before the unloading of any halibut caught in that Area.

(c) No person other than a person who lands his total annual halibut catch at a port within Area 4E, or the closed area defined in § 301.7 of this part may fish for halibut in Area 4E from any vessel, unless the operator of that vessel obtains a vessel clearance and hold inspection both before such fishing in each fishing period that applies to Area 4E and before the unloading of any halibut caught in that Area.

(d) The vessel clearance and hold inspection required under paragraphs (a), (b), and (c) of this section may be obtained only at Dutch Harbor or Akutan, Alaska, from a customs or fishery officer of the United States or a representative of the Commission.

(e) Vessel clearances and hold inspections required under paragraphs (a), (b), and (c) of this section prior to fishing in Area 4 shall be obtained within the 120-hour period before each of the openings in that Area, between 0600 and 1800 hours, local time.

(f) No halibut shall be on board at the time of inspection required by paragraph (e) of this section.

(g) Vessel clearances and hold inspections required under paragraphs (a), (b), and (c) of this section after fishing in Area 4 shall be obtained within the 120-hour period after each of the openings in that Area, between 0600 and 1800 hours, local time.

(h) The vessel clearance and hold inspection required under paragraphs (b) and (c) of this section are not valid if the vessel has fished for halibut in Areas 4A, 4B, or 4D after obtaining the clearance and inspection required for such fishing.

**§ 301.13 Logs.**

(a) The operator of any vessel five (5) net tons or greater shall keep an accurate log of all halibut fishing operations including the date, locality, amount of gear used, and total weight of halibut taken daily in each locality.

(b) The log referred to in paragraph (a) of this section shall be

(1) Updated not later than 24 hours after midnight local time for each day fished and within 24 hours following the closure of the area in which the vessel is fishing;

(2) Retained for a period of two years by the owner or operator of the vessel;

(3) Open to inspection by a fishery officer or any authorized representative of the Commission upon demand; and

(4) Kept on board the vessel when engaged in halibut fishing, during transits to port of landing, and for 5 days following off-loading halibut.

(c) No person shall make a false entry in a log referred to in paragraph (a) of this section.

**§ 301.14 Receipt and possession of halibut.**

(a) A person who purchases or otherwise receives halibut from the owner or operator of the vessel from which that halibut was caught, either directly from that vessel or through another carrier, either directly from that vessel or through another carrier, shall record each such purchase or receipt on State or Provincial fish tickets, showing the date, locality, name of vessel, Halibut Commission license number, and the name of the person from whom the halibut was purchased or received and the amount in pounds according to trade categories of the halibut.

(b) A copy of the fish tickets referred to in paragraph (a) of this section shall be

(1) Retained by the person making them for a period of two years from the date the fish tickets are made; and

(2) Open to inspection by a fishery officer or any authorized representative of the Commission.

(c) No person shall possess any halibut that he knows to have been taken in contravention of this part.

(d) When halibut are delivered to other than a commercial fish processor or primary fish buyer, the records required by paragraph (a) of this section shall be maintained by the operator of the vessel from which that halibut was caught, in compliance with paragraph (b) of this section.

(e) It shall be illegal to enter a Halibut Commission license number on a State or Provincial fish ticket for any vessel other than the vessel actually used in catching the halibut reported thereon.

**§ 301.15 Fishing gear.**

(a) No person shall fish for halibut using any gear other than hook and line gear.

(b) No person shall possess halibut taken with any gear other than hook and line gear except as provided in § 301.16 of this part.

(c) No person shall possess halibut while on board a vessel carrying any fishing gear other than hook and line gear or nets that are used solely for the capture of bait.

(d) All setline or skate marker buoys carried aboard or used by any United States vessel used for halibut fishing in a regulatory area shall be marked with one of the following:

(1) The vessel's name,

(2) The vessel's state license number, or

(3) The vessel's registration number, which markings shall be in characters at least four inches in height and one-half inch in width in a contracting color visible above the water and shall be maintained in legible condition.

(e) All setline or skate marker buoys carried aboard or used by a Canadian vessel used for halibut fishing in a regulatory area shall be

(1) Floating and visible on the surface of the water, and

(2) Legibly marked with the identification plate number of the vessel engaged in commercial fishing from which that setline is being operated.

(f) No person on board a vessel from which setline gear was used to fish for any species of fish anywhere in waters described in § 301.3(a) of this part during the 72-hour period immediately before the opening of a halibut fishing period shall catch or possess halibut anywhere in those waters during that halibut fishing period.

(g) No vessel from which setline gear was used to fish for any species of fish anywhere in waters described in § 301.3(a) of this part during the 72-hour period immediately before the opening of a halibut fishing period may be used to catch or possess halibut anywhere in those waters during that halibut fishing period.

(h) Notwithstanding paragraphs (f) and (g) of this section, the 72-hour fishing restriction proceding a halibut fishing period shall not apply to persons and vessels fishing for halibut during fishing periods in Areas 4C and 4E as described in § 301.4(h) and (j) of this part.

(i) No person shall fish for halibut from a vessel that is equipped with, or that possesses on board, an automated hook stripper.

(j) No person shall possess halibut on a vessel that is equipped with, or that possesses on board, an automated hook stripper.

**§ 301.16 Retention of tagged halibut.**

Nothing contained in this part prohibits any vessel at any time from retaining and landing a halibut that bears a Commission tag at the time of capture, if the halibut with the tag still attached is reported at the time of

landing and made available for examination by a representative of the Commission or by an officer of the Contracting Parties or a state or provincial government.

**§ 301.17 Supervision of unloading and weighing.**

The unloading and weighing of halibut may be subject to the supervision of a customs officer or other authorized officers to assure the fulfillment of the provisions of this part.

**§ 301.18 Sport fishing for halibut.**

(a) Sport fishing for halibut in all waters off the coasts of Alaska and British Columbia is only permitted from February 1 to December 31.

(b) Sport fishing for halibut in all waters off the coasts of California, Oregon, and Washington is only permitted from February 1 to September 30.

(c) No person shall engage in sport fishing for halibut using gear other than a handline or rod with no more than two hooks attached, or a spear.

(d) No person shall possess or land more than two halibut of any size per day from a vessel that is engaged in sport fishing in waters off the coasts of Alaska or British Columbia.

(e) The minimum size limit for sport-caught halibut in all waters off the coasts of California, Oregon, and Washington is 30 inches (76.2 cm), with head on, as measured in a straight line, passing over the pectoral fin from the tip of the lower jaw with

(f) No person shall possess or land more than two legal-sized halibut per day from a vessel that is engaged in sport fishing in waters off the coasts of California, Oregon, or Washington.

(g) No person shall fillet, mutilate, or otherwise disfigure a halibut in any manner that prevents the determination of a minimum size limit, or the number of fish caught, possessed, or landed.

(h) After two halibut have been taken by any person engaged in sport fishing, those halibut shall be landed before that person takes more halibut on any succeeding day.

(i) No halibut caught by sport fishing shall be offered for sale, sold, traded, or bartered.

(j) No halibut caught in sport fishing shall be possessed aboard a vessel when other fish or shellfish aboard the said vessel are destined for commercial use, sale, trade, or barter.

(k) No person shall operate a charter vessel engaged in fishing for halibut unless the Commission has issued a license in respect of that vessel and such license is aboard such vessel.

(l) A license issued in respect of a vessel referred to in paragraph (k) of this section must be carried on that charter vessel at all times and the holder of it shall permit its inspection by customs and fishery officers of the Contracting Parties.

(m) A license shall be issued without fee by the Commission from its office in Seattle, Washington, upon receipt of a completed "Application for Vessel License for the Halibut Fishery" form.

(n) Licenses issued under this section shall be valid only during the year in which they are issued.

**§ 301.19 Previous regulations superseded.**

Sections 301.1 through 301.19 shall supersede all previous regulations of the Commission, and shall be effective each succeeding year until superseded.

**§ 301.20 United States treaty Indian tribes.**

(a) *Purpose.* The purpose of this section is to implement the recommendations of the International Pacific Halibut Commission (IPHC) to govern fishing for halibut by eleven United States treaty Indian tribes in certain marine fishing areas off the coast of Washington, in the Strait of Juan de Fuca, and in Puget Sound.

(b) *Relation to other laws.* Except as provided in this section, all regulations of the IPHC in this part apply to halibut fishing by members of United States treaty Indian tribes.

(c) *Definitions.* For purposes of this Part 301, United States treaty Indian tribes means the Makah, Quileute, Hoh, and Quinault tribes located along the north Washington coast, the Lower Elwha Klallam, Jamestown Klallam, and Port Gamble Klallam located along the Strait of Juan de Fuca, and the Lummi, Swinomish, Tulalip, and Skokomish Tribes located along Puget Sound in the State of Washington.

(d) *Area.* Within IPHC Regulatory Area 2A, Subarea 2A-1 includes waters under United States jurisdiction off the coast of Washington from the U.S.-Canada border south to 46°53'18" N. latitude [Point Chehalis] along the Pacific coast and east through the Strait of Juan de Fuca to include the waters of Puget Sound. Within Subarea 2A-1, boundaries of a tribe's fishery may be revised as ordered by a Federal court.

| Tribe | Boundaries |
|---|---|
| Makah | North of 48°02'15" N. latitude (Norweigan Memorial), west of longitude 123°42'30" W, and east of 125°44'00" W. longitude. |
| Quileute | Between 48°07'36" N. latitude (Sand Point) and 47°31'42" N. latitude (Queets River), and east of 125°44'00" W. longitude |
| Hoh | Between 47°54'18" N. latitude (Quillayute River) and 47°21'00" N. latitude (Quinault River), and east of 125°44'00" W. longitude. |
| Quinault | Between 47°40'06" N. latitude (Destruction Island) and 46°53'18" N. latitude (Point Chehalis), and east of 125°44'00" W. longitude: |
| L. Elwha | Those locations in the Strait of Juan de Fuca and Puget Sound as determined in or in accordance with Final Decision No. 1 and subsequent orders in *United States* v. *Washington*, 384 F. Supp. 312 (W.D. Wash. 1974), and particularly at 459 F. Supp. 1049 and 1066 and 626 F. Supp. 1443, to be places at which the Lower Elwha Tribe may take fish under rights secured by treaties with the United States. |
| Jamestown | Those locations in the Strait of Juan de Fuca and Puget Sound as determined in or in accordance with Final Decision No. 1 and subsequent orders in *United States* v. *Washington*, 384 F. Supp. 312 (W.D. Wash. 1974), and particularly at 626 F. Supp. 1486, and to be places at which the Jamestown Tribe may take fish under rights secured by treaties with the United States. |
| Port Gamble | Those locations in the Strait of Juan de Fuca and Puget Sound as determined in or in accordance with Final Decision No. 1 and subsequent orders in *United States* v. *Washington*, 384 F. Supp. 312 (W.D. Wash. 1974), and particularly at 626 F. Supp. 1442, to be places at which the Port Gamble Tribe may take fish under rights secured by treaties with the United States. |
| Lummi | Those locations in the Strait of Juan de Fuca and Puget Sound as determined in or in accordance with Final Decision No. 1 and subsequent orders in *United States* v. *Washington*, 384 F. Supp. 312 (W.D. Wash. 1974), and particularly at 384 F. Supp. 360, to be places at which the Lummi Tribe may take fish under rights secured by treaties with the United States. |
| Swinomish | Those locations in the Strait of Juan de Fuca and Puget Sound as determined in or in accordance with Final Decision No. 1 and subsequent orders in *United States* v. *Washington*, 384 F. Supp. 312 (W.D. Wash. 1974), and particularly at 459 F. Supp. 1049, to be places at which the Swinomish Tribe may take fish under rights secured by treaties with the United States. |
| Tulalip | Those locations in the Strait of Juan de Fuca and Puget Sound as determined in or in accordance with Final Decision No. 1 and subsequent orders in *United States* v. *Washington*, 384 F. Supp. 312 (W.D. Wash. 1974), and particularly at 626 F. Supp. 1531-1532 to be places at which the Tulalip Tribe may take fish under rights secured by treaties with the United States. |
| Skokomish | Those locations in the Strait of Juan de Fuca and Puget Sound as determined in or in accordance with Final Decision No. 1 and subsequent orders in *United States* v. *Washington*, 384 F. Supp. 312 (W.D. Wash. 1974), and particularly at 384 F. Supp. 377, to be places at which the Skokomish Tribe may take fish under rights secured by treaties with the United States. |

(e) *Quota.* Of the total allowable catch in IPHC Regulatory Area 2A, 100,000 pounds (46 metric tons) is suballocated to the U.S. treaty Indian tribes regardless of where the fish are taken by those tribes in Regulatory Area 2A. If it

is projected that the treaty tribal suballocation of 100,000 pounds will be taken prior to October 31, then an additional amount of fish is available to the tribes sufficient for them to reach the October 31, 1987, closing date, but in no event will this additional amount exceed the 50,000 pounds (23 metric tons) made available for this purpose by the IPHC. All fish taken by members of U.S. treaty Indian tribes in Subarea 2A during the season described in paragraph (f)(1) of this section will count toward this quota whether or not the fish are sold.

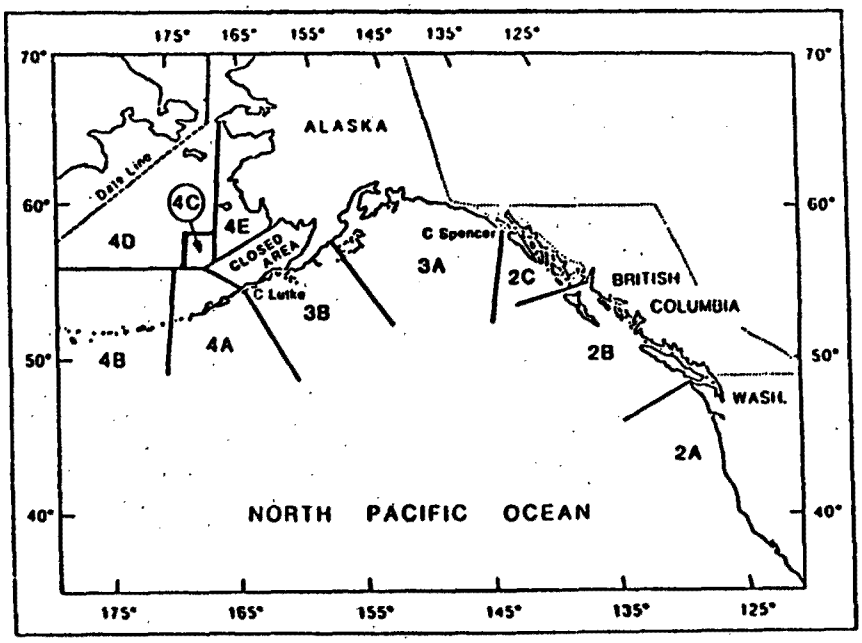
(f) *Seasons.* (1) For members of U.S. treaty Indian tribes, the commercial fishing season in Subarea 2A–1 will commence on April 1 and terminate on October 31 or when a total tribal harvest of 100,000 pounds is reached as specified in paragraph (e) of this section, whichever occurs first. The IPHC will monitor catch and effort data in the treaty Indian fishery during the season. If at any time during the season it is projected that the treaty Indian harvest will reach 100,000 pounds prior to October 31, then an additional amount of halibut will be made available to the tribes sufficient to allow them to continue fishing until October 31, but in no event will this additional amount exceed 50,000 pounds. If the additional 50,000 pounds is projected to be taken, the Secretary will, by publishing a notice in the **Federal Register**, close the treaty Indian halibut fishery as of the date 50,000 pounds is projected to be taken. Following closure of the treaty Indian commercial halibut fishing season, no person authorized to fish for halibut by a United States treaty Indian tribe may fish for halibut except as authorized by paragraph (f)(2) of this section.

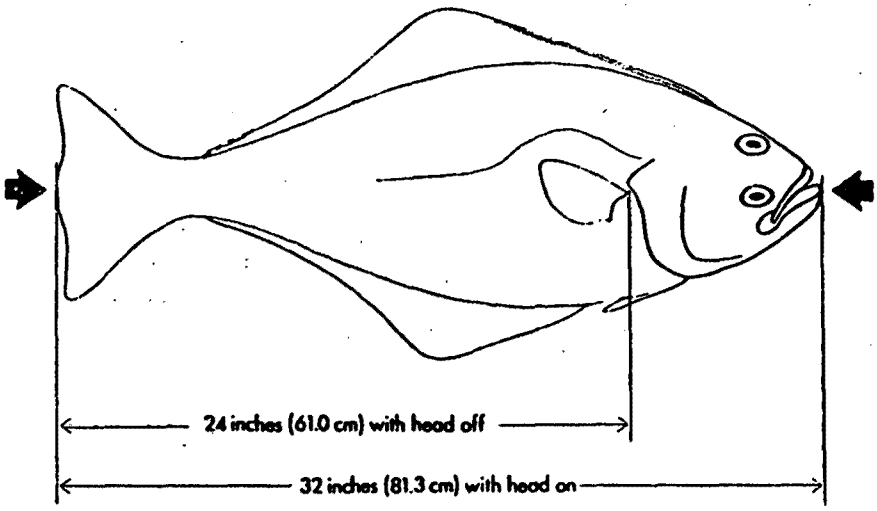
(2) For members of the U.S. treaty Indian tribes, a subsistence and ceremonial fishing season in Subarea 2A–1 will commence on April 1, and terminate on December 31. After the treaty Indian halibut quota is taken or after October 31, 1987, whichever occurs first, treaty Indians may take and retain, but not sell, up to two halibut per day caught on hook and line gear.

(g) *Size limit.* All halibut taken and retained by treaty Indians during the commercial fishing season specified in paragraph (f)(1) of this section must, with the head on, be a minimum of 32 inches (81.3 cm) as measured in a straight line, passing over the pectoral fin from the tip of the lower jaw with the mouth closed, to the extreme end of the middle of the tail, or, with the head removed, be a minimum of 24 inches (61.0 cm) as measured from the base of the pectoral fin at its most anterior point to the extreme end of the middle of the tail, as illustrated in the schedule.

(h) *Identification of U.S. treaty Indian.* Any member of a U.S. treaty Indian tribe as defined in paragraph (c) of this section who is fishing under this part must have in his or her possession a valid treaty Indian identification card issued under 25 CFR Part 249, Subpart A and must not fish except from a vessel properly identified and marked with the treaty Indian vessel identification required under 25 CFR Part 249, Subpart A.

**Appendix to Part 301**




[FR Doc. 87–10043 Filed 4–29–87; 4:46 pm]

BILLING CODE 3510-22-M

**50 CFR Part 652**

**[Docket No. 61109-7026]**

## Atlantic Surf Clam and Ocean Quahog Fisheries; Surf Clam Trip Limits

**AGENCY:** National Marine Fisheries Service (NMFS), NOAA, Commerce.

**ACTION:** Notice of surf clam trip limits.

**SUMMARY:** NOAA issues this notice to impose limits on the amount of surf clams which may be taken during a fishing trip in the Nantucket Shoals Area. This action should reduce the rate of harvest from the fishery. The intended effect is to match fishing effort to the available quota for the area.

**EFFECTIVE DATES:** May 3 through July 4, 1987.

**FOR FURTHER INFORMATION CONTACT:** Bruce Nicholls, 617-281-3600, ext. 232.

**SUPPLEMENTARY INFORMATION:** Regulations implementing the Fishery Management Plan for the Atlantic Surf Clam and Ocean Quahog Fisheries contain at 50 CFR 652.22(b)(2)(ii) a provision allowing the Regional Director to impose trip landing limits to reduce harvest of surf clams from the Nantucket Shoals Area when the harvest in that area reaches, or is likely to reach, 50 percent of a quarterly quota.

Landings from the area during the first quarter of 1987 exceeded the quarterly quota of 45,000 bushels by 7,000 bushels. Landings the first week of the second quarter continued at that high rate. If harvest continues in the range of 6,000 to 7,000 bushels weekly, the combined quota for the first half of the year of 95,000 bushels would be reached or exceeded by the end of May. The Regional Director discussed these harvest statistics with the New England Fishery Management Council at its meeting in April and recommended that trip limits be imposed to reduce the rate of harvest in the fishery. Following those consultations, and after informing the Mid-Atlantic Fishery Management Council of the situation, the Regional Director has decided to impose trip limits at the following levels, which are 25 percent above the minimum allowable trip limits specified in § 652.22(b)(2)(ii)(A), (B), and (C), effective May 3, 1987:

For vessels between 0 and 50 gross registered tons, 280 bushels per trip. For vessels between 51 and 100 gross registered tons, 520 bushels per trip. For vessels greater than 101 gross registered tons, 960 bushels per trip.

No vessel harvesting surf clams in the Nantucket Shoals Area after May 3, 1987, may land more than the amount indicated above for its size class. These trip limits will expire at the end of the quarter, on July 4, 1987, unless adjusted, cancelled, or superseded by closure of the fishery.

### Other Matters

This action is taken under the authority of 50 CFR Part 652 and is taken in compliance with Executive Order 12291.

(16 U.S.C. 1801 *et seq.*)

### List of Subjects in 50 CFR Part 652

Fisheries, Reporting and recordkeeping requirements.

Dated: April 29, 1987.

**Joseph W. Angelovic,**

*Deputy Assistant Administrator For Science and Technology, National Marine Fisheries Service.*

[FR Doc. 87-10044 Filed 5-1-87; 8:45 am]

BILLING CODE 3510-22-M

# Proposed Rules

Federal Register
Vol. 52, No. 85
Monday, May 4, 1987

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.

## NUCLEAR REGULATORY COMMISSION

### 10 CFR Part 50

### Licensing of Nuclear Power Plants Where State and/or Local Governments Decline to Cooperate in Offsite Emergency Planning; Extension of Comment Period

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Proposed rule; extension of comment period.

**SUMMARY:** On March 6, 1987 (52 FR 6980), the Nuclear Regulatory Commission published a proposed amendment to its rules regarding offsite emergency planning at nuclear power plant sites. The period for submission of comments on the proposal was due to expire on May 5, 1987. Pursuant to my authority under 10 CFR 2.808, I am extending the comment period to June 4, 1987.

**DATE:** Comment period expires June 4, 1987.

**ADDRESSES:** Submit written comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attn: Docksting and Service Branch. Deliver comments to: Room 1121, 1717 H Street, NW., Washington, DC, between 8:15 a.m. and 5:00 p.m. weekdays. Examine comments received at: NRC Public Document Room, 1717 H Street, NW., Washington, D.C..

**FOR FURTHER INFORMATION CONTACT:** Peter G. Crane, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. Telephone (202) 634-1465.

Dated at Washington, D.C., this 27th day of April, 1987.

For the Nuclear Regulatory Commission

**Samuel J. Chilk,**

*Secretary of the Commission.*

[FR Doc. 87-9972 Filed 5-1-87; 8:45 am]

BILLING CODE 7590-01-M

## FEDERAL ELECTION COMMISSION

### 11 CFR Part 114

**[Notice 1987-6]**

### Rulemaking Petition; National Right to Work Committee, Notice of Availability

**AGENCY:** Federal Election Commission.

**ACTION:** Rulemaking Petition: Notice of Availability.

**SUMMARY:** On February 24, 1987, the Commission received a Petition for Rulemaking from the National Right to Work Committee. The petition is available for public inspection in the Commission's Public Records Office. Statements in support of or in opposition to the petition must be filed on or before June 3, 1987.

**DATE:** Comments must be received on or before June 3, 1987.

**FOR FURTHER INFORMATION CONTACT:** Ms. Susan E. Propper, Assistant General Counsel, 999 E Street, NW., Washington, DC 20463, (202) 376-5690 or (800) 424-9530.

**SUPPLEMENTARY INFORMATION:**

**Rulemaking Petition: Notice of Availability**

Petitioners contend that the United States Supreme Court decision in *Federal Election Commission v. Massachusetts Citizens For Life, Inc.*, 107 S. Ct. 616 (1986) ("*MCFL*") compels the modification of several regulatory sections. Specifically, Petitioners argue the *MCFL* holds "that independent communications are not covered by § 441b of the Act unless they constitute 'express advocacy,' " and that therefore §§ 114.3 and 114.4 of the Commission's regulations, which regulate communications that are "partisan" or "nonpartisan," are unconstitutional. Copies of the Petition for Rulemaking are available for public inspection at the Commission's Public Records Office, 999 E Street, NW., Washington, DC 20463, between the hours of 9:00 a.m. and 5:00 p.m. Statements in support of or in opposition to the Petition for Rulemaking must be filed with the Commission by June 3, 1987.

Dated: April 28, 1987.

**Scott E. Thomas,**

*Chairman, Federal Election Commission.*

[FR Doc. 87-9945 Filed 5-1-87; 8:45 am]

BILLING CODE 6715-01-M

## DEPARTMENT OF THE INTERIOR

### Office of Surface Mining Reclamation and Enforcement

### 30 CFR Part 773

### Requirements for Surface Coal Mining and Reclamation Permit Approval: Ownership and Control; Reopening of Public Comment Period

**AGENCY:** Office of Surface Mining Reclamation and Enforcement, Interior.

**ACTION:** Notice of reopening of public comment period.

**SUMMARY:** The Office of Surface Mining Reclamation and Enforcement (OSMRE) of the United States Department of the Interior (DOI) previously has published a proposed rule amending its regulations dealing with the permit approval provisions of the Surface Mining Control and Reclamation Act of 1977 (the Act). The proposed rule would define the terms "ownership" and "control," and would expand the scope of the findings which regulatory authorities are required to make prior to permit approval. OSMRE is now reopening and extending the comment period for the definition in that proposed rule.

**DATES:** The comment period on the proposed rule is extended until June 3, 1987.

**ADDRESSES:** Written comments may be mailed to the Office of Surface Mining Reclamation and Enforcement, Administrative Record, Room 5131-L, 1951 Constitution Avenue NW., Washington, DC 20240; or hand-delivered to the Office of Surface Mining Reclamation and Enforcement, Administrative Record, Room 5131, 1100 L Street NW., Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Andrew F. DeVito, Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior, 1951 Constitution Avenue NW., Washington, DC 20240; Telephone: 202-343-5241 (Commercial or FTS).

**SUPPLEMENTARY INFORMATION:** OSMRE previously has published a proposed rule which would amend its regulations dealing with the permit approval process by (1) adding definitions of the terms "ownership" and "control" as those concepts are used in the Surface Mining Control and Reclamation Act of 1977 (the Act), 30 U.S.C. 1201 *et seq.*; and

(2) expanding the scope of the compliance finding required by section 510(c) of the Act, which regulatory authorities are required to make prior to permit approval. The proposed rule was published in the **Federal Register** on April 5, 1985 (50 FR 13724).

The comment period for the proposed rule was reopened and extended on April 16, 1986 (51 FR 12879). The April 16th notice described an option for the proposed definitions and compliance finding, and sought comment on a presumption that would be included in 30 CFR 773.15(b) concerning notices of violation (NOV's).

OSMRE is not considering an option for the final definitions of "ownership" and "control" for which further notice and public comment is appropriate. OSMRE is therefore reopening the comment period until June 3, 1987, in order to solicit comments on the option discussed below. OSMRE is under court order to have its computerized applicant-violator system (AVS) operative by October 1, 1987. A key element of the AVS, which is intended to aid in implementing section 510(c) of the Act, is the ownership and control relationships upon which future permits will be blocked. Thus, OSMRE intends to have a final rule in place by October 1, 1987, and will not extend this comment period. OSMRE would be pleased to hold meetings with interested person upon request during the comment period.

**Explanation of and Basis for Option**

Section 507 of the Act requires an applicant for a surface coal mining and reclamation permit to submit a wide variety of information. In particular, section 507(b)(4) requires that if the applicant is a partnership, corporation, association, or other business entity the application shall include:

> The names and addresses of every officer, partner, director, or person performing a function similar to a director, of the applicant, together with the name and address of any person owning, of record 10 percentum or more of any class of voting stock of the applicant and a list of all names under which the applicant, partner, or principal shareholder previously operated a surface mining operation . . . within the five-year period preceding the date of submission of the application.

The legislative history of the Act establishes a link between these information reporting requirements in section 507(b)(4) and the permit approval provisions of section 510(c) of the Act. A house report states that "[t]he information required by [section 507(b)(4)] is a key element of the operator's affirmative demonstration that the environmental protection provisions of the Act can be met as stipulated in section 510 and includes: (1) identification of all parties, corporations, and officials involved *to allow identification* of parties ultimately responsible . . . ." H.R. Rep. No. 94-896, 94th Cong., 2nd Sess. 111 (1976). (Emphasis added.) See also S. Rep. No. 94-28, 94th Cong., 1st Sess. 206 (1975). Despite this link between sections 507(b)(4) and 510(c), however, there remains a question as to whether the informational requirements of section 507(b)(4) should be interpreted as controlling the scope of ownership and control determinations for permit blocking purposes under section 510(c). In view of comments it has received on the proposed rule, OSMRE tentatively has concluded that section 507(b)(4) should not be interpreted in this way and accordingly is proposing a revised definition of the terms "owned or controlled" and "owns or controls."

Several commenters have argued that the above quoted legislative history indicates that the Congress did not intend that *all* persons required to be identified by section 507(b)(4) should be held ultimately responsible for compliance with the requirements of the Act. They argue that section 507(b)(4) does not define who owns or controls an applicant for the purposes of section 510(c) permit blocking, but simply requires the submission of data from which OSMRE must determine those utlimately responsible for the mining operation, either because of their official position or because of their controlling ownership interest in a corporation.

One commenter, citing *11 Fletcher, Corporations* (1986) as authority, stated that a 10 percent shareholder does not own a corporation, he merely owns one-tenth of its shares. He has the right to vote one-tenth of the corporation's shares and collect one-tenth of its dividends. He does not own any of the corporation's assets or capital directly. The commenter went on to argue that since the Congress did not define "ownership" or "control" in the Act, it is appropriate to assume that the Congress intended these terms to be used in their usual and ordinary sense rather than in an extreme fashion such as the 10 percent ownership provisions of the proposed rule.

The purpose of denying a permit under section 510(c) is to compel compliance with the Act by withholding approval of a new permit until outstanding violations under an old permit are corrected. The commenters argue that it would serve no purpose to block a permit simply because someone listed in the permit application owned 10 percent of an existing operation that was not in compliance with the Act. OSMRE should block a permit only for an ownership interest sufficiently large to allow a person to compel compliance. OSMRE finds this reasoning persuasive, and therefore is proposing a revised definition that would apply in determinations of ownership and control under section 510(c). OSMRE intends to collect information on persons holding at least a 10 percent interest in the applicant and include such information in the AVS, but would only block permits based on the definition discussed herein.

**Definition of "Owned or Controlled" and "Owns or Controls"**

In line with the above reasoning, OSMRE is considering the adoption of a definition of the terms "owned or controlled" and "owns or controls" (the phrase set forth in section 510(c)) which focuses on those relationships which allow one person or entity to influence or compel action by another person or entity, such as compliance with the requirements of the Act. Accordingly, OSMRE proposes the following definition:

"*Owned or controlled* and *owns or controls* mean any relationship which gives one person authority to determine the manner in which an applicant, or an operator if other than an applicant, conducts surface coal mining operations, and includes but is not limited to the following:

"(1) Being a chief executive officer, chief operating officer, or chairman of the board of an entity constitutes control of the entity.

"(2) Being an officer, director, or operator of an entity, or having the ability to commit the financial or real property assets of an entity creates a presumption of control.

"(3) Based on the instruments of ownership or the voting securities of an entity: (a) Ownership in excess of 50 percent constitutes control; (b) ownership of 20 through 50 percent creates a presumption of control; and (c) ownership of less than 20 percent creates a presumption of noncontrol."

This definition differs from the April 16th option, which would have defined the terms "ownership" and "control" separately. That option would have defined "ownership" as holding the proprietary interest in a sole proprietorship, being a general partner in a partnership, or having a 10% or greater interest in an entity either directly or *indirectly* through one or more intermediary companies. Under the April 16th option, a 10 percent or

greater interest in an entity would constitute ownership regardless of the number of levels up or down through a corporate structure between a parent and a subsidiary.

The present option, like the original April 5, 1985 proposal, considers "ownership" as a subset of control and focuses on the size of holdings to determine whether control exists. Thus a holding of one share of stock may be sufficient if coupled with enough other factors to demonstrate that control exists. The specific references to sole proprietors and partners which appeared in the April 5, 1985 and the April 16, 1986 options have been deleted from this option. Sole proprietors, and any partner in a partnership or joint venture, would be regulated through paragraph (3).

The April 16th option, like the present option, would have defined control as any relationship which gives one person authority to determine the manner in which an applicant, or an operator if other than an applicant, conducts surface coal mining operations. Under the April 16th option, being an operator, chief executive officer or chief operating officer of an entity would constitute control, and being a director or an officer other than a chief executive officer or chief operating officer of the applicant or of any company which directly or indirectly owns a 10 percent or greater interest in the applicant would create a rebuttable presumption of control.

Under the present option being a chief executive officer, chief operating officer, or chairman of the board of a corporation would constitute control of the corporation and of any subsidiary in which the corporation owned sufficient stock to control the actions of the subsidiary. Being an officer, director, or operator of an entity, or having the ability to direct or commit the financial or real property assets of the entity would create a presumption of control. Ownership in excess of 50% of an entity would constitute control. The modified option also would create a presumption of control for ownership of 20 through 50 percent because actual control of a corporation will often exist without ownership of a majority of the corporation's voting stock. Ownership of less than 50 percent may provide actual control where the stock ownership or other instruments of ownership are widely dispersed.

The modified definition contained in this option would apply *indirectly* up and down a corporation structure. The percentage ownership test would apply at each level of the structure and would be used in determining whether control existed in a parent-subsidiary relationship. For example, if Company "A" owned a 45 percent controlling interest in Company "B" and Company "B" owned a 20 percent controlling interest in the applicant, then Company "A" would itself be presumed to control the applicant even though Company "A" had an indirect interest in the applicant of only 9 percent. Also, under the definition, if an applicant and a violator had a common controlling officer or operator, the permit would be blocked.

The Appendix to this notice contains a hypothetical corporate tree (Figure No. 1) and an applicant-violator matrix (Table No. 1), based on Figure No. 1, demonstrating how permit blocking under the definition would work if the applicant or any person owned or controlled by either the applicant or by any person who owns or controls the applicant is in violation of the requirements of the Act. The hypothetical corporation tree was previously published on April 16, 1986 (51 FR 12879) and used by OSMRE to explain another option which would block the issuance of a permit based on indirect ownership of 10 percent or more of one entity by another. The same corporate tree is being used in order to facilitate a comparison of the two options. The ownership interests in Company No. 1 have been changed for purposes of illustration.

It is important to note, that the final rule will serve as a basis by which searches and proposed permit blocking actions in OSMRE's Applicant-Violator System (AVS) will be made. Therefore, there is a direct linkage between this rule and the AVS.

Dated: April 27, 1987.

**Jed D. Christensen,**

*Director, Office of Surface Mining Reclamation and Enforcement.*

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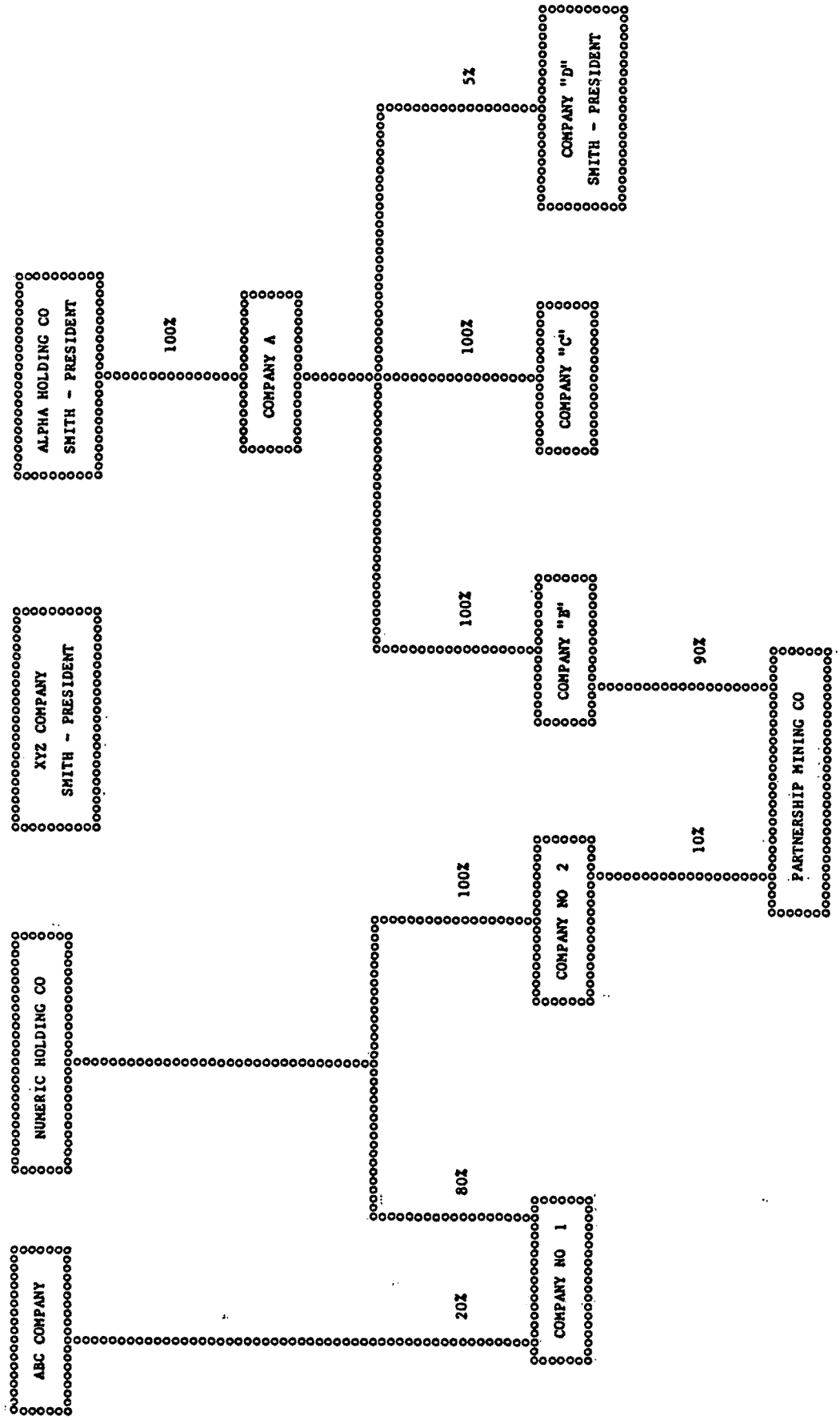


FIGURE NO 1

BILLING CODE 4310-05-C

TABLE NO. 1

| Applicant | Violator | Permit issued | Reason |
|---|---|---|---|
| Partnership Mining | Company No. 2 | Yes | Under the definition there is a presumption that Company No. 2 does not control the applicant. If there are no factors which can overcome the presumption, the permit would be issued. |
| Partnership Mining | Company "C" | No | Under the definition, Company "A" controls Company "B" which controls the applicant, and Company "A" also controls the violator. |
| Partnership Mining | Numeric Holding Co. | Yes | Numeric Holding Co. controls Company No. 2. However, there is a presumption that Company No. 2 does not control the applicant. If there are no factors which can overcome the presumption of noncontrol, the permit would be issued. |
| XYZ Company | Partnership Mining | No | Smith controls the applicant and Smith controls Alpha Holding Co. which controls Company "A" which controls Company "B" which controls the violator. Under the definition, Smith controls both the applicant and the violator. Therefore, the permit would not be issued. If Smith were the operator for both companies instead of the President, there would be a presumption that Smith controlled both the applicant and the violator and the permit would not be issued. However, if the presumption of control for the operator were overcome by other factors, the permit would be issued. |
| Company No. 2 | Company "B" | Yes | No blocking relationship exists. |
| Company No 1 | ABC Company | No | Under the definition there is a presumption that the applicant is controlled by the violator. Therefore, the permit would not be issued. If there are factors which overcome the presumption, the permit would be issued. |

[FR Doc. 87-10039 Filed 5-1-87; 8:45 am]

BILLING CODE 4310-05-M

## NATIONAL SCIENCE FOUNDATION

## 45 CFR Part 612

## Freedom of Information Changes

**AGENCY:** National Science Foundation.

**ACTION:** Notice of proposed rule making.

**SUMMARY:** The National Science Foundation proposes to make changes to its Freedom of Information Act regulations. These changes are intended to reflect a uniform schedule of FOIA fees, fee guidelines, and fee waivers, in accordance with the guidance issued by the Office of Management and Budget, in their memorandum of March 31, 1987, and the Department of Justice, in their memorandum of April 2, 1987. Comments are invited.

**DATE:** Comments should be made by June 3, 1987.

**ADDRESS:** Written comments should be addressed to the Office of Legislative and Public Affairs, Room 527, National Science Foundation, 1800 G Street, NW., Washington, DC 20550. Attn: FOIA Amendment.

**FOR FURTHER INFORMATION CONTACT:** Mary Ellen Schoolmaster, FOIA Officer, National Science Foundation, 1800 G Street, NW., Washington, DC 20550. Phone: 202-357-9498.

**SUPPLEMENTARY INFORMATION:** These changes follow the language of the Office of Management and Budget Uniform FOIA Fee Schedule and Guidelines

### List of Subjects in 45 CFR Part 612

Freedom of information.

### PART 612—[AMENDED]

For the reasons set out in the preamble, Part 612 of Title 45 of the Code of Federal Regulations is proposed to be amended as follows:

1. The authority citation for Part 612 is revised to read as follows:

**Authority:** 5 U.S.C. 552, as amended.

**§ 612.6 [Removed and reserved]**

2. By removing and reserving § 612.6.

3. By adding §§ 612.9, 612.10, 612.11, 612.12, and 612.13 as set forth below:

**§ 612.9 Definitions.**

For the purpose of these Guidelines:

(a) All the terms defined in the Freedom of Information Act apply.

(b) A "statute specifically providing for setting the level of fees for particular types of records" (5 U.S.C. 552(a)(4)(vi)) means any statute that specifically requires a government agency, such as the Government Printing Office (GPO) or the National Technical Information Service (NTIS), to set the level of fees for particular types of records, in order to:

(1) Serve both the general public and private sector organizations by conveniently making available government information;

(2) Ensure that groups and individuals pay the cost of publications and other services which are for their special use so that these costs are not borne by the general taxpaying public;

(3) Operate an information dissemination activity on a self-sustaining basis to the maximum extent possible; or

(4) Return revenue to the Treasury for defraying, wholly or in part, appropriated funds used to pay the cost of disseminating government information.

Statutes, such as the User Fee Statute, which only provide a general discussion of fees without explicitly requiring that an agency set and collect fees for particular documents do not supersede the Freedom of Information Act under section (a)(4)(A)(vi) of that statute.

(c) The term "direct costs" means those expenditures which an agency actually incurs in searching for and duplicating (and in the case of commercial requesters, reviewing) documents to respond to a FOIA request. Direct costs include, for example, the salary of the employee performing work (the basic rate of pay for the employee plus 16 percent of that rate to cover benefits) and the cost of operating duplicating machinery. Not included in direct costs are overhead expenses such as costs of space, and heating or lighting the facility in which the records are stored.

(d) The term "search" includes all time spent looking for material that is responsive to a request, including page-by-page or line-by-line identification of material within documents. NSF shall ensure that searching for material is done in the most efficient and least expensive manner so as to minimize costs for both the agency and the requester. For example, NSF shall not engage in line-by-line search when merely duplicating an entire document would prove the less expensive and quicker method of complying with a request. "Search" should be distinguished, moreover, from "review" of material in order to determine whether the material is exempt from disclosure (see paragraph (f) of this section). Searches may be done manually or by computer using existing programming.

(e) The term "duplication" refers to the process of making a copy of a document necessary to respond to a FOIA request. Such copies can take the form of paper copy, microform, audio-visual materials, or machine readable documentation (e.g., magnetic tape or disk), among others. The copy provided must be in a form that is reasonably usable by requesters.

(f) The term "review" refers to the process of examining documents located

in response to a request that is for a commercial use (see paragraph (g) of this section) to determine whether any portion of any document located is permitted to be withheld. It also includes processing any documents for disclosure, e.g., doing all that is necessary to excise them and otherwise prepare them for release. Review does not include time spent resolving general legal or policy issues regarding the application of exemptions.

(g) The term " 'commercial use' request" refers to a request from or on behalf of one who seeks information for a use or purpose that furthers the commercial, trade, or profit interests of the requester or the person on whose behalf the request is made. In determining whether a requester properly belongs in this category, NSF shall determine the use to which a requester will put the documents requested. Moreover, where NSF has reasonable cause to doubt the use to which a requester will put the records sought, or where that use is not clear from the request itself, NSF shall seek additional clarification before assigning the request to a specific category.

(h) The term "educational institution" refers to a preschool, a public or private elementary or secondary school, an institution of graduate higher education, an institution of professional education, and an institution of vocational education, which operates a program or programs of scholarly research.

(i) The term "non-commercial scientific institution" refers to an institution that is not operated on a "commercial" basis as that term is referenced in paragraph (g) of this section and which is operated solely for the purpose of conducting scientific research the results of which are not intended to promote any particular product or industry.

(j) The term "representative of the news media" refers to any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. The term "news" means information that is about current events or that would be of current interest to the public. Examples of news media entities include television or radio stations broadcasting to the public at large, and publishers of periodicals (but only in those instances when they can qualify as disseminators of "news") who make their products available for purchase or subscription by the general public. These examples are not intended to be all-inclusive. Moreover, as traditional methods of news delivery evolve (e.g., electronic dissemination of newspapers through telecommunications services), such alternative media would be included in this category. In the case of "freelance" journalists, they may be regarded as working for a news organization if they can demonstrate a solid basis for expecting publication through that organization, even though not actually employed by it. A publication contract would be the clearest proof, but NSF may also look to the past publication record of a requester in making this determination.

**§ 612.10 Fees to be charged—general.**

NSF shall charge fees that recoup the full allowable direct costs they incur. Moreover, NSF shall use the most efficient and least costly methods to comply with requests for documents made under the FOIA. NSF will contract with private sector services to locate, reproduce and disseminate records in response to FOIA requests when that is the most efficient and lease costly method. When doing so, however, NSF shall ensure that the ultimate cost to the requester is no greater than it would be if NSF itself had performed these tasks. In no case will NSF contract out responsibilities which the FOIA provides that it alone may discharge, such as determining the applicability of an exemption, or determining whether to waive or reduce fees. In addition, NSF shall ensure that when documents that would be responsive to a request are maintained for distribution by agencies operating statutory-based fee schedule programs (see definition in paragraph (b) of this section, such as the NTIS, they inform requesters of the steps necessary to obtain records from those sources.

(a) *Manual searches for records.* Whenever feasible, NSF shall charge at the salary rate(s) (i.e. basic pay plus 16 percent) of the employee(s) making the search. However, where a homogeneous class of personnel is used exclusively (e.g., all administrative/clerical, or all professional/executive), NSF may establish an average rate for the range of grades typically involved.

(b) *Computer searches for records.* NSF shall charge at the actual direct cost of providing the service. This will include the cost of operating the central processing unit (CPU) for that portion of operating time that is directly attributable to searching for records responsive to a FOIA request and operator/programmer salary apportionable to the search. When NSF can establish a reasonable agency-wide average rate for CPU operating costs and operator-programmer salaries involved in FOIA searches, the Foundation will do so and charge accordingly.

(c) *Review of records.* Only requesters who are seeking documents for commercial use may be charged for time NSF spends reviewing records to determine whether they are exempt from mandatory disclosure. It should be noted that charges may be assessed only for the *initial* review; i.e., the review undertaken the first time NSF analyzes the applicability of a specific exemption to a particular record or portion of a record. NSF may not charge for review at the administrative appeal level of an exemption already applied. However, records or portions of records withheld in full under an exemption which is subsequently determined not to apply may be reviewed again to determine the applicability of other exemptions not previously considered. The costs for such a subsequent review would be properly assessable. Where a single class of reviewers is typically involved in the review process, NSF may establish a reasonable agency-wide average and charge accordingly.

(d) *Duplication of records.* NSF shall establish an average agency-wide, per-page charge for paper copy reproduction of documents. This charge shall represent the reasonable direct costs of making such copies, taking into account the salary of the operators as well as the cost of the reproduction machinery. For copies prepared by computer, such as tapes or printouts, NSF shall charge the actual cost, including operator time, of production of the tape or printout. For other methods of reproduction or duplication, NSF shall charge the actual direct costs of producing the document(s). In practice, if NSF estimates that duplication charges are likely to exceed $25, it shall notify the requester of the estimated amount of fees, unless the requester has indicated in advance his willingness to pay fees as high as those anticipated. Such a notice shall offer a requester the opportunity to confer with agency personnel with the object of reformulating the request to meet his or her needs at a lower cost.

(e) *Other charges.* It should be noted that complying with requests for special services such as those listed below is entirely at the discretion of NSF. Neither the FOIA nor its fee structure cover these kinds of services. NSF shall recover the full costs of providing services such as those enumerated below to the extent that it elects to provide them:

(1) Certifying that records are true copies;

(2) Sending records by special methods such as express mail, etc.

(f) *Restrictions on assessing fees.* With the exception of requesters seeking

documents for a commercial use, section (4)(A)(iv) of the Freedom of Information Act, as amended, requires NSF to provide the first 100 pages of duplication and the first two hours of search time without charge. Moreover, this section prohibits NSF from charging fees to any requester, including commercial use requesters, if the cost of collecting a fee would be equal to or greater than the fee itself. These provisions work together, so that except for commercial use requesters, NSF would not begin to assess fees until after they had provided the free search and reproduction. For example, for a request that involved two hours and ten minutes of search time and resulted in 105 pages of documents, NSF will determine the cost of only 10 minutes of search time and only five pages of reproduction. If this cost was equal to or less than the cost to the agency of billing the requester and processing the fee collected, no charges would result. The elements to be considered in determining the "cost of collecting a fee," are the administrative costs to the NSF of receiving and recording a requester's remittance, and processing the fee for deposit in the Treasury Department's special account (or the NSF's account if the agency is permitted to retain the fee). The per-transaction cost to the Treasury to handle such remittances is negligible and shall not be considered in the NSF's determination. For purposes of these restrictions on assessment of fees, the word "pages" refers to paper copies of a standard agency size which will normally be "8½ x 11" or "11 by 14." Thus, requesters would not be entitled to 100 microfiche or 100 computer disks, for example. A microfiche containing the equivalent of 100 pages or pages of computer printout, however, might meet the terms of the restriction. Similarly, the term "search time" in this context has as its basis *manual search*. To apply this term to searches made by computer, NSF shall determine the hourly cost of operating the central processing unit and the operator's hourly salary plus 16 percent. When the cost of the search (including the operator time and the cost of operating the computer to process a request) equals the equivalent dollar amount of two hours of the salary of the person performing the search, i.e., the operator, NSF shall begin assessing charges for computer search.

**§ 612.11 Fees to be charged categories of requesters.**

There are four categories of FOIA requesters: Commercial use requesters; educational and non-commercial scientific institutions; representatives of the news media; and all other requesters. The Act prescribes specific levels of fees for each of these catagories:

(a) *Commercial use requesters.* When a request for documents for commercial use is received, NSF shall assess charges which recover the full direct cost of searching for, reviewing for release, and duplicating the record sought. Requesters must reasonably describe the record sought. Commercial use requesters are not entitled to two hours of free search time nor 100 free pages of reproduction of documents. NSF may recover the cost of searching for and reviewing records even if there is ultimately no disclosure of records (see paragraph (b) of this section).

(b) *Educational and non-commercial scientific institution requesters.* NSF shall provide documents to requesters in this catagory for the cost of reproduction alone, excluding charges for the first 100 pages. To be eligible for inclusion in this catagory, requesters must show that the request is being made as authorized by and under the asupices of a qualifying institution and that the records are not sought for a commercial use, but are sought in furtherance of scholarly (if the request is from an educational institution) or scientific (if the request is from a non-commercial scientific institution) research. Requesters must reasonably describe the records sought.

(c) *Requesters who are representatives of the news media.* NSF shall provide documents to requesters in this category for the cost of reproduction alone, excluding charges for the first 100 pages. To be eligible for inclusion in this catagory, a requester must meet the criteria in § 612.9(j), and his other request must not be made for a commercial use. In reference to this class of requester, a requst for records supporting the news dissemination function of the requester shall not be considered to be a request that is for commerical use. Requesters must reasonably describe the record sought.

(d) *All other requesters.* NSF shall charge requesters who do not fit into any of the categories above fees which recover the full reasonable direct cost of searching for and reproducing records that are responsive to the request, except that the first 100 pages of reproduction and the first two hours of search time shall be furnished without charge. Moreover, requests from record subjects for records about themselves filed in NSF's systems of records will continue to be treated under the fee provisions of the Privacy Act of 1974 which permit fees only for reproduction. Requesters must reasonably describe the records sought.

**§ 612.12 Administrative actions to improve assessment and collection of fees.**

NSF shall ensure that procedures for assessing and collecting fees are applied consistently and uniformly by all components. To do so, NSF amends its FOIA regulations to conform to the provisions of this Fee Schedule and Guidelines, especially including the following elements.

(a) *Charging interest notice and rate.* NSF may being assessing interest charges on an unpaid bill starting on the 31st day following the day on which the billing was sent. NSF shall ensure that their accounting procedures are adequate to properly credit a requester who has remitted the full amount within the time period. The fact that the fee has been received by the agency, even if not processed, will suffice to say the accrual of interest. Interest will be at the rate prescribed in section 3717 of Title 31 U.S.C. and will accrue from the date of the billing.

(b) *Charged for unsuccessful search.* NSF may assess charges for time spent searching, even if NSF fails to locate the records or if records located are determined to be exempt from disclosure. In practice, if NSF estimates that search charges are likely to exceed $25, it shall notify the requester of the estimated amount of fees, unless the requester has indicated in advance his willingness to pay fees as high as those anticipated. Such a notice shall offer the requester the opportunity to confer with agency personnel with the object of reformulating the request to meet his or her needs at a lower cost.

(c) *Aggregating requests.* Except for requests that are for a commercial use, NSF shall not charge for the first two hours of search time or for the first 100 pages of reproduction. However, a requester may not file multiple requests at the same time, each seeking portions of a document or documents, solely in order to avoid payment of fees. When NSF reasonbly believes that a requester or, on rare occasions, a group of requesters acting in concert, is attempting to break a request down into a series of request for the purpose of evading the assessment of fees, NSF may aggregate any such requests and charge accordingly. One element to be considered in determining whether a belief would be reasonable is the time period in which the requests have occurred. For example, it would be reasonable to presume that multiple requests of this type made within a 30-day period had been made to avoid fees. For requests made over a longer period, however, such a presumption becomes harder to sustain and NSF should have a

solid basis for determining that aggregation is warranted in such cases.

(d) *Advance payments.* NSF shall not require a requester to make an advance payment, i.e., payment before work is commenced or continued on a request, unless:

(1) The NSF estimates or determines that allowable charges that a requester may be required to pay are likely to exceed $250. Then, NSF should notify the requester of the likely cost and obtain satisfactory assurance of full payment where the requester has a history of prompt payment of FOIA fees, or require an advance payment of an amount up to the full estimated charges in the case of requesters with no history of payment; or

(2) A requester has previously failed to pay a fee charged in a timely fashion (i.e. within 30 days of the date of the billing), NSF may require the requester to pay the full amount owed plus any applicable interest as provided above or demonstrate that he has, in fact, paid the fee, and to make an advance payment of the full amount of the estimated fee before the NSF begins to process a new request or a pending request from that requester.

When NSF acts under paragraph (d)(1) or (2) of this section, the administrative time limits prescribed in subsection (a)(6) of the FOIA (i.e., 10 working days from receipt of initial requests and 20 working days from receipt of appeals from initial denial, plus permissible extensions of these time limits) will begin only after NSF has received fee payments described above.

**§ 612.13 Waivers or reductions.**

(a) Employees of the National Science Foundation are encouraged to waive fees whenever the statutory fee waiver standard is met. However, employees are expected to respect the balance drawn in the statute, safeguarding federal funds by granting waivers or reductions only where it is determined that the following statutory standard is satisfied:

Documents shall be furnished without any charge or at a charge reduced below the fees established under clause (ii) if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.

(b) NSF will employ the following six factors in determining when FOIA fees should be waived or reduced:

(1) The subject of the request: Whether the subject of the requested records concerns "the operations or activities of the government";

(2) The informative value of the information to be disclosed: Whether the disclosure is "likely to contribute" to an understanding of government operations or activities;

(3) The contribution to an understanding of the subject by the general public likely to result from disclosure: Whether disclosure of the requested information will contribute to "public understanding";

(4) The significance of the contribution to public understanding: Whether the disclosure is likely to contribute "significantly" to public understanding of government operations or activities.

(5) The existence and magnitude of a commercial interest: Whether the requester has a commercial interest that would be furthered by the requested disclosure; and, if so

(6) The primary interest in disclosure: Whether the magnitude of the identified commercial interest of the requester is sufficiently large, in comparison with the public interest in disclosure, that disclosure is "primarily in the commercial interest of the requester."

(c) NSF will use the U.S. Department of Justice policy guidance in applying the foregoing factors.

Dated: April 20, 1987.

**Erich Bloch,**

*Director.*

[FR Doc. 87-10002 Filed 5-1-87; 8:45 am]

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## FEDERAL MARITIME COMMISSION

### 46 CFR Parts 558, 559, 560, 561, 562, 564, 566, and 569

**[Docket No. 87-9]**

### Filing of Agreements by Common Carriers and Other Persons Subject to the Shipping Act, 1916

**AGENCY:** Federal Maritime Commission.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Federal Maritime Commission proposes to amend its rules governing the filing of agreements by common carriers and other persons subject to the Shipping Act, 1916. The purpose of the rules changes is to amend 46 CFR Part 560 to incorporate all other Parts pertaining to the filing of agreements in the domestic offshore trades.

**DATE:** Comments due on or before June 3, 1987.

**ADDRESS:** Send comments (original and fifteen copies) to: Joseph C. Polking, Secretary, Federal Maritime Commission, 1100 L Street, NW., Washington, DC 20573, (202) 523-5725.

**FOR FURTHER INFORMATION CONTACT:** Austin L. Schmitt, Acting Director, Bureau of Trade Monitoring, Federal Maritime Commission, 1100 L Street, NW., Washington, DC 20573, (202) 523-5787.

**SUPPLEMENTARY INFORMATION:** Parts 558 through 562, 564, 566, and 569 of Title 46, Code of Federal Regulations,[1] currently constitute the Commission's rules governing the activities of agreements in the domestic offshore trades subject to the Shipping Act, 1916 (1916 Act), 46 U.S.C. app. 801 *et seq.* To improve public knowledge of these rules and to provide a single reference work for industry use in filing agreements, we are proposing to consolidate them under one rule, Part 560, and to create a structural parallel to the rules applicable to agreements under the Shipping Act of 1984 (1984 Act), 46 U.S.C. app. 1701 through 1720, to the extent practicable. We also propose to amend the rules, which were previously intended to deal with conditions in the foreign commerce, to make them more compatible with conditions in the domestic offshore commerce.

The substantive changes to the existing rules are as follows:

1. The essential elements of Parts 558, 559,[2] 561, 562, 564, 566, and 569 have been incorporated into Part 560 without substantive alterations. "Joint policing agreement" and "Military household goods agreement" have been deleted from the list of agreements in Part 559 which are exempt from the filing and approval requirements of section 15 of the 1916 Act. This is done because such agreements have been used only in the foreign trades.

2. The definition of "Conference agreement" has been revised to simplify it and to delete certain characteristics which are not necessarily applicable to

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[1] *Part 558,* Exemption Of Husbanding And Agency Agreements Under The Shipping Act, 1916; *Part 559,* Exemption Of Certain Agreements From The Requirements Of section 15, Shipping Act, 1916; *Part 560,* Filing Of Agreements By Common Carriers And Other Persons Subject To The Shipping Act, 1916; *Part 561,* Time For Filing Certain Agreements Under The Shipping Act, 1916; *Part 562,* Conference Agreement Provisions Relating To Concerted Activities Under The Shipping Act, 1916; *Part 564,* Admission, Withdrawal And Expulsion Provisions Of Steamship Conference Agreements Under The Shipping Act, 1916; *Part 566,* Shippers' Requests And Complaints Under The Shipping Act, 1916; and *Part 569,* Rules Governing The Right Of Independent Action Under The Shipping Act, 1916.

[2] The Commission will shortly be publishing its final rule in Docket 85-10, *Marine Terminal Agreements,* which will include an amendment to Part 559. That amendment will also be incorporated into Part 560 when a final rule is issued in this proceeding.

conference agreements today, especially in the domestic offshore trades.

3. The definitions of "Rate agreement," "Pooling agreement," "Joint service agreement," "Sailing agreement," and "Transshipment agreement" have been deleted. The definition of "Rate agreement" is adequately covered by the proposed definition of "Conference agreement" and the other agreements are employed almost exclusively in the foreign commerce.

4. Subpart D—Filing and Form of Agreements, and Subpart E—Content of Agreements, are closely patterned after those particular sections of Part 572 pertaining to the filing of agreements under the 1984 Act.

The Commission, therefore, invites comments on a proposal to combine all of its rules pertaining to agreements subject to the 1916 Act under Part 560 and to structure those rules, insofar as is appropriate, along the lines of Part 572 pertaining to agreement activities in the foreign commerce subject to the 1984 Act. Commenters are particularly requested to address the continuing need for exemptions proposed herein which are presently contained in 46 CFR Parts 558 and 559.

The Commission has determined that the proposed rule, if adopted, is not a "major rule" as defined in Executive Order 12291 because it will not result in: (1) Annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) a significant adverse effect on competition, employment, investment, productivity, innovations, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, it is certified that the proposed rule will not, if adopted, have a significant economic impact on a substantial number of small entities, including small businesses, small organizational units and small governmental jurisdictions.

The collection of information requirements contained in this rule have been submitted to the Office of Management and Budget for review under section 3504(h) of the Paperwork Reduction Act of 1980, 44 U.S.C. 3504(h). Requests for information, including copies of the collection of information and supporting documentation, may be obtained from John Robert Ewers, Director, Bureau of Administration, Federal Maritime Commission, 1100 L Street, NW., Room 12211, Washington, DC 20573, telephone number (202) 523-5866. Comments may be submitted to the agency and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503, Attention: Desk Officer for the Federal Maritime Commission, within 15 days after the date of the **Federal Register** in which this notice appears.

**List of Subjects in 46 CFR Parts 558, 559, 560, 561, 562, 564, 566, and 569**

Antitrust, Contracts, Maritime Carriers, Reporting and recordkeeping requirements, Rates.

Therefore, pursuant to 5 U.S.C. 553 and sections 15, 18(a), 21, 22, 35 and 43 of the Shipping Act, 1916, 46 U.S.C. app. 814, 817(a), 820, 821, 833a and 841a, the Federal Maritime Commission proposes to revise Part 560 of Title 46, Code of Federal Regulations as follows, and to remove Parts 558, 559, 561, 562, 564, 566, and 569 upon the effectiveness of Part 560.

**SUBCHAPTER C—REGULATIONS AFFECTING MARITIME AND RELATED ACTIVITIES IN DOMESTIC OFFSHORE COMMERCE**

## PART 560—AGREEMENTS BY COMMON CARRIERS AND OTHER PERSONS SUBJECT TO THE SHIPPING ACT, 1916

**Subpart A—General Provisions**

Sec.
560.101 Authority.
560.102 Purpose.
560.103 Policies.
560.104 Definitions.

**Subpart B—Scope**

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**Subpart C—Exemptions**

560.301 Exemption procedures.
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560.303 Husbanding agreements—exemption.
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560.305 Transshipment agreements—exemption.
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560.307 Equipment interchange agreements—exemption.

**Subpart D—Filing and Form of Agreements**

560.401 Filing of agreements.
560.402 Form of agreements.
560.403 Supporting statements.
560.404 Time for filing agreements.

**Subpart E—Content of Agreements**

560.501 Provisions of conference agreements.
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**Subpart F—Action on Agreements**

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560.601 Federal Register notice.
560.602 Comments and protests.
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**Subpart G—Reporting and Record Retention Requirements**

560.701 General requirements.
560.702 Filing of reports relating to shippers' requests and complaints.
560.703 Filing of minutes.
560.704 Filing of reports on admissions, withdrawal, and expulsions.

**Subpart H—[Reserved]**

**Subpart I—Penalties**

560.901 Failure to file agreements.
560.902 Failure to file reports.
560.903 Falsification of reports.

**Subpart J—Paperwork Reduction**

560.991 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

Authority: Sec. 4 of the Administrative Procedure Act, 5 U.S.C. 553, and secs. 15, 18a, 21, 22, 35, and 43 of the Shipping Act, 1916 (the Act), 46 U.S.C. app. 814, 817(a), 820, 821, 833a, and 841a.

### Subpart A—General Provisions

**§ 560.101 Authority.**

The rules in this part are issued pursuant to the authority of section 4 of the Administrative Procedure Act, 5 U.S.C. 553, and sections 15, 18a, 21, 22, 35, and 43 of the Shipping Act, 1916 (the Act), 46 U.S.C. app. 814, 817(a), 820, 821, 833a, and 841a.

**§ 560.102 Purpose.**

(a) This part implements those provisions of the Act which govern agreements between common carriers by water in interstate commerce or other persons subject to the Act.

(b) This part also establishes procedures for: (1) Filing agreement approval requests pursuant to section 15 of the Act, including supporting statements; (2) filing comments and protests to such agreements and responses; and (3) the disposition of agreement approval requests.

**§ 560.103 Policies.**

(a) It is the responsibility of the Commission to disapprove, cancel, or modify, by order, after notice and hearing, any agreement, or modification or cancellation thereof, whether or not previously approved by it, that it finds to be unjustly discriminatory or unfair as between carriers, shippers, exporters, importers, or ports, or between exporters from the United States and their foreign competitors; to operate to the detriment of the commerce of the United States; to be contrary to the

public interest; or to be in violation of the Act, and to approve all other agreements, modifications, or cancellations. This part is intended to establish procedures for the orderly and expeditious review of agreements in accordance with these statutory requirements.

(b) Section 35 of the Act provides that the Commission may exempt classes of agreements from any requirement of the Act or this part where it finds that such exemption will not substantially impair effective regulation by the Commission, be unjustly discriminatory, or be detrimental to commerce. In order to minimize delay in implementation of routine agreements and to avoid the private and public cost of unnecessary regulation, the Commission is exempting certain classes of agreements from the filing and approval requirements of the Act and this part.

(c) In order to discharge the responsibilities of the Act the Commission requires sufficient time to analyze and consider every agreement, modification, and cancellation to determine whether or not it is lawful. Therefore, the Commission is establishing procedures, and form and content requirements for agreements, supporting statements, comments and protests, and responses. Parties to agreements are solely responsible for the timely filing of amendments to extend agreements containing termination dates.

(d) It is the responsibility of the Commission to insure that parties to agreements approved under section 15 of the Act are at all times complying with the requirements of that Act. In order to discharge properly this responsibility, the Commission must be fully apprised of the manner in which operations are being and will be carried out and shall require that meaningful reports on such activities be provided to the Commission.

(e) Section 15 of the Act provides that no conference agreement shall be approved, nor shall continued approval be permitted for any agreement, which fails to provide reasonable and equal terms and conditions for admission and readmission to conference membership of other qualified carriers in the trade, or fails to provide that any member may withdraw from membership upon reasonable notice without penalty for such withdrawal. All conference agreements shall contain reasonable and equal terms and conditions for admission and readmission to conference membership to qualified carriers.

(f) Section 15 of the Act provides that the Commission shall disapprove any agreement after notice and hearing on a finding of failure or refusal to adopt and maintain reasonable procedures for promptly and fairly hearing and considering shippers' requests and complaints. All ratemaking groups operating under approved section 15 agreements (except leases, licenses, assignments and other agreements of similar character for the use of terminal facilities) shall adopt and maintain such procedures.

(g) Section 15 of the Act provides that no agreement between carriers not members of the same conference or conferences of carriers serving different trades that would otherwise be naturally competitive, shall be approved, nor shall continued approval be permitted, unless in the case of agreements between carriers, each carrier, or in the case of agreements between conferences, each conference, retains the right of independent action. All such agreements shall contain a provision retaining the right of independent action.

(h) Section 15 of the Act provides that the Commission shall disapprove an agreement on a finding of inadequate policing of the obligations under it. The Commission shall require that ratemaking agreements (except leases, licenses, assignments and other agreements of similar character for the use of terminal facilities) contain procedures for policing the terms of the agreement.

**§ 560.104 Definitions.**

(a) *"Agreement"* means an agreement, or modification thereof, which is a written document and which reflects an understanding, arrangement, or undertaking, between two or more common carriers by water in interstate commerce or other persons subject to the Act which is required by section 15 of the Act to be filed with the Commission.

(b) *"Assessment agreement"* means an agreement, whether part of a collective bargaining agreement or negotiated separately, which provides for the funding of collectively bargained fringe benefit obligations on other than a uniform man-hour basis regardless of the cargo handled or type of vessel or equipment utilized.

(c) *"Common carrier by water in interstate commerce"* means a common carrier engaged in the transportation by water of passengers or property on the high seas or the Great Lakes on regular routes from port to port between one State, Territory, District, or possession of the United States and any other State, Territory, or possession of the United States, or between places in the same Territory, District, or possession.

(d) *"Conference agreement"* means an agreement which authorizes two or more common carriers by water, each operating as a single entity in the trade covered by the agreement, to discuss and agree upon common rates, charges and conditions of carriage and to enforce adherence, by means of liquidated damages, penalties, fines, suspension, expulsion or other contractual remedies.

(e) *"Modification"* means any change, alteration, correction, addition, deletion, or revision of an effective agreement or to any appendix to such an agreement.

(f) *"Proponents"* means the parties to an agreement for which section 15 approval has been requested pursuant to this part.

(g) *"Other person subject to the Act"* means any person not included in the term "common carrier by water in interstate commerce", carrying on the business of forwarding or furnishing wharfage, dock, warehouse or other terminal facilities in connection with a common carrier by water in interstate commerce.

(h) *"Shippers' requests and complaints"* means any communication requesting a change in tariff rates, rules, or regulations; the protesting of, or objecting to, existing tariff rates, rules, or regulations; objecting to rate increases or other tariff changes; and protests against allegedly erroneous billings due to an incorrect commodity classification, incorrect weight or measurement of cargo, or other implementation of the tariff. Routine requests for rate information, sailing schedules, space availability, and the like are not included in the term.

(i) *"Terminal Facilities"* means one or more structures (and services connected therewith) comprising a terminal unit, including, but not limited to docks, berths, piers, aprons, wharves, warehouses, covered and/or open storage space, cold storage plants, grain elevators and/or bulk cargo loading and/or unloading structures, landings, and receiving stations, used for the transmission, care and convenience of cargo and/or passengers or the interchange of same between land and common carriers by water in interstate commerce or between two common carriers by water in interstate commerce. This term is not limited to waterfront or port facilities and includes so-called off-dock container freight stations at inland locations and any other facility from which inbound waterborne cargo may be tendered to the consignee or outbound cargo may be received from shippers for vessel or container loading.

## Subpart B—Scope

### § 560.201 Subject agreements.

This part applies to agreements by or among two or more common carriers by water in interstate commerce or other persons subject to the Act, or modifications or cancellations thereof:

(a) Fixing or regulating transportation rates or fares;

(b) Giving or receiving special rates, accommodations, or other special privileges or advantages;

(c) Controlling, regulating, preventing, or destroying competition;

(d) Pooling or apportioning earnings, losses, or traffic;

(e) Allotting ports or restricting or otherwise regulating the number and character of sailings between ports;

(f) Limiting or regulating in any way the volume or character of freight or passenger traffic to be carried; or

(g) In any manner providing for an exclusive, preferential, or cooperative working arrangement.

## Subpart C—Exemptions

### § 560.301 Exemption procedures.

(a) *Authority.* The Commission, upon application or on its own motion, may by order or rule exempt for the future any class of agreements between persons subject to the Act from any requirement of the Act if it finds that the exemption will not substantially impair effective regulation by the Commission, be unjustly discriminatory, or be detrimental to commerce.

(b) *Optional filing.* Notwithstanding any exemption from filing or approval or other requirements of the Act and this part, any party to an exempt agreement may file such an agreement with the Commission.

(c) *Application for exemption.* Any person may apply for an exemption or revocation of an exemption of any class of agreements or an individual agreement pursuant to section 35 of the Act and this subpart. An application for exemption shall state the particular requirement of the Act for which exemption is sought. The application shall also include a statement of the reasons why an exemption should be granted or revoked and shall provide information relevant to any finding required by the Act. Where an application for exemption of an individual agreement is made, the application shall include a copy of the agreement.

(d) *Participation by interested persons.* No order or rule of exemption or revocation of exemption may be issued unless opportunity for hearing has been afforded interested persons and departments and agencies of the United States.

(e) *Federal Register notice.* Notice of any proposed exemption or revocation of exemption, whether upon application or upon the Commission's own motion, shall be published in the **Federal Register.** The notice shall include:

(1) A short title for the proposed exemption or the title of the existing exemption;

(2) The identity of the party proposing the exemption or seeking revocation;

(3) A concise summary of the agreement or class of agreements for which exemption is sought, or the exemption which is to be revoked;

(4) A statement that the application and any accompanying information are available for inspection in the Commission's offices in Washington, DC; and

(5) The final date for filing comments regarding the application.

(f) *Retention of agreement by parties.* Any agreement which has been exempted by the Commission pursuant to section 35 of the Act shall be retained by the parties and shall be available upon request by the Bureau of Trade Monitoring for inspection during the term of the agreement and for a period of three years after its termination.

### § 560.302 Non-substantive agreements—exemption.

(a) *"Non-substantive agreement"* means an agreement between common carriers by water in interstate commerce or other persons subject to the Act, acting individually or through approved agreements, which:

(1) Reflects changes in the:

(i) Name of any geographic locality stated therein;

(ii) Name of the agreement or the name or address of a party to the agreement;

(iii) Name and/or number of any other section 15 agreement, or designated provisions thereof referred to in the agreement;

(iv) Table of contents of an agreement;

(v) Date or amendment number through which agreements state they have been reprinted to incorporate prior revisions thereto or which corrects typographical and grammatical errors in the text of the agreement; or

(vi) Numbers or letters of articles or subarticles of agreements and references thereto in the text;

(2) Reflects changes in the titles or persons or committees designated therein or transfers the functions of such persons or committees to other designated persons or committees or which merely establishes a committee;

(3) Concerns the procurement, maintenance, or sharing of office facilities, furnishings, equipment, supplies, and personnel, including employees and contractors, the allocation and assessment of the costs thereof, or the provisions for the administration and management of such agreements by duly appointed individuals; or

(4) Cancels an agreement approved under the Act and this part.

(b) Non-substantive agreements are exempt from the filing and approval requirements of section 15 and of this part; provided, however, a non-substantive agreement which modifies or cancels an agreement which is subject to the filing and approval requirements of this part shall be filed with the Commission for informational purposes within 30 days of its effective date.

### § 560.303 Husbanding agreements—exemption.

(a) *Husbanding agreement"* means an agreement between a common carrier by water in interstate commerce and another person subject to the Act through which a carrier contracts with an agent to handle routine vessel operating activities in port, such as notifying port officials of vessel arrivals and departures; ordering pilots, tugs, and linehandlers; delivering mail; transmitting reports and requests from the Master to the owner/operators; dealing with passenger and crew matters; and providing similar services related to the above activities. The term does *not* include agreements which provide for the solicitation or booking of cargoes, signing contracts or bills of lading and other related matters, *nor* does it include agreements that prohibit the agent from entering into similar agreements with other carriers.

(b) Husbanding agreements are exempted from the filing and approval requirements of section 15 and of this part.

### § 560.304 Agency agreements—exemption.

(a) *"Agency agreement"* means an agreement between persons subject to the Act which provides for the agent's solicitation and booking of cargoes, and signing contracts of affreightment and bills of lading, on behalf of a common carrier by water in interstate commerce. Such an agreement may or may not also include husbanding service functions and other functions incidental to the performance of duties by agents including processing of claims, maintenance of a container equipment

inventory control system, collection and remittance of freight and reporting functions.

(b) Agency agreements except those: (1) Where a common carrier by water in interstate commerce is to be an agent for a competing common carrier by water in the same trade, or (2) which permit an agent to enter into similar agreements with more than one such carrier in a trade, are exempted from the filing and approval requirements of section 15 and of this part.

**§ 560.305 Transshipment agreements—exemption.**

(a) A nonexclusive transshipment agreement means an agreement by which one common carrier by water in interstate commerce serving a port of origin by direct vessel call and another such carrier serving a port of destination by direct vessel call provide transportation between such ports via an intermediate port served by direct vessel call of both such carriers and at which cargo will be transferred from one to the other and which agreement does not:

(1) Prohibit either carrier from entering into similar agreements with other carriers;

(2) Guarantee any particular volume of traffic or available capacity; or

(3) Provide for the discussion or fixing of rates for the account of the cargo interests, conditions of service or other tariff matters other than the tariff description of the service offered as being by means of transshipment, the port of transshipment and the participation of the nonpublishing carrier.

(b) A nonexclusive transshipment agreement is exempt from the filing and approval requirements of the Act and of this part, provided that the tariff provisions set forth in paragraph (c) of this section and the content requirements of paragraph (d) of this section are met.

(c) The applicable tariff or tariffs shall provide:

(1) The through rate;

(2) The routings (origin, transshipment, and destination ports); additional charges, if any (*i.e.* port arbitrary and/or additional transshipment charges); and participating carriers; and

(3) A tariff provision substantially as follows:

The rules, regulations, and rates in this tariff apply to all transshipment arrangements between the publishing carrier or carriers and the participating, connecting or feeder carrier. Every participating connecting or feeder carrier which is a party to transshipment arrangements has agreed to observe the rules, regulations, rates, and routings established herein as evidenced by a connecting carrier agreement between the parties.

(d) Nonexclusive transshipment agreements must contain the entire arrangement between the parties, must contain a declaration of the nonexclusive character of the arrangement and must provide for:

(1) The identification of the parties and the specification of their respective roles in the arrangement;

(2) A specification of the governed cargo;

(3) The specification of responsibility for the issuance of bills of lading (and the assumption of common carriage-associated liabilities) to the cargo interests;

(4) The specification of the origin, transshipment and destination ports;

(5) The specification of the governing tariff(s) and provision for their succession;

(6) The specification of the particulars of the nonpublishing carrier's concurrence/participation in the tariff of the publishing carrier;

(7) The division of revenues earned as a consequence of the described carriage;

(8) The division of expenses incurred as a consequence of the described carriage;

(9) Termination and/or duration of the agreement;

(10) Intercarrier indemnification or provision for intercarrier liabilities consequential to the contemplated carriage and such documentation as may be necessary to evidence the involved obligations;

(11) The care, handling and liabilities for the interchange of such carrier equipment as may be consequential to the involved carriage;

(12) Such rationalization of services as may be necessary to ensure the cost effective performance of the contemplated carriage; and

(13) Such agency relationships as may be necessary to provide for the pickup and/or delivery of the cargo.

(e) No subject other than as listed in paragraph (d) of this section may be included in exempted nonexclusive transshipment agreements.

**§ 560.306 Credit information agreements—exemption.**

(a) *"Credit information agreement"* means an agreement between common carriers by water in interstate commerce or their duly appointed representatives which provides only for the collection, compilation and exchange of credit experience information. Under such an agreement, the parties cannot discuss or agree on any matter which is required to be published in a tariff pursuant to the Act or any rule published pursuant thereto.

(b) Credit information agreements are exempt from the filing and approval requirements of section 15 and of this part.

**§ 560.307 Equipment interchange agreements—exemption.**

(a) *"Equipment interchange agreement"* means an agreement between two or more common carriers by water in interstate commerce for the exchange of empty containers, chassis, empty LASH/SEABEE barges, and related equipment, which provides only for the transportation of the equipment as required, payment therefor, management of the logistics of transferring, handling and positioning equipment, its use by the receiving carrier, its repair and maintenance, damages thereto, and liability incidental to the interchange of equipment, and no other subject.

(b) Equipment interchange agreements are exempt from the filing and approval requirements of section 15 and of this part.

## Subpart D—Filing and Form of Agreements

**§ 560.401 Filing of agreements.**

(a) Agreement approval requests shall be submitted to the Secretary, Federal Maritime Commission, Washington, DC 20573. Such requests shall consist of a true copy and 15 additional copies of the agreement and all supporting information. Requests shall also be accompanied by a letter of transmittal which summarizes the agreement's contents and expressly requests Commission approval pursuant to section 15. The true copy shall be signed by each of the proponents personally or by an authorized representative and shall show immediately below each signature the name, position, and authority of the signer. Requests for approval which do not meet the requirements of this section shall be rejected within 30 days of receipt.

(b) Assessment agreements shall be filed and shall be approved upon filing.

**§ 560.402 Form of agreements.**

(a) A request for approval of an agreement modification shall be filed in accordance with § 560.401 and shall identify the page and paragraph to be amended and restate each such paragraph. The language to be excised should be struck through, but not obliterated, and the substituted language, if any, should be inserted directly following that which is to be

excised. The new language should be underscored. If the modification does not completely replace approved provisions, the page or pages on which the proposed amendments will appear should be restated with the proposed amendments underscored and placed in proper sequence on the page.

(b) Whenever an approved agreement shall have been modified three times in the manner described in paragraph (a) of this section, the next succeeding modification shall be accomplished by restating the entire agreement, incorporating all previous modifications, and showing the latest change in the manner required by paragraph (a) of this section.

**§ 560.403 Supporting statements.**

An agreement submitted for approval may be accompanied by a supporting statement, signed by an authorized representative of the proponents, indicating the reasons which caused the making of the agreement and the results intended to flow from its implementation, or other facts or arguments which support approval. Affidavits or other evidence may be attached to such statements. Supporting statements, including all documents, affidavits or other evidence attached thereto, are public records. No claims of confidentiality will be allowed.

**§ 560.404 Time for filing agreements.**

(a) All modifications of approved agreements shall be filed within the following specified times:

(1) Applications for extension of an approved agreement due to terminate by its own terms, shall be filed so that the Commission will receive the application not less than one hundred twenty (120) days prior to the date on which the approved agreement would otherwise terminate.

(2) Modifications of an approved agreement, other than as designated in paragraph (a) of this section, should be filed not less than one hundred twenty (120) days prior to the date it is intended that action will begin, change or cease as a result of the provision(s) of the modification.

(b) Failure to file, at least one hundred twenty (120) days in advance of the termination date, an application for the extension of an approved agreement due to terminate by its own terms, may result in the approved agreement terminating prior to Commission action on the filed amendment.

(c) Notice of cancellation of an approved agreement should be filed not less than sixty (60) days prior to the effective date of cancellation.

## Subpart E—Content of Agreements

**§ 560.501 Provisions of conference agreements.**

(a) *Voting.* Conference agreements, agreements between or among conferences, and agreements whereby the parties are authorized to fix rates (except leases, licenses, assignments or other agreements of similar character for the use of terminal facilities) submitted to the Commission for approval shall contain a provision stating the manner in which the joint business of the parties may be carried out: i.e., full conference meeting, agents' meeting, principals' meeting, owners' meeting, through committees or subcommittees, telephone or oral polls, or through any other procedure by which the business of the joint parties may be conducted. This provision shall also include quorum requirements and the types of vote necessary to take various actions; i.e., majority, two-thirds, three-fourths, majority plus one, unanimous, etc.

(b) *Membership.* Conference agreements shall include a provision substantially as follows:

> Any common carrier by water in interstate commerce which has been regularly engaged as a common carrier in the trade covered by this agreement, or who furnishes evidence of ability and intention in good faith to institute and maintain such a common carrier service between ports within the scope of this agreement, and who evidences an ability and intention in good faith to abide by all the terms and conditions of this agreement, may hereafter become a party to this agreement by affixing its signature thereto.

This section will not preclude the conference from imposing legitimate conditions on membership, including but not necessarily limited to, the payment of an admission fee, payment of any outstanding financial obligations arising from prior membership, or the posting of a security bond or deposit. All such conditions must be made expressed terms of the conference agreement, filed with and approved by the Commission pursuant to section 15 of the Act.

(c) Every application for membership shall be acted upon promptly.

(d) Any party may withdraw from the conference without penalty by giving at least 30 days' written notice of intention to withdraw to the conference, except that action taken by the conference to compel the payment of outstanding financial obligations by the resigning member shall not be construed as a penalty for withdrawal.

(e) No party may be expelled against its will from the conference except for failure to maintain a common carrier service between the ports within the scope of the agreement (said failure to be determined according to the minimum sailing requirements set forth in the agreement) or for failure to abide by all the terms and conditions of the agreement.

**§ 560.502 Provisions of agreements of conferences and others.**

(a) All agreements between common carriers by water not members of the same conference or conferences of such carriers serving trades that would otherwise be naturally competitive, shall contain provisions substantially as follows:

> The parties hereto (either carriers or conferences as the case may be) agree that with respect to any actions to be taken or procedures to be followed under this agreement, any party, after (insert here a period of time not to exceed ten days) may take action or follow procedures independent of those agreed upon.

(b) The parties may stipulate in the agreement whatever event should commence the running of the notice period, and the mode of communicating the decision to take independent action.

## Subpart F—Action on Agreements

**§ 560.601 Federal Register notice.**

Requests for approval which are not rejected pursuant to § 560.401 shall be noticed in the **Federal Register.** The notice shall include:

(a) A short title for the agreement;

(b) The identity of the proponents;

(c) The Commission agreement number;

(d) A concise summary of the agreement's contents;

(e) A statement that the agreement and any supporting statement, including all documents, affidavits, or other evidence attached thereto, are available for inspection at the Commission's offices;

(f) The final date for filing protests or comments regarding the agreement; and

(g) The name and address of the filing agent.

**§ 560.602 Comments and protests.**

(a) A comment is a written statement regarding the approvability of an agreement. Comments have no prescribed form or content and are not limited in any way, except by the time limits provided in the **Federal Register** notice. A written communication regarding the approvability of an agreement, not conforming to the requirements of paragraph (b) of this section, shall be considered a comment. Filing a comment shall not necessarily entitle a person to:

(1) Any discussion of the comment in a Commission order disposing of the agreement;

(2) The institution of any further Commission proceeding; or

(3) Participation in any further proceeding which may be instituted.

(b) A protest is a written opposition to the approval of an agreement which complies with the requirements of this paragraph. A protest also constitutes an undertaking by the protestant to actively participate as a party in any further proceeding concerning the agreement, and protestants shall be so named in any Commission hearing order which may be issued. Protests shall:

(1) Identify, with particularity, the reasons why the agreement, or any constituent part, should be disapproved;

(2) Address the accuracy of any statements and conclusions submitted by the proponents pursuant to § 560.403;

(3) Allege facts which support the arguments made in paragraphs (b)(1) and (b)(2) of this section; and

(4) Specify the source or derivation of the facts alleged pursuant to paragraph (b)(3) of this section.

(c) A copy of all comments and protests filed with the Commission shall be served upon the filing agent identified in § 560.601(g) on the same date they are filed with the Commission. A certificate of service attesting that this requirement has been met shall be attached to the comment or protest.

(d) Within 15 days from the date that comments or protests are due (as specified by the **Federal Register** notice or as subsequently extended by the Commission), the proponents or their authorized representative may file a response to each such comment or protest with service to all persons which have filed comments or protests.

(e) Except as provided in this section and § 560.403, or except, in the case of an unprotested agreement, as the Director, Bureau of Trade Monitoring may in his/her discretion initiate, or unless specifically requested in writing by the Commission, with copies to the proponents and persons which have filed protests or comments, no other written or oral communication concerning a pending agreement shall be permitted. Amendments or supplements to documents submitted pursuant to § 560.403 and this section shall be permitted in the discretion of the Commission upon a showing of good cause, except that, in no case shall such permission be granted where the agreement has been scheduled and noticed for an agency meeting pursuant to § 503.82 of this chapter. A change in material fact or in applicable law occurring after the submission of the initial statement, comment or protest will normally constitute good cause. Inquiries as to the status of agreements shall be made to the Secretary of the Commission.

**§ 560.603 Disposition of agreement approval requests.**

(a) The Commission shall, by conditional or unconditional orders, approve, disapprove, or institute further proceedings regarding agreements filed with it.

(b) Further proceedings regarding an agreement will be instituted when:

(1) The Commission, in its discretion, considers further inquiry advisable;

(2) A protest alleges material facts which, if true and reasonably subject to proof on the basis of their source and derivation, and arguments advanced, would preclude approval of the agreement, except that no further proceeding will be instituted if the disputed factual issues are resolved by the proponents' acceptance of conditions imposed by a conditional order in accordance with paragraph (c) of this section;

(3) The proponents of an agreement which seemingly contravenes the standards of section 15 properly exercise their right to request a further hearing pursuant to paragraph (d)(2) of this section.

(c) The Commission may issue a conditional order prescribing modifications in the agreement necessary to obtain approval when the agreement does or appears to contravene the standards of section 15 unless modified; and if so modified, would be approvable without further proceedings. If conditions imposed by the Commission are met within the time specified by a conditional order, the revised version of the agreement will stand approved from the date of receipt. Notice of such date shall be given to proponents or their representative by the Commission.

(d) Failure to meet conditions imposed by the Commission will result in either the automatic disapproval of the agreement or the institution of further proceedings by the Commission either on its own initiative or, where the conditional order found that the agreement was unapprovable, pursuant to a request from proponents. Any such request shall include a detailed recital of the facts that they intend to prove at that hearing, a description of evidence intended to be used to prove those facts, and an explanation as to why the facts sought to be proven support the approval of the agreement. If a finding of unapprovability was made, the conditional order will expressly state the date upon which disapproval would take place.

(e) It is unlawful to carry out the provisions of a conditionally approved or disapproved agreement prior to approval by the Commission.

## Subpart G—Reporting and Record Retention Requirements

**§ 560.701 General requirements.**

(a) The parties to conference agreements, agreements between or among conferences and agreements whereby the parties are authorized to fix rates (except leases, licenses, assignments or other agreements of similar character for the use of terminal facilities) shall retain a record of the vote on each question voted on for at least two years. These records may be retained by a single party to the agreement, or an administrative official of a conference or ratemaking agreement designated for that purpose.

(b) All reports or circulars, in whatever form, distributed to the parties, which relate to matters within the scope of the approved agreement, shall be retained by the parties for at least two years. This record may be retained by a single party to the agreement, or an administrative official of a conference or ratemaking agreement designated for that purpose.

**§ 560.702 Filing of reports relating to shippers' requests and complaints.**

(a) By January 31 of each year, each conference and each other body with rate-fixing authority under an approved agreement (except for leases, licenses, assignments or other agreements of similar character for the use of terminal facilities) shall file with the Commission a report covering all shippers' requests and complaints received during the preceding calendar year or pending at the beginning of such calendar year. All such reports shall include the following information for each request or complaint:

(1) Date request or complaint was received.

(2) Identity of the person or firm submitting the request or complaint.

(3) Nature of request or complaint, i.e., rate reduction, rate establishment, classification, overcharge, undercharge, measurement, etc.

(4) If final action was taken, date and nature thereof.

(5) If final action was not taken, an identification of the request or complaint as "pending."

(6) If denied, the reason.

(b) Tariffs issued by or on behalf of conferences and other rate-making

groups shall contain full instructions as to where and by what method shippers may file their requests and complaints, together with a sample of the rate request form, if one is used, or, in lieu thereof, a statement as to what supporting information is considered necessary for processing the request or complaint through conference channels. All changes made in such instructions shall be published in said tariffs, supplements thereto, or reissues thereof, in accordance with the tariff filing requirements of section 18(a) of the Act.

**§ 560.703 Filing of minutes.**

(a) The parties to each approved conference agreement, agreement between or among conferences, or agreements subject to this part whereby the parties are authorized to fix rates (except leases, licenses, assignments or other agreements of similar character for the use of terminal facilities) shall, through a designated official, file with the Commission a report of all meetings describing all matters within the scope of the agreement which are discussed or taken up at any such meeting, and shall specify the action taken with respect to each such matter. For the purpose of this part, the term "meeting" shall include any meeting of parties to the agreement, including meetings of their agents, principals, owners, committees or subcommittees of the parties authorized to take final action in behalf of the parties. If the agreement authorizes final action by telephonic or personal polls of the membership, a report describing each matter so considered and the action taken with respect thereto shall be filed with the Commission. These reports need not disclose the identity of parties that propose actions, or the identity of parties that participated in the discussions of any particular matter.

(b) The reports subject to paragraph (a) of this section shall be filed with the Commission within 30 days after such meetings and shall be certified as to accuracy and completeness by the Conference Chairman, Secretary, or other official.

(c) No report need be filed under paragraph (a) of this section with respect to any discussion of or action taken with regard to rates that, if adopted, would be required to be published in a tariff on file with the Commission. This reporting exemption does not apply to discussions involving general rate policy, general rate changes, the opening or closing of rates, or discussions involving items, that, if adopted, would be required to be published in other tariff sections as specified in Part 550 of this chapter.

**§ 560.704 Filing of reports on admissions, withdrawals, and expulsions.**

(a) Prompt notice of admission to membership to a conference shall be furnished to the Commission and no admission shall be effective prior to the postmark date of such notice.

(b) Advice of any denial of admission to membership, together with a statement of the reasons therefor, shall be furnished promptly to the Commission.

(c) Notice of withdrawal of any party shall be furnished promptly to the Commission.

(d) No expulsion shall become effective until a detailed statement setting forth the reason or reasons therefor has been furnished the expelled member and a copy of such notification submitted to the Commission.

## Subpart H—[Reserved]

## Subpart I—Penalties

**§ 560.901 Failure to file agreements.**

Any common carrier by water in interstate commerce or other person subject to the Act entering into or carrying out an agreement subject to the Act which has not been filed with and approved, or has not been exempted by the Commission is in violation of section 15 of the Act and this part and subject to penalties of up to $1000 for each day such violation continues.

**§ 560.902 Failure to file reports.**

Compliance is mandatory and failure to file the reports required by this part may result in disapproval of agreements under section 15 of the Act or penalties of up to $100 for each day of such default under section 21 of the Act.

**§ 560.903 Falsification of reports.**

Knowing falsification of any report required by the Act or this part is a violation of the rules of this part and is subject to the penalties set forth in section 21 of the Act and may be subject to the criminal penalties provided in 18 U.S.C. 1001.

## Subpart J—Paperwork Reduction

**§ 560.991 OMB control numbers assigned pursuant to the Paperwork Reduction Act.**

This section displays the control numbers assigned to information collection requirements of the Commission in this part by the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1980, Pub. L. 96-511. The Commission intends that this part comply with the requirements of section 3507(f) of the Paperwork Reduction Act, which requires that agencies display a current control number assigned by the Director of the Office of Management and Budget (OMB) for each agency information collection requirement:

[CODES TO BE ASSIGNED BY OMB]

By the Commission.

**Joseph C. Polking,**

*Secretary.*

[FR Doc. 87-10005 Filed 5-1-87; 8:45 am]

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## DEPARTMENT OF DEFENSE

## 48 CFR Parts 204, 205, 206, 219 and 252

## Department of Defense Federal Acquisition Regulation Supplement; Implementation of Section 1207 of Pub. L. 99-661; Set-Asides for Small Disadvantaged Business Concerns

**AGENCY:** Department of Defense (DoD)

**ACTION:** Notice of Intent to develop a proposed rule to help achieve a goal of awarding 5 percent of contract dollars to small disadvantaged businesses.

**SUMMARY:** The Defense Acquisition Regulatory (DAR) Council invites public comment concerning the development of procurement methods to be used to implement section 1207 of the National Defense Authorization Act for Fiscal Year 1987 (Pub. L. 99-661), entitled "Contract Goal for Minorities."

**DATES:** Comments should be submitted in writing to the DAR Council at the address shown below no later than June 3, 1987, to be considered in the formulation of a proposed rule. Please cite DAR Case 87-33 in all correspondence related to this issue.

**ADDRESS:** Interested parties should submit written comments to: Defense Acquisition Regulatory Council, ATTN: Mr. Charles W. Lloyd, Executive Secretary, ODASD (P) DARS, c/o OASD (P&L) (M&RS), Room 3C841, The Pentagon, Washington, DC 20301-3062.

**FOR FURTHER INFORMATION CONTACT:** Mr. Charles W. Lloyd, Executive Secretary, DAR Council, (202) 697-7266.

**SUPPLEMENTARY INFORMATION:**

### A. Background

The DAR Council is publishing an interim rule appearing elsewhere in this **Federal Register** to implement section 1207 of Pub. L. 99-661. That interim rule requires that contracting officers set aside acquisitions, other than small purchases conducted under procedures of Federal Acquisition Regulation (FAR) Part 13, for exclusive competition among Small Disadvantaged Business (SDB)

concerns, whenever the contracting officer determines that offers can be anticipated from two or more SDB concerns and that the contract award price will not exceed fair market price by more than 10 percent.

Public comments are invited concerning other procurement methods which can reasonably be used to attain the objective above. Presently, the DAR Council is considering two additional procedures set out below which may form the basis of an additional proposed rule on this topic, tentatively set for publication on or about June 12, 1987. The first proposal would establish, under authority of "exception five" of the Competition in Contracting Act (CICA), 10 U.S.C. 2304(c)(5), entitled "Authorized or Required by Statute" by FAR 6.302-5, a procedure whereby direct award could be made to an SDB firm, without providing for full and open competition (as permitted by Section 1207), in those circumstances where a market survey and a "sources sought" CBD notice identified only one responsible SDB concern which could fulfill DoD's requirements. Use of the authority would be limited to those circumstances where SDB set-aside criteria are not met, where realistic pricing is possible (e.g., through cost and pricing data, or otherwise) and where award without full and open competition is necessary to achieve the 5 percent goal.

A second proposal under consideration involves establishing a 10 percent preference differential for SDB concerns in certain sealed bid competitive acquisitions, when the preference is determined necessary to attain the 5 percent goal. Under this procedure, award would be made to an otherwise responsible SDB concern whose bid is within 10 percent of the low offeror's bid. Consideration is being given to extending this procedure for use in competitive negotiated acquisitions where source selection will be based primarily on price. However, the procedure would not be utilized in acquisitions involving partial or Labor Surplus Area set-asides, or small purchases under FAR Part 13. Consideration is presently being given to the criteria for application of the preference differential and whether it should be employed only when acquisitions are totally unrestricted.

**Charles W. Lloyd,**

*Executive Secretary, Defense Acquisition Regulatory Council.*

[FR Doc. 87-10100 Filed 5-1-87; 8:45 am]

BILLING CODE 3810-01-M

## VETERANS ADMINISTRATION

## 48 CFR Part 819

## Acquisition Regulations for Small Business Concerns

**AGENCY:** Veterans Administration.

**ACTION:** Proposed regulations.

**SUMMARY:** The Veterans Administration (VA) is issuing a proposed rule to the Veterans Administration Acquisition Regulation (VAAR). The proposed rule addresses the procedure for processing Small Business Administration Certificate of Competency appeals and includes Administration Certificate of Competency appeals and includes additional language to increase the emphasis on giving Vietnam era and disabled veteran-owned firms every opportunity to participate in selling items and services to the VA.

**DATES:** Written comments must be submitted no later than June 3, 1987, for consideration in the final regulation. The final regulation will be effective upon approval.

**ADDRESS:** Interested persons are invited to submit written comments, suggestions or objections to the Administrator of Veterans Affairs (271A), Veterans Administration, 810 Vermont Avenue, NW., Washington, DC 20420. All written comments will be available for public inspection only in the Veterans Services Unit, room 132 of the above address, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday (except holidays) until June 17, 1987.

**FOR FURTHER INFORMATION CONTACT:** Thomas A. Hamilton, Supply Management Representative, Policy Division, Office of Procurement and Supply (91A), (202) 233-3882.

**SUPPLEMENTARY INFORMATION:**

### I. Background

This proposed rule includes regulatory revisions by providing internal procedures for processing Small Business Administration Certificate of Competency appeals and providing additional language to give the Vietnam era and disabled veteran-owned firms every opportunity to participate in VA business opportunities.

### II. Executive Order 12291

This proposed rule has been reviewed in conjunction with Executive Order 12291, Federal Regulation, and has been determined not to be a "major rule" as defined therein.

### III. Regulatory Flexibility Act (RFA)

Because this proposed rule does not come within the term "rule" as defined in the RFA (5 U.S.C. 601(2)), it is not subject to the requirements of that Act. In any case, this change will not have a significant impact on a substantial number of small entities because the provisions implement the requirements of the Competition in Contracting Act (CICA) as required by the Federal Acquisition Regulation (FAR). The provisions are primarily internal procedures which will not impact the private sector.

### IV. Paperwork Reduction Act

This proposed rule requires no additional information collection or recordkeeping requirement upon the public.

### List of Subjects in 48 CFR Part 819

Government procurement.

*Approved: April 27, 1987.*

**Thomas K. Turnage,**

*Administrator.*

Part 819 of title 48 of the Code of Federal Regulations is proposed to be amended as follows:

## PART 819—SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS

1. The authority citation for Part 819 continues to read as follows:

Authority: 38 U.S.C. 210 and 40 U.S.C. 486(c).

2. Subpart 819.6, consisting of 819.602-3, is added to read as follows:

## Subpart 819.6—Certificates of Competency and Determinations of Eligibility

### 819.602-3 Appealing Small Business Administration's decision to issue Certificates of Competency.

Formal VA appeals of an initial concurrence by the SBA Central Office in an SBA Regional Office decision to issue a (CoC) Certificate of Competency will be processed as follows:

(a) When the contracting officer believes that the VA should formally appeal the concurrence by the SBA Central Office in an SBA Regional Office decision to issue a CoC, the contracting officer will so notify the Director, Office of Procurement and Supply (93B) in writing within five business days after receipt of the SBA Central Office's written confirmation of its determination. Within ten business days of the contracting officer's receipt of the SBA's written confirmation (or

within a period acceptable to the VA and the SBA), the Director, Office of Procurement and Supply (93B) will advise the SBA Central Office that the VA intends to file a formal appeal.

(b) Within ten business days of the contracting officer's recepit of the SBA Central Office's written confirmation, the contracting officer will furnish an original and one copy of the appeal file to the Director, Office of Procurement and Supply (93B). The file must contain a copy of the bid/offer from the firm considered nonresponsible, a copy of the bid/offer from the firm otherwise in line for award, a copy of the bid, a copy of the bid abstract, a copy of SBA's CoC Review Committee report, a copy of all correspondence with SBA on the matter, and the contracting officer's narrative statement establishing the error, omission, or other basis for disputing SBA's proposed responsibility determination.

(c) The Director, Office of Procurement and Supply (93B) will review the file prepared by the contracting officer. If the contracting officer's position is accepted, the Director, Office of Procurement and Supply (93B) will transmit the formal appeal to the SBA Central Office within ten business days after notifying that office of the VA's intent to appeal (or within a period acceptable to the VA and the SBA). The contracting officer will be informed of the final SBA decision.

(d) If, after the Central Office review, it is decided that a formal appeal should not be made to the SBA, the contracting officer will be advised of this decision and that the CoC should be accepted by the VA. The SBA Central Office will also be advised that the VA will not pursue its formal appeal. If the decision concerns major construction projects and the Office of Facilities disagrees with the decision made by the Director, Office of Procurement and Supply, the matter will be referred to the Senior Procurement Executive for a final VA determination.

3. In section 819.806–4, paragraph (a)(2) is revised to read as follows:

**819.806–4 Funding business development expense.**

(a) * * *

(2) Major and Minor Construction Projects—Director, Office of Facilities.

* * * * *

4. In section 819.807–70, the heading and first sentence are revised to read as follows:

**819.807–70 Commitments of the Office of Facilities' funded projects for the 8(a) program.**

Major and minor projects funded by the Office of Facilities (including those delegated to the Department of Medicine and Surgery) which have been committed to the 8(a) program will not be withdrawn from the program without the consent of the Office of Small and Disadvantaged Business Utilization (005C). * * *

5. In section 819.7004, the first sentence is revised to read as follows:

**819.7004 Waiver of the use of Vietnam era or disabled veteran-owned firms.**

It is the policy of the VA to provide Vietnam era and disabled veteran-owned firms every opportunity to participate in the acquisition process. * * *

[FR Doc. 87–9984 Filed 5–1–87; 8:45 am]
BILLING CODE 8320-02-M

# Notices

Federal Register
Vol. 52, No. 85
Monday, May 4, 1987

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.

## ACTION

### VISTA Regional Literacy Corps Projects; Availability of Funds

**AGENCY:** ACTION.

**ACTION:** Notice of availability of funds; VISTA Regional Literacy Corps Projects.

ACTION Regions 2, 3, 4, 5, and 9 announce the availability of funds for fiscal year 1987 for new VISTA Literacy Corps grants authorized by section 109 of the Domestic Volunteer Service Act Amendments of 1986 (Pub. L. 99-551). VISTA Literacy Corps grants will be awarded for up to a twelve month period. No requests for renewals or continuations may be sought by grantees under this announcement.

Application packages and technical assistance on grant preparation are available from: Region 2—Claire Wojno, ACTION, Jacob K. Javits Federal Building, 26 Federal Plaza, Suite 1611, New York, NY 10278, 212-264-5710; Region 3—Paul R. Shrader, ACTION, Federal Building, Room 107, 85 Marconi Boulevard, Columbus, OH 43215 (614) 469-7441; Region 4—Kareemah Rasheed, ACTION, 101 Marietta Street, N.W., Suite 1003, Atlanta, GA 30323, 404-331 2859; Region 5—Cynthia Rudmann, ACTION, 10 West Jackson Blvd., 6th Floor, Chicago, IL 60604, 312-353-4899; Region 9—Carl Ehmann, ACTION, 211 Main Street, Room 530, San Francisco, CA 94105, 415-974-0675.

### A. Background and Purpose

Congress created Volunteers In Service To America (VISTA) in 1964 to alleviate and eliminate poverty and its related problems in the United States. VISTA is a full-time, year-long volunteer program which encourages and enables men and women 18 years and older from all backgrounds to perform meaningful and constructive volunteer service. The Volunteers live among, and at the economic level of, the low-income people served. The VISTA program has served poor individuals most effectively by assisting low-income communities and residents to develop the facility, skills, and resources needed for achieving self-sufficiency. VISTA also enlists the commitment and support of the private sector toward attainment of this goal. Literacy training and education represent a longstanding and integral part of the VISTA mission. VISTA Volunteers have been involved in the mobilization of community efforts to combat illiteracy among disadvantaged populations since the inception of the VISTA program.

The Domestic Volunteer Service Act Amendments of 1986 directed the VISTA program to commit additional volunteers to the literacy challenge through the formation of the VISTA Literacy Corps.

The statutory purpose of the VISTA Literacy Corps is to use VISTA Volunteers in developing, strengthening, supplementing and expanding the literacy efforts of both public and private nonprofit organizations at the local, State, and Federal levels to mobilize local, State, Federal and private sector financial and volunteer resources in attacking the problem of illiteracy particularly within low-income areas throughout the United States. In addition, the VISTA Literacy Corps will encourage public/private partnerships; promote voluntarism; heighten the visibility of the literacy issue; and increase the capacity of low-income communities to address their respective literacy needs.

### Objectives

ACTION will be awarding grants for the placement of VISTA Literacy Corps Volunteers in the following regions:

*Region 2 (NJ, NY, Puerto Rico, and the Virgin Islands)*

Grant 1 and 2

*No. of VISTA Literacy Corps volunteers:* 10-16.

*Approximate size of grant:* $85,000-$130,000.

*Emphasis area:* Literacy projects that address the specific needs of low-income adults experiencing literacy difficulties including unemployed and underemployed individuals. Programs should assess and remediate the skills, general comprehension, and reading and achievement levels of the adult learner in an effort to make him/her more employable or to live independently.

*Region 3 (KY, MD, DE, OH, PA, VA, DC, WV)*

Grant 1 and 2

*No. of VISTA Literacy Corps volunteers:* 10.

*Approximate size of grant:* $85,000.

*Emphasis area:* Literacy projects that assist individuals in the greatest need of literacy training who reside in unserved or underserved low-income areas with the highest concentration of illiteracy; and projects which enhance literacy activities within a particular state, region or local community.

*Region 4 (AL, FL, GA, MS, NC, SC, TN)*

Grant 1 and 2

*No. of VISTA Literacy Corps volunteers:* 10.

*Approximate size of grants:* $85,000.

*Emphasis area:* Literacy projects that concentrate on preventive educational training for potential school dropouts and other low-income young adults who may be "educationally at risk" as well as programs that offer retraining and remedial skills enhancement.

*REGION 5 (IL, IN, IA, MI, MN, WI)*

Grant 1

*No. of VISTA Literacy Crops volunteers:* 14.

*Approximate size of grants:* $115,000.

*Emphasis area:* Projects to provide comprehensive services that will curb the intergenerational transfer of illiteracy within low-income families by intructing parents and children together. Priority consideration will be given to literacy programs affiliated with libraries and Head Start projects that focus on the overall concerns of low-income individuals in need. Such programs should have the reading materials available that will entice and challenge all age groups represented in the family unit.

*REGION 9 (AZ, CA, NV, HI, GU, AS)*

Grant 1

*No. of VISTA Literacy Crops volunteers:* 16.

*Approximate size of grants:* $130,000.

*Emphasis area:* Literacy projects to provide comprehensive services that will curb the intergenerational transfer of illiteracy within families by

instructing parents and children together. In particular VISTA will seek literacy programs affiliated with libraries and Head Start projects that focus on the overall concerns of low-income families in need. Such programs should have the reading materials available that will entice and challenge all age groups represented in the family unit.

**B. Eligible Applicants**

Eligible applicants for the VISTA Literacy Crops grants include: public or private nonprofit agencies; local, State and national literacy councils and organizations; community-based nonprofit organizations; local and state education agencies; local and state agencies administering adult basic education programs; educational institutions; libraries, anti-poverty organizations; and local, municipal and State governmental entities designated to administer job training plans under the Job Training Partnership Act.

**C. Scope of Grant**

The amount of each grant includes the monthly subsistence and readjustment allowance for VISTA Volunteers. This support is commensurate to the cost-of-living of the assignment area and covers the cost of food, housing and incidentals, and a monthly stipend paid to the VISTA Literacy Crops Volunteer upon completion of his/her service.

Applicants should demonstrate their commitment for matching the Federal contribution toward the operation of the VISTA Literacy Crops grant in the areas of transportation, supervision, and/or training. This support can be achieved through cash or allowable in-kind contributions.

Publication of this announcement does not obligate ACTION to award any specific number of grants or to obligate the entire amount of funds available, or any part thereof, for grants under the VISTA Literacy Corps Program.

**D. General Criteria for Grant Selection**

The general criteria for the VISTA Literacy Corps projects are consistent with those established for the selection of VISTA sponsors and projects. All of the following elements must be incorporated in the applicant's submission.

The project must:

- Be poverty-related in scope and otherwise comply wit the provisions of the Domestic Volunteer Service Act of 1973 and as amended (42 U.S.C. 4951, *et seq.*) applicable published regulations, guidelines and ACTION policies.
- Comply with applicable financial and fiscal requirements established by ACTION or other elements of the Federal Government.
- Show that the goals, objectives and volunteer tasks are attainable within the time frame during which the volunteers will be working on the project and will produce a measurable and verifiable result.
- Provide for reasonable efforts to recruit and involve low-income community residents in the planning, development and implementation of the VISTA project.
- Outline specific plans for the continuation of program activities upon the termination of ACTION funds.
- Have evidence of local public and private sector support (in the form of endorsement letters limited to those organizations, government entities, and institutions that are aware of and will be involved in supporting the VISTA projects efforts.
- Have a permanent mechanism of self-evaluation.
- Provide frequent and effective supervision of the volunteers.
- Identify resources needed and make them available to volunteers to perform their tasks.
- Have the management and technical capability to implement the project successfully.

In addition to the general criteria, the authorizing statute stipulates that priority consideration will be given to the following literacy programs and projects that apply for funding:

- Those that assist individuals in greatest need of literacy training who reside in unserved or underserved areas with the highest concentration of illiteracy and of low-income individuals and families;
- Those that serve individuals reading at the zero to fourth grade levels;
- Those that focus on providing services to high risk populations, e.g., school dropouts and minority youth;
- Those that operate in areas with the highest concentration of individuals and families living at or below the poverty level;
- Those providing literacy services to parents of disadvantaged children between the ages of two and eight who may be educationally at risk, and
- Statewide programs and projects that support the creation of new literacy efforts, encourage coordination of intrastate literacy efforts and provide technical assistance to local literacy efforts.

**E. Application Review Process**

ACTION Regions 2, 3, 4, 5, and 9 will review and evaluate all eligible applications prior to submission to the Director of VISTA and Service-Learning Programs, ACTION, for the final selections. ACTION reserves the right to ask for evidence of any claims of past performance or future capability.

**F. Application Submission and Deadline**

One signed original and two copies of all completed applications must be submitted to the appropriate Regional Director as noted in paragraph 2 of this announcement. The deadline for receipt of applications is 5PM local time (45 days from date of publication). Applications post-marked 5 days before the deadline date will also be accepted for consideration.

All grant applications must consist of:

a. Application for Federal Assistance (A-1017, Page 1-9) and VISTA Project Application (Form A-1421) with a detailed budget justification and a narrative of project goals and objectives.

b. CPA certification of accounting capability.

c. Copy of recent Articles of Incorporation, or a letter of good standing from the Governor's Office.

d. Proof of non-profit status or an application for non-profit status, and related documentation.

e. Resume of potential VISTA Supervisor, if available, or the resume of the director of the applicant agency or project.

f. Organizational chart illustrating the relationship of the VISTA project to the overall objectives of the sponsor organization.

g. The professional affiliations and/or literacy-related activities of Board of Director Members should be specified.

Signed at Washington, DC, this 27th day of April, 1987.

**Donna M. Alvarado,**

*Director.*

[FR Doc. 87-10024 Filed 5-1-87; 8:45 am]

BILLING CODE 6050-28-M

## DEPARTMENT OF AGRICULTURE

### Forest Service

### Electronic Communications Rental Fees for the Eastern Region

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of proposed policy.

**SUMMARY:** The Eastern Region of the Forest Service headquartered in Milwaukee, Wisconsin, is proposing to

revise its procedures for determining rental fees for electronics communication sites. A minimum fee rental schedule is proposed with provisions for establishing fees above the minimum to be based on market evidence and other sound business management principles.

**DATE:** Comments on the proposal must be received, in writing, on or before July 6, 1987.

**ADDRESS:** Send written comments to Floyd J. Marita, Regional Forester (2700), Eastern Region, Forest Service, USDA, 310 W. Wisconsin Avenue, Milwaukee, WI 53203.

The public may inspect comments received on this proposed policy in the office of the Director of Lands, Watershed and Minerals, 6th Floor, 310 W. Wisconsin Avenue, Milwaukee, WI 53203, between the hours of 8:00 a.m. and 4:00 p.m.

**FOR FURTHER INFORMATION CONTACT:** Timothy Curtis, Lands, Watershed, and Minerals Management Staff, (414) 291-1902.

**SUPPLEMENTARY INFORMATION:** The existing policy for determining annual land use rental fees for communication sites in the Eastern Region is based on 0.2 percent of the authorization holder's total investment value for communication facilities and equipment, plus 5 percent of the rental income from building tenants and/or equipment users served by the holder.

Revised policy contained in Forest Service Manual 2728, Amendment 90, dated 1/87, establishes that fees will be based on the market value of the rights and privileges authorized as determined by appraisals or other sound business management principles including competitive bidding or use of a fee schedule.

The Eastern Region has determined a minimum rental fee schedule for communication sites is appropriate. Fees above the minimum will be based on market evidence and other sound business management practices. The exclusive use of a fee schedule for all communication sites in the Region has been determined to be inappropriate. This is due to the limited number of existing National Forest sites and the large geographic area involved. It is not realistic or cost effective to develop a fee schedule suitable for the entire Region.

However, enough data does exist to identify minimum rental fees, proposed as follows:

—*Two-Way Radios.* Establish a minimum fee of $200 per year. The fee would apply to permittees renting space on an existing tower or for a permittee with a tower and associated building.

—*Commercial Radio/TV Broadcasting and Microwave.* Establish a minimum fee of $1000 per year.

Rental fees above these minimums and for other forms of electronic uses may be established on the basis of market evidence and other sound business management practices, in accordance with the policy contained in the Forest Service Manual, and includes individual site appraisals (rental data) and competitive bidding for large or unique sites or where competitive interest exists. In some instances, fee negotiations may be appropriate.

The final rental fee policy will take into consideration comments received on this proposal and be published in the **Federal Register** and will become effective January 1, 1988. Fees for existing permits will be implemented as permits come up for rate renewal. All existing permits will be adjusted by 1993. Significant rate increases will be phased in over a three year period. The minimum fee schedule will be updated with new market data at five year intervals.

Until the final fee policy is adopted, fees for existing authorization will be continued unchanged. New authorizations approved between the date of publication of this notice and the effective date of the final policy will include a provision that the rental fee will be adjusted, to conform to a new rental fee policy and schedule to become effective in 1988.

Copies of this notice are being mailed to holders of existing communication site authorizations and will also be sent to anyone requesting a copy. This notice is also available for review at the Regional Office and Forest Supervisors' Offices in the Eastern Region.

**Gordon H. Small,**

*Acting Regional Forester.*

April 17, 1987.

[FR Doc. 87-10008 Filed 5-1-87; 8:45 am]

BILLING CODE 3410-11-M

## DEPARTMENT OF COMMERCE

### Bureau of the Census

### Census Advisory Committee on Agriculture Statistics; Public Meeting

Pursuant to the Federal Advisory Committee Act (Pub. L. 92-463 as amended by Pub. L. 94-409), we are giving notice that the Census Advisory Committee on Agriculture Statistics will convene on May 7, 1987, at 9 a.m. The Committee will meet in Room 2424, Federal Building 3, at the Bureau of the Census in Suitland, Maryland.

This Committee advises the Director, Bureau of the Census, concerning the kind of information that should be obtained from respondents associated with agricultural production; prepares recommendations regarding the contents of agricultural reports; and presents the views and needs for data of major agricultural organizations and their members, and other suppliers of agricultural statistics.

The Committee is composed of 20 members appointed by the presidents of the nonprofit organizations having representatives on the Committee and a representative from the Department of Agriculture.

The agenda for the meeting, which is scheduled to adjourn at 3:45 p.m., is: (1) Introductory remarks by the Director, Bureau of the Census; (2) update on the Census Bureau's agriculture programs; (3) changes in the 1987 census data collection methodology; (4) agriculture marketing statistics; (5) data needs on rural residents and farm operator households; and (6) Committee recommendations.

The meeting will be open to the public, and a brief period will be set aside for public comment and questions. Extensive questions or statements must be submitted in writing to the Committee Control Officer.

Persons planning to attend and wishing additional information concerning this meeting or who wish to submit written statements may contact the Committee Control Officer, Mr. George Pierce, Agriculture Division, Bureau of the Census, Room 3009, Federal Building 4, Suitland, Maryland. (Mail address: Washington, DC 20233). Telephone (301) 763-7731.

Dated: April 28, 1987.

**John G. Keane,**

*Director, Bureau of the Census.*

[FR Doc. 87-10019 Filed 5-1-87; 8:45 am]

BILLING CODE 3510-07-M

## Foreign-Trade Zones Board

**[Docket No. 3-87]**

### Foreign-Trade Zone 20, Suffolk, VA—Norfolk-Newport News Customs Port of Entry; Application for Subzone, Stihl Chain and Power Tool Plant, Virginia Beach; Extension of Comment Period

The period for comments on the above case, involving a special-purpose subzone for the chain saw and power tool manufacturing plant of Stihl Inc., Virginia Beach, Virginia (52 FR 9514, 3-

25–87), is extended to June 15, 1987, to allow interested parties additional time in which to comment on the proposal.

Comments in writing are invited duuring this period. Submissions should be mailed to the address below and include 5 copies: Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 1529, 14th and Pennsylvania Avenue, NW., Washington, DC 20230.

Dated: April 28, 1987.

John J. Da Ponte, Jr.,

*Executive Secretary.*

[FR Doc. 87–10065 Filed 5–1–87; 8:45 am]

BILLING CODE 3510-DS-M

## International Trade Administration

### Subcommittee on Export Administration of the President's Export Council; Partially Closed Meeting

A partially closed meeting of the President's Export Council Subcommittee on Export Administration will be held May 28, 1987, 9 a.m. to 3 p.m., U.S Department of Commerce, Herbert Hoover Building, Room 4830, 14th and Constitution Avenue, NW., Washington, D.C.

The Subcommittee provides advice on matters pertinent to those portions of the Export Administration Act, as amended, that deal with United States policies of encouraging trade with all countries with which the United States has diplomatic or trading relations, and of controlling trade for national security and foreign policy reasons.

*General Session:* 9:00 a.m.–11:45 a.m. Status reports by Ad Hoc Working Group Chairmen, and update on implementation of Secretary Baldrige's February 9 initiatives in export controls.

**Executive Session**

1:30–3:00 p.m. Discussion of matters properly classified under Executive Order 12356 pertaining to the control of exports for national security, foreign policy or short supply reasons under the Export Administration Act of 1979, as amended. A Notice of Determination to close meetings, or portions of meetings, of the subcommittee to the public on the basis of 5 U.S.C. 552(c)(1) was approved October 17, 1985, in accordance with the Federal Advisory Committee Act. A copy of the Notice of Determination is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, (202) 377–4217.

For further information, contact Connie White, (202) 377–4275.

April 28, 1987.

Vincent F. DeCain,

*Deputy Assistant Secretary for Export Administration.*

[FR Doc. 87–10012 Filed 5–1–87; 8:45 am]

BILLING CODE 3510-DT

## Minority Business Development Agency

**[Transmittal No. 06–10–87006–01; Project I.D. No. 06–10–87006–01]**

### McAllen Minority Business Development Center (MBDC); Solicitation of Competitive Applications

**SUMMARY:** The Minority Business Development Agency (MBDA) announces that it is soliciting competitive applications under its Minority Business Development Center (MBDC) Program to operate an MBDC for a three (3) year period, subject to available fund. The cost of performance for the first twelve (12) months is estimated at $256,118 for the project's performance period of September 1, 1987 to August 31, 1988. The MBDC will operate in the McAllen, Texas Standard Metropolitan Statistical Area (SMSA).

The first year's cost for the MBDC will consist of:

| Name | Federal | Non-federal [1] | Total |
|---|---|---|---|
| McAllen, Texas SMSA | $217,700 | $38,418 | $256,118 |

[1] Can be a combination of cash, in-kind contribution and fee for service.

The funding instruments for the MBDC will be a cooperative agreement and competition is open to individuals, non-profit and for-profit organization, local and state governments, American Indian Tribes and educational institutions.

The MBDC will provide management and technical assistance (M&TA) to eligible clients for the establishment and operation of businesses. The MBDC program is designed to assist those minority businesses that have the highest potential for success. In order to accomplish this, MBDA supports MBDC programs that can: coordinate and broker public and private sector resources on behalf of minority individuals and firms; offer them a full range of management and technical assistance (M&TA); and serve as a conduit of information and assistance regarding minority business.

Applications will be judged on the experience and capability of the firm and its staff in addressing the needs of minority business individuals and organizations; the resources available to the firm in providing management and technical assistance (M&TA); the firm's proposed approach to performing the work requirements included in the application; and the firm's estimated cost for providing such assistance. It is advisable that applicants have an existing office in the geographic region for which they are applying.

The MBDC will operate for a three (3) year period with periodic reviews culminating in annual evaluations to determine if funding for the project should continue. Continued funding will be at the discretion of MBDC, based on such factors as an MBDC's satisfactory performance, the availability of funds, and Agency priorities.

**CLOSING DATE:** The closing date for receipt of application is June 1, 1987.

**ADDRESS:** MBDA—Dallas Regional Office, 1100 Commerce Street, Suite 7B23, Dallas, Texas 7542–0790.

**FOR FURTHER INFORMATION CONTACT:** Marie Hearne, Business Development Clerk, Dallas Regional Office, 214/767–8001.

**SUPPLEMENTARY INFORMATION:** Questions concerning the preceding information, copies of application kits and applicable regulation can be obtained at the above address.

Melda Cabrera,

*Acting Regional Director, Minority Business Development Agency.*

April 28, 1987.

**Section B. Project Specifications**

Program Number and Title: 11.800 Minority Business Development

Project Name: McAllen, Texas MBDC (Geographic Area of MSA)

Project Identification Number: 06–10–87006–01

Project Start and End Dates: 9/1/87 thru 8/31/87

Project Duration: 12 months

Total Federal Funding (85%) $217,700

Minimum Non-Federal Funding Sharing (15%) $38,418

Total Project Cost (100%) $256,118

Closing Date for Receipt of this Application: June 1, 1987

*Geographic Specification:* The Minority Business Development Center shall offer assistance in the geographic area of: McAllen, Texas.

*Eligibilty Criteria:* There are no eligibility restrictions for this project. Eligible applicants may include individuals, non-profit organizations, for-profit firms, local and state governments, American Indian Tribes, and educational institutions.

*Project Period:* The competitive award period will be for approximately three years consisting of three separate budget periods. Performance evaluations will be conducted, and funding levels will be established for each of three budget periods. The MBDC will receive continued funding, after the initial competitive year, at the discretion of MBDA based upon the availability of funds, the MBDC's performance, and Agency priorities.

MBDA's minimum levels of efforts:
Financial packages: $2,990,000
Billable M&TA: $136,000
Procurements: $6,344,000
Number of Clients: 85

[FR Doc. 87-10078 Filed 5-1-87; 8:45 am]

BILLING CODE 3510-21-M

## National Oceanic and Atmospheric Administration

[P12G]

## Marine Mammals; Application for Permit: Dr. Howard E. Winn

Notice is hereby given that an Applicant has applied in due form for a Permit to take marine mammals as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216), the Endangered Species Act of 1973 (16 U.S.C. 1531-1544), and the National Marine Fisheries Service regulations governing endangered fish and wildlife permits (50 CFR Parts 217 through 222).

1. Applicant: Dr. Howard E. Winn, Graduate School of Oceanography, University of Rhode Island, Kingston, Rhode Island 02881.

2. Type of Permit: Scientific Research/Scientific Purposes.

3. Name and Number of Marine Mammals:

Right whales (*Eubalaena glacialis*).....50
Fin whales (*Balaenoptera physalus*).....60
Blue whales (*Balaenoptera musculus*).....60
Humpback whales (*Megaptera Novaengliae*).....60
Minke whales (*Balaenoptera acutorostrata*).....60
Bryde's whales (*Balaenoptera edeni*).....60
Sperm whales (*Physeter catadon*).....60
Bowhead whales (*Balaena mysticetus*).....30
Sei whales (*Balaenoptera borealis*).....60

4. Type of Take: To tag with radio tags up to 500 cetaceans and to collect specimen materials from cetaceans taken by strandings, beaching, and/or legal fisheries. Area stranding networks will be utilized as appropriate and available. Up to ten animals of each species will also be tagged with satellite tags.

5. Location of Activity: All U.S. coastal areas for all species.

6. Period of Activity: 5 years.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, Washington, DC 20235, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries.

All statements and opinions contained in this application are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above application are available for review by interested persons in the following offices:

Office of Protected Species and Habitat Conservation, National Marine Fisheries Service, 1825 Connecticut Avenue, NW., Rm. 805, Washington, DC; and

Director, Alaska Region, National Marine Fisheries Service, 709 West 9th Street, Federal Building, Juneau, Alaska 99802;

Director, Northeast Region, National Marine Fisheries Service, 14 Elm Street, Federal Building, Gloucester, Massachusetts 01930;

Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way, NW., BIN C15700, Seattle, Washington 98115;

Director, Southeast Region, National Marine Fisheries Service, 9450 Koger Boulevard, St. Petersburg, Florida 33702; and

Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731-7415.

Dated: April 28, 1987.

**Nancy Foster,**

*Director, Office of Protected Species and Habitat Conservation, National Marine Fisheries Service.*

[FR Doc. 87-10020 Filed 5-1-87; 8:45 am]

BILLING CODE 3510-22-M

## Mid-Atlantic Fishery Management Council; Public Meeting

**AGENCY:** National Marine Fisheries Service, NOAA, Commerce.

The Mid-Atlantic Fishery Management Council will convene a public meeting, May 13-14, 1987, at the Ramada Inn, 76 Industrial Highway, Essington, PA (telephone: 215-521-9600), to discuss joint ventures; the Blue Ribbon Panel Study; the Swordfish Fishery Management Plan, as well as to discuss other fishery management and administrative matters. The public meeting may be lengthened or shortened depending upon progress on agenda items. The Council also may convene a closed session (not open to the public) to discuss personnel and/or national security matters.

For further information, contact John C. Bryson, Executive Director, Mid-Atlantic Fishery Management Council, Federal Building, 300 South New Street, Room 2115, Dover, DE 19901; telephone: (302) 674-2331.

Dated: April 28, 1987.

**Richard B. Roe,**

*Director, Office of Fisheries Management, National Marine Fisheries Service.*

[FR Doc. 87-10021 Filed 5-1-87; 8:45 am]

BILLING CODE 3510-22-M

## New England Fishery Management Council; Public Meeting

**AGENCY:** National Marine Fisheries Service, NOAA, Commerce.

The New England Fishery Management Council will convene a public meeting, May 5, 1987, at 1:30 p.m., at the Treadway Inn, Newport, RI, to discuss reports of the groundfish, foreign fishing and scallop oversight committees; the status of lobster; habitat issues; conflict of interest for appointed Council members, as well as to discuss other fishery management and administrative matters. The public meeting will adjourn May 6 at approximately 5 p.m.

For further information, contact Douglas G. Marshall, Executive Director, New England Fishery Management Council, Suntaug Office Park, 5 Broadway, (Route One), Saugus, MA 01906; telephone: (617) 231-0422.

Dated: April 28, 1987.

**Richard B. Roe,**

*Director, Office of Fisheries Management, National Marine Fisheries Service.*

[FR Doc. 87-10022 Filed 5-1-87; 8:45 am]

BILLING CODE 3510-22-M

## COMMISSION OF FINE ARTS

### Meeting

The Commission of Fine Arts next scheduled meeting is Friday, May 22, 1987 at 10:00 AM in the Commission's offices at 708 Jackson Place NW., Washington, DC 20006 to discuss various projects affecting the appearance of Washington, DC including buildings, memorials, parks, etc.; also matters of design referred by other agencies of the government. Handicapped persons should call the offices (566-1066) for details concerning access to meetings.

Inquiries regarding the agenda and requests to submit written or oral statements should be addressed to Mr. Charles Atherton, Secretary, Commission of Fine Arts, at the above address or call the above number.

Dated in Washington, DC, April 27, 1987.

**Charles H. Atherton,**

*Secretary.*

[FR Doc. 87-9998 Filed 5-1-87; 8:45 am]

BILLING CODE 6330-01-M

## COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

### Adjustment of the Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in the People's Republic of China

April 29, 1987.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on May 5, 1987. For further information contact Diana Solkoff, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4712. For information on the quota status of these limits, please refer to the Quota Status Reports which are posted on the bulletin boards of each Customs port or call (202) 566-5810. For information on embargoes and quota reopenings, please call (202) 377-3715.

**Background**

CITA directives dated December 24, 1985 and January 22, 1986 (50 FR 53182 and 51 FR 3392), established import limits for specified categories of cotton, wool and man-made fiber textile products, produced or manufactured in China and exported during the twelve-month period which began on January 1, 1986 and extended through December 31, 1986. A further directive dated April 27, 1987 also established import limits for certain cotton, wool and man-made fiber textile products exported during the same period.

Under the terms of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of August 19, 1983, as amended, between the Governments of the United States and the People's Republic of China and at the request of the People's Republic of China, the restraint limits for Categories 331, 334, 337, 350, 351, 359-C, 361, 363, 443, 635 and 640 are being increased by the application of swing for the agreement year which began on January 1, 1986. To account for the increases, the 1986 limits are being reduced for Categories 335, 336, 359-V, 444 and 659-H. An adjustment was made in a previous directive in Categories 647 and 648 to account for swing. In addition to the foregoing adjustments, in the letter published below the Chairman of the Committee for the implementation of Textile Agreements directs the Commissioner of Customs to deduct 1986 overshipments charged to the restraint limits established for 1987, charging these same amounts to the 1986 limits. These adjustments will reopen the 1987 limit for Category 359-C which is currently embargoed.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), July 14, 1986 (51 FR 25386), July 29, 1986 (51 FR 27068) and in Statistical Headnote 5, Schedule 3 of the TARIFF SCHEDULES OF THE UNITED STATES ANNOTATED (1987).

This letter and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

**Ronald I. Levin,**

*Acting Chairman, Committee for the Implementation of Textile Agreements.*

April 29, 1987.

**Committee for the Implementation of Textile Agreements**

Commissioner of Customs,

*Department of the Treasury, Washington, DC 20229*

Dear Mr. Commissioner: This directive amends, but does not cancel, the directives of December 24, 1985, January 22, 1986 and April 27, 1987, from the Chairman of the Committee for the Implementation of Textile Agreements, which established restraint limits for certain specified categories of cotton, wool and man-made fiber textile products, produced or manufactured in the People's Republic of China and exported during 1986.

Effective on May 5, 1987, the directives of December 24, 1985, January 22, 1986 and April 27, 1987 are hereby amended to adjust the previously established restraint limits for the following categories under the terms of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of August 19, 1983, as amended: [1]

| Category | Adjusted 12-mo limit [1] |
|---|---|
| 331 | 4,029,067 dozen pair. |
| 334 | 236,580 dozen. |
| 335 | 240,314 dozen. |
| 336 | 113,104 dozen. |
| 337 | 1,008,141 dozen. |
| 350 | 108,180 dozen. |
| 351 | 352,497 dozen. |
| 359-C [2] | 781,397 pounds. |
| 359-V [3] | 313,750 pounds. |
| 361 | 3,151,375 numbers. |
| 363 | 22,193,162 numbers. |
| 443 | 10,547 dozen. |
| 444 | 10,302 dozen. |
| 635 | 468,891 dozen. |
| 640 | 1,227,679 dozen. |
| 659-H [4] | 3,299,968 pounds. |

[1] The limits have not been adjusted to reflect any imports exported after December 31, 1985.

[2] In Category 359, only TSUSA numbers 381.0822, 381.6510, 384.0928 and 384.5222.

[3] In Category 359, only TSUSA numbers 381.0258, 381.0554, 381.3949, 381.5800, 381.5920, 384.0451, 384.0648, 384.0650, 384.0651, 384.3449, 384.3450, 384.4300, 384.4421 and 384.4422.

[4] In Category 659, only TSUSA numbers 703.0510, 703.0520, 703.0530, 703.0540,

[1] The agreement provides, in part, that: (1) With the exception of Category 315, any specific limit may be exceeded by not more than 5 percent of its square yards equivalent total, provided that the amount of the increase is compensated for by an equivalent square yard equivalent decrease in one or more other specific limits in that agreement year; (2) the specific limits for certain categories may be increased for carryforward, and (3) administrative arrangements or adjustments may be made to resolve minor problems arising in the implementation of the agreement.

703.0550, 703.0560, 703.1000, 703.1610, 703.1620, 703.1630, 703.1640 and 703.1650.

Also effective on May 5, 1987, you are directed to deduct the following amounts exported in 1986 and charged to the 1987 restraint limits. These same amounts are to be charged to the restraint limits for 1986.

| Category | Amount to be deducted/charged |
|---|---|
| 331 | 191,860 dozen pairs. |
| 334 | 11,266 dozen. |
| 337 | 48,007 dozen. |
| 350 | 3,350 dozen. |
| 351 | 16,786 dozen. |
| 359-C | 37,209 pounds. |
| 361 | 150,075 numbers. |
| 363 | 1,056,817 numbers. |
| 443 | 502 dozen. |
| 635 | 26,306 dozen. |
| 640 | 201,141 dozen. |

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553.

Sincerely,

Ronald I. Levin,

*Acting Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 87-10066 Filed 5-1-87; 8:45 am]

BILLING CODE 3510-DR-M

## Rescission of Call on Certain Cotton and Man-Made Fiber Textile Products in Category 330/630 Produced or Manufactured in the People's Republic of China

April 29, 1987.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below by the Commissioner of customs to be effective on May 5, 1987. For further information contact Diana Solkoff, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212.

### Background

A CITA directive dated December 22, 1986 (51 FR 47040) established import restraint levels for certain cotton, wool and man-made fiber textiles products, including cotton and man-made fiber handkerchiefs in Category 330/630, produced or manufactured in the People's Republic of China and exported during the twelve-month period which began December 28, 1986 and extends through December 27, 1987. The purpose of this notice is to announce that, pursuant to consultations held February 23-27, 1987 under the terms of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of August 19, 1983, as amended, between the Governments of the United States and the People's Republic of China, the United States Government has rescinded its request for consultations made on September 29, 1986 (see 51 FR 37470) and is withdrawing the level established for Category 330/630 at this time. Should it become necessary to discuss this category with the Government of the People's Republic of China at a later date, further notice will be published in the **Federal Register**. In the letter published below, the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to cancel the import control level previously established for Category 330/630.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), July 14, 1986 (51 FR 25386), July 29, 1986 (51 FR 27068) and in Statistical Headnote 5, Schedule 3 of the TARIFF SCHEDULES OF THE UNITED STATES ANNOTATED (1987).

**Ronald I. Levin,**

*Acting Chairman, Committee for the Implementation of Textile Agreements.*

April 29, 1987.

**Committee for the Implementation of Textile Agreements**

Commissioner of Customs,

*Department of the Treasury, Washington, DC 20229*

Dear Mr. Commissioner: This directive cancels that portion of the directive of December 22, 1986 concerning imports of cotton and man-made fiber textile products in Category 330/630, produced or manufactured in the People's Republic of China and exported during the twelve-month period which began on December 28, 1986 and extends through December 27, 1987.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. (a)(1).

Sincerely,

Ronald I. Levin,

*Acting Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 87-10069 Filed 5-1-87; 8:45 am]

BILLING CODE 3510-DR-M

## Adjustment of Import Limits for Certain Cotton and Man/Made Fiber Apparel Products Produced or Manufactured in Mauritius

April 29, 1987.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on May 5, 1987. For further information contact Pamela Smith, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of these limits, please refer to the Quota Status Reports which are posted on the bulletin boards of each Customs port. For information on embargoes and quota re-openings, please call (202) 377-3715.

### Background

CITA directives dated September 26, 1986 and October 30, 1986 (51 FR 35020 and 51 FR 40061) established limits for certain specified categories of cotton, wool and man-made fiber textile products, including Categories 638/639 and 341/641, produced or manufactured in Mauritius and exported during the agreement year which began on October 1, 1986 and extends through September 30, 1987. Pursuant to an exchange of notes between the Governments of the United States and Mauritius under the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of June 3 and 4, 1985, as amended, special shift in the amount of 47,800 dozen is being applied to the limit of 239,000 dozen established for Category 341/641. As agreed, the limit for Category 638/639 is being reduced to 201,794 dozen. In addition, as per the exchange of notes of March 23, 1987, overshipments during the period April 1, 1986 through September 30, 1986 for Category 341 in the amount of 50,897 dozen shall be charged in equal parts over a three year period beginning October 1, 1987 to the level established for Category 341/641. Another 60,000 dozen in overshipments for Category 341 shall be charged to Category 341/641 for those same years, at 20,000 per year. (This is a deferral of 50,000 dozen in overshipment charges, being paid back at a rate of 1.2 to 1.) In addition, shipments in Category 641 for the period April 1, 1986 through September 30, 1986 shall not be charged. Thjis adjustment will reopen the limit for Category 341/641 which is currently filled.

Accordingly, in the letter published below the Chairman of the Committee

for the Implementation of Textile Agreements directs the Commissioner of Customs to adjust the limits for Categories 341/641 and 638/639 to the agreed limits.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), July 14, 1986 (51 FR 25386) and in Statistical Headnote 5, Schedule 3 of the TARIFF SCHEDULES OF THE UNITED STATES ANNOTATED (1987).

**Ronald I. Levin,**

*Acting Chairman, Committee for the Implementation of Textile Agreements.*

April 29, 1987

**Committee for the Implementation of Textile Agreements**

Commissioner of Customs,

*Department of the Treasury, Washington, DC 20229*

Dear Mr. Commissioner: This directive amends, but does not cancel, the directives of September 26, 1986 and October 30, 1986 from the Chairman of the Committee for the Implementation of Textile Agreements, concerning imports into the United States of certain cotton, wool and man-made fiber textile products, produced or manufactured in Mauritius and exported during the agreement year which began on October 1, 1986 and extends through September 30, 1987.[1]

Effective on May 5, 1987, paragraph 1 of the directives of September 26, 1986 and October 30, 1986 are hereby amended to include the following adjusted restraint limits for Categories 638/639 and 341/641:

| Category | Adjusted 12-Mo. limit |
|---|---|
| 341/641 | 286,800 dozen. |
| 638/639 | 201,794 dozen. |

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. (a)(1).

Sincerely

Ronald I. Levin,

*Acting Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 87-10070 Filed 5-1-87; 8:45 am]

BILLING CODE 3510-DR-M

[1] The agreement, provides in part, that: (1) Specific limits may be exceeded during the agreement year by designated percentages; (2) specific limits may be adjusted for carryover and carryforward; and (3) administrative arrangements or adjustments may be made to resolve minor problems arising in the implementation of the agreement.

## Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in the People's Republic of China

April 29, 1987.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on May 5, 1987. For further information contact Diana Solkoff, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of these limits, please refer to the Quota Status Reports which are posted on the bulletin boards of each Customs port or call (202) 566-5810. For information on embargoes and quota re-openings, please call (202) 377-3715.

### Background

On December 30, 1986 a notice was published in the **Federal Register** (51 FR 47041) which established import restraint limits for certain cotton, wool and man-made fiber textile products, produced or manufactured in the People's Republic of China and exported during the twelve-month period which began on January 1, 1987 and extends through December 31, 1987. Under the terms of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of August 19, 1983, as amended, and at the request of the Government of the People's Republic of China, swing is being applied to the restraint limits previously established for cotton textile products in Categories 337, 338 and 342.

The limits for Categories 335, 336, 359-V, 634 and 651 are being reduced to account for the amount of swing applied to Categories 337, 338 and 342. These reductions also include swing applied to Categories 339 and 347/348 in a previous directive. This adjustment will open the limit for Category 342 which is currently embargoed.

Accordingly, in the letter published below, the Chairman of the Committee for the Implementation of Textile agreements directs the Commissioner of Customs to adjust the restraint limits previously established in the foregoing categories.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), July 14, 1986 (51 FR 25386), July 29, 1986 (51 27068) and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States annotated (1987).

This letter and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

**Ronald I. Levin,**

*Acting Chairman, Committee for the Implementation of Textile Agreements.*

April 29, 1987

**Committee for the Implementation of Textile Agreements**

Commissioner of Customs,

*Department of the Treasury, Washington, DC 20229.*

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive issued to you on December 23, 1986 by the Chairman, Committee for the Implementation of Textile Agreements, concerning imports into the United States of certain cotton, wool and man-made fiber textile products, produced or manufactured in the People's Republic of China and exported during the twelve-month period which began on January 1, 1987 and extends through December 31, 1987.

Effective on May 5, 1987, the directive of December 23, 1986 is further amended to include the following adjusted limits to the previously established restraint limits for cotton and man-made fiber textile products in the following categories, as provided under the terms of the bilateral agreement of August 19, 1983, as amended:[1]

| Category | Adjusted 12-mo limit [1] |
|---|---|
| 335 | 305,028 dozen. |
| 336 | 119,664 dozen. |
| 337 | 1,058,548 dozen. |
| 338 | 912,820 dozen of which not more than 662,695 dozen shall be in Category 338-X [2]. |
| 342 | 205,468 dozen. |
| 359-V [3] | 1,146,538 pounds. |
| 634 | 407,383 dozen. |
| 651 | 518,400 dozen. |

[1] The agreement provides, in part, that (1) with the exception of Category 315, any specific limit may be exceeded by not more than 5 percent of its square yards equivalent total, provided that the amount of the increase is compensated for by an equivalent square yard decrease in one or more other specific limit in that agreement year; (2) the specific limits for certain categories may be increased for carryforward; (3) administrative arrangements or adjustments may be made to resolve minor problems arising in the implementation of the agreement.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1986.

[2] In Category 338, only TSUSA numbers 381.0240 and 381.4130.

[3] In Category 359, only TSUSA numbers 384.0258, 381.0554, 381.3949, 381.5800, 381.5920, 384.0451, 384.0648, 384.0650, 384.0651, 384.3449, 384.3450, 384.4300, 384.4421, and 384.4422.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553.

Sincerely,

Ronald I. Levin,

*Acting Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 87-10067 Filed 5-1-87; 8:45 am]

BILLING CODE 3510-DR-M

## Establishment of Import Limits for Certain Cotton, Wool, Man-Made Fiber and Other Vegetable Fiber Textiles and Textile Products From Jamaica; Correction

April 29, 1987.

On April 27, 1987 a notice was published in the **Federal Register** (52 FR 13858) which announced the establishment, effective on April 28, 1987, of import limits for certain cotton, wool, man-made fiber and other vegetable fiber textiles and textile products, produced or manufactured in Jamaica.

The effective date for Categories 352/652 and 632 for the control period June 1, 1987 through December 31, 1987, should be June 1, 1987 instead of April 28, 1987.

**Ronald I. Levin,**

*Acting Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 87-10068 Filed 5-1-87; 8:45 am]

BILLING CODE 3510-DR-W

# COMMODITY FUTURES TRADING COMMISSION

## Chicago Board of Trade Eurobond Index Futures Contract; Request for Public Comment

**AGENCY:** Commodity Futures Trading Commission.

**ACTION:** Request for public comment on proposed amended terms and conditions of proposed commodity futures contract.

**SUMMARY:** On January 13, 1987, the Commodity Futures Trading Commission ("Commission") in accordance with sections 2(a)(1)(B)(iii) and 2(a)(1)(B)(iv)(II) of the Commodity Exchange Act, 7 U.S.C. 2a(iii), 2a(iv)(II)(1983), published in the **Federal Register**, a notice of availability of the contract terms and conditions contained in an application by the Chicago Board of Trade ("CBT") for designation as a futures contract market in a Eurobond index. 52 FR 1372. The notice provided for a sixty-day comment period which ended on March 16, 1987. Subsequently, the CBT notified the Commission that it intends to propose several changes to the terms of the proposed contract. In light of the nature of the intended contract modifications and the significance of the issues which they raise, the Director of the Division of Economic Analysis of the Commission, acting pursuant to the authority delegated by Commission Regulation § 140.96, has determined that, in this instance, an additional period for public comment is warranted.

**DATE:** Comments must be received on or before June 3, 1987.

**ADDRESS:** Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581, (202) 254-6314. Reference should be made to the CBT Eurobond index futures contract.

**FOR FURTHER INFORMATION CONTACT:** Naomi Jaffe, Division of Economic Analysis, Commodity Futures Trading Commission, 2033 K Street, NW. Washington, DC 20581, (202) 254-7227.

**SUPPLEMENTARY INFORMATION:** By letter dated April 24, 1987, the CBT notified the Commission of its intent to propose modifications to its application for designation as a futures contract market in a Eurobond index. The Commission previously published in the **Federal Register** a notice of availability of the contract terms and conditions of the proposed contract and provided a sixty-day comment period which ended on March 16, 1987. 52 FR 1372 (January 13, 1987). An additional comment period to enable the public to consider the intended modifications and to express their views on them is in the public interest and is consistent with the objectives of the Commodity Exchange Act.

The contemplated changes in the design of the proposed Eurobond index contract are as follows:

(1) To increase the minimum number of market makers supplying price information for the bonds in the Index from five, as currently provided, for a certain percentage of the bonds in the Index,

(2) To modify the current requirement that there be a maximum number of three bonds per issuer in the Index with the additional provision that there be a specified minimum number of separate issuers, and

(3) To increase the number of price surveys at and near contract expiration from once per day, as currently proposed.

Comment is requested on the potential effects of these proposed changes to the design of the contract.

A copy of the CBT's letter of April 24, 1987, and the terms and conditions of its proposed Eurobond index futures contract are available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Copies of these documents can be obtained through the Office of the Secretariat by mail at the above address or by phone at (202) 254-6314.

Any person interested in submitting written data, views or arguments on the above identified issues should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581, by the specified date. Such comment letters will be publicly available except to the extent that they are entitled to confidential treatment as set forth in 17 CFR 145.5 and 145.9.

Issued in Washington, DC, on April 28, 1987.

**Paula A. Tosini,**

*Director, Division of Economic Analysis.*

[FR Doc. 87-9987 Filed 5-1-87; 8:45 am]

BILLING CODE 6351-01-M

# DEPARTMENT OF DEFENSE

## Department of the Army

## Closed Meeting, Army Science Board

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: 21-22 May 1987.

Times of Meeting: 0715-1845, 21 May 1987; 0715-0905, 22 May 1987.

Place: Dugway Proving Ground, Utah.

Agenda: The Army Science Board's Ad Hoc Subgroup for the Army Biological Defense Program will meet to discuss the Dugway Proving Ground modernization program, history of the biological test program, ecology and epidemilogy, and the biological study program. This meeting will be closed to the public in accordance with section 552b(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C., Appendix 1, subsection 10(d). The classified and nonclassified matters to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. The ASB

Administrative Officer, Sally Warner, may be contacted for further information at (202) 695-3039 or 695-7046.

Sally A. Warner,

*Administrative Officer, Army Science Board.*

[FR Doc. 87-10003 Filed 5-1-87; 8:45 am]

BILLING CODE 3710-08-M

## Army Science Board; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Committee Meeting:

*Name of the Committee:* Army Science Board (ASB)

*Dates of Meeting:* 19 & 20 May 1987

*Times of Meeting:*

1200-1600, 19 May 1987

0800-1700, 20 May 1987

*Place:* Fort Lewis, Washington

*Agenda:* The Operational Subgroup of the Army Science Board 1987 Summer Study on Lightening the Force will meet with the 9th Infantry Division (Mechanized) to receive classified briefings on the operational requirements for motorized infantry Division and Corps Headquarters related to efforts for lightening the force. This meeting will be closed to the public in accordance with section 552b(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C., Appendix 1, subsection 10(d). The classified and nonclassified matters and proprietary information to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (202) 695-3039 or 695-7046.

Sally A. Warner,

*Administrative Officer, Army Science Board.*

[FR Doc. 87-10141 Filed 5-1-87; 8:45 am]

BILLING CODE 3710-08-M

## DEPARTMENT OF EDUCATION

[CFDA No. 84.178]

## Amended Notice Inviting Applications for New Awards Under the Leadership in Educational Administration Development (LEAD) Program for Fiscal Year 1987

On September 18, 1986, the Secretary of Education published in the **Federal Register** at 51 FR 33218 a Notice of Proposed Rulemaking for the LEAD Program. On March 24, 1987, the Secretary published in the **Federal Register** at 52 FR 9440 the Final Regulations for the LEAD Program. In addition, the Office of Educational Research and Improvement published an application notice on October 6, 1986 (51 FR 35550), inviting applications for grants to establish or operate a technical assistance center in each of the 50 States. The closing date for applications from the 50 States was December 5, 1986.

The Department of Education received only one application for a center in the State of Indiana, and it was withdrawn by the applicant before the Department was able to consider it for an award. In view of this development, the Secretary is providing eligible organizations an opportunity to apply for grant assistance for establishment or operation of a technical assistance center in Indiana. The revised deadline for submission of grant applications for a center in Indiana is June 8, 1987. Aside from this revised deadline, all other information provided in the application notice published on October 6 remains in effect.

**FOR FURTHER INFORMATION CONTACT:** Hunter Moorman, U.S. Department of Education, 555 New Jersey Avenue, NW., Room 502-C, Capitol Place, Washington, DC 20208, (202) 357-6116.

(20 U.S.C. 1109)

Dated: April 29, 1987.

Chester E. Finn, Jr.

*Assistant Secretary for Educational Research and Improvement.*

[FR Doc. 87-10061 Filed 5-1-87; 8:45 am]

BILLING CODE 4000-01-M

## National Advisory Committee on Accreditation and Institutional Eligibility; Meeting

**AGENCY:** Department of Education.

**ACTION:** Notice of Public Meeting.

**SUMMARY:** This notice sets forth the schedule and proposed agenda of a public meeting of the National Advisory Committee on Accreditation and Institutional Eligibility. It also describes the functions of the Committee. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of its opportunity to attend and to participate.

**DATES:** May 18, 1987, 9:30 a.m. until 5:30 p.m. and May 19, 8:30 a.m. until 5:00 p.m. local time. Requests for oral presentations before the Committee must be received on or before May 11, 1987. Written comments may be submitted at any time prior to the meeting and will be considered by the Advisory Committee.

**ADDRESS:** Sheraton Inn Washington Northwest, 8727 Colesville Road, Silver Spring, Maryland 20910.

**FOR FURTHER INFORMATION CONTACT:** Leslie W. Ross, Chief, Agency Evaluation Staff, 400 Maryland Avenue SW. (Room 3030, ROB-3), U.S. Department of Education, Washington, DC 20202 (202) 732-3486.

**SUPPLEMENTARY INFORMATION:** The National Advisory Committee on Accreditation and Institutional Eligibility is authorized by Section 1205 of the Higher Education Act as amended by Pub. L. 96-374 (20 U.S.C. 1145). The Committee advises the Secretary of Education regarding his responsibility to publish a list of nationally recognized accrediting agencies and associations, State agencies recognized for the approval of public postsecondary vocational education, and State agencies recognized for the approval of nurse education.

The Committee also advises the Secretary of Education regarding policy affecting both recognition of accrediting and approval bodies, and institutional eligibility for participation in Federal funding programs.

The meeting on May 18-19 will be open to the public. The Advisory Committee will review petitions and reports by the following accrediting agencies relative to initial or continued recognition by the Secretary of Education. The Committee will also hear presentations by representatives of these petitioning agencies and interested third parties.

Finally, the Committee will discuss potential changes in the Secretary's Criteria for Recognition of Accrediting Agencies and Associations. The agencies having petitions and reports pending before the Committee are:

**Petitions for Recognition as Nationally Recognized Accrediting Agencies and Associations**

*A. Petitions for Initial Recognition*

Accreditation Council for Childhood Education Specialist Schools

Commission on Accreditation of Rehabilitation Facilities

Council on Naturopathic Medical Education

U.S. Catholic Conference (clinical pastoral education)

*B. Petitions for Continued Recognition*

Accreditation Board for Engineering and Technology, Inc.

American Board of Funeral Service Education

American Library Association

American Medical Association, Committee on Allied Health Education and Accreditation, in cooperation with the review committee for:
Emergency Medical Technician-Paromedic
American Society of Landscape Architects
Association of Advanced Rabbinical and Talmudic Schools
Council on Chiropractic Education
Council on Education for Public Health
Council on Social Work Education
Foundation for Interior Design Education Research (appeal)
National Accrediting Commission of Cosmetology Arts and Sciences
National Association of Schools of Arts and Design
National Association of Schools of Music
New England Association of Schools and Colleges

**Petition for Recognition as a State Agency for the Approval of Public Postsecondary Vocational Education**

*A. Petition for Continued Recognition*

Iowa State Board of Public Instruction

Requests for oral presentation before the Committee should be submitted in writing to Leslie W. Ross (address above). Requests should include the names of all persons seeking an appearance, the organization they represent and the purpose for which the presentation is requested. Requests should be received on or before May 11, 1987. Time constraints may limit oral presentations. However, all written materials will be considered by the Advisory Committee.

A record will be made of the proceedings of the meeting and will be available for public inspection at the Office of Postsecondary Education, U.S. Department of Education, 400 Maryland Avenue, SW., (Room 3030, ROB-3), Washington, DC, from the hours of 8:00 a.m. to 4:30 p.m., Monday through Friday.

Signed at Washington, DC, on April 29, 1987.

**C. Ronald Kimberling,**

*Assistant Secretary for Postsecondary Education.*

[FR Doc. 87-10007 Filed 5-1-87; 8:45 am]

BILLING CODE 4000-01-M

## DEPARTMENT OF ENERGY

### Renewal Award of Cooperative Agreement; Restricted Eligibility

**AGENCY:** Department of Energy, Nevada Operations Office

**ACTION:** Notice of restricted eligibility for renewal award of cooperative agreement.

**SUMMARY:** DOE announces that pursuant to the DOE Financial Assistance Rules, 10 CFR 600.7(b), it is restricting eligibility for the renewal award of a cooperative agreement for the management and operation of the National Laser Users Facility and the performance of inertial fusion research.

*Project Scope:* This renewal award will primarily support the management and operation of the National Laser Users Facility and the planning and performance of original, basic research underlying the scientific and technological base related to laser-matter interactions. The overall objectives and goals of the National Laser Users Facility are to explore a broad class of physical phenomena related to laser-matter interactions with special emphasis on the physics associated with the demonstration of scientific feasibility of inertial fusion using neodymium glass lasers. The topics related specifically to inertial fusion research include laser target interaction physics, target implosion studies, theory, code development, target interaction experiments, beam uniformity studies, evaluation of short wave-length plasma instabilities, and diagnostic development. Supporting this activity will serve the essential function of maintaining a supply of trained scientists and engineers to meet the nation's future scientific and technological needs.

Eligibility for the renewal award of this cooperative agreement is being limited to the University of Rochester because of its unique laser and optical facilities and scientific resources within an academic environment which are not available elsewhere in the private sector.

The term of this cooperative agreement renewal award will commence on October 1, 1987, and end on September 30, 1992. The total estimated cost of this renewal award is $40,000,000.

**FOR FURTHER INFORMATION CONTACT:** U.S. Department of Energy, Nevada Operations Office, Attn: Robert E. Clemensen, P.O. Box 14100, Las Vegas, NV 89114-4100.

Issued in Las Vegas, Nevada, on April 20, 1987.

**Thomas R. Clark,**

*Manager.*

[FR Doc. 87-10071 Filed 5-1-87; 8:45 am]

BILLING CODE 6450-01-M

### Availability of Draft Environmental Impact Statement, Waste Management Activities for Groundwater Protection at the Savannah River Plant, Aiken, SC

**AGENCY:** Department of Energy.

**ACTION:** Notice of availability of Draft Environmental Impact Statement (DEIS) and notice to conduct a public hearing on the DEIS.

**SUMMARY:** The Department of Energy (DOE) announces the availability of a draft environmental impact statement, "Waste Management Activities for Groundwater Protection at the Savannah River Plant, Aiken, South Carolina," (DOE/EIS-0120D), on the modification of waste management activities at the Savannah River Plant for hazardous, low-level radioactive, and mixed wastes for the protection of human health and the environment. Modifications will be based on compliance with applicable regulatory requirements and DOE orders.

Public comments are invited and a public hearing will be held with respect to the DEIS.

**DATES:** Written comments to the Department of Energy should be postmarked by June 30, 1987, to ensure consideration in preparation of the final environmental impact statement. Public hearings will be held on June 2 and 4, 1987, as described in this notice. Individuals desiring to make oral statements as the hearings should notify Mr. S. R. Wright at the address below by May 26, 1987, so that the Department may arrange a schedule for presentations.

**ADDRESS:** Requests for copies of the DEIS, written comments on the DEIS, requests to present oral comments at the hearings, and requests for further information should be directed to Mr. S.R. Wright, Director, Environmental Division, U.S. Department of Energy, Savannah River Operations Office, P.O. Box A, Aiken, South Carolina 29802. Attention: "Waste Management EIS." For further information on the NEPA process contact: Ms. Carol Borgstrom, Acting Director, Office of NEPA Project Assistance, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585, telephone 202/586-4600.

**SUPPLEMENTARY INFORMATION:**

**I. Previous Notice of Intent**

The Department of Energy published a Notice of Intent (50 FR 16534) on April 26, 1985, regarding the preparation of a draft EIS on the waste management modification at the Savannah River Plant.

## II. Background Information

The Savannah River Plant (SRP) is a controlled access, major DOE installation established in the early 1950s for the production of nuclear materials for national defense. SRP operations generate hazardous, radioactive, and mixed (radioactive and hazardous) wastes.

Previously acceptable waste management practices (e.g., the use of unlined seepage basins) conducted at some SRP sites has caused occasional cases of groundwater contamination, mostly in water-table aquifers. Groundwater contaminants include volatile organic compounds, heavy metals, radionuclides, and other chemicals.

As a result of legislative actions, DOE Administrative Orders, and institutional concerns for continued environmental and human health protection, many remedial actions, waste treatment facilities, and demonstrations programs are already underway. Examples of these actions are the storage of buried wastes and soils from the Chemicals, Metals, and Pesticides (CMP Pits; the design, construction, and operation of liquid effluent treatment facilities for M-, F-, H-, and TNX-Areas; the use of recovery wells and an air stripper to remove volatile organic compounds from groundwater in M-Area; the design of a two-stage, rotary-kiln incinerator to detoxify hazardous wastes; and waste disposal demonstration programs.

Current demonstration programs that affect waste management activities include the "ashcrete" facility, which solidifies sludge from the effluent treatment facilities; a "beta-gamma" incinerator; a box/drum compactor; and a greater confinement disposal (GCD) demonstration. DOE expects these programs to result in improved methods of disposal for mixed and low-level radioactive waste and/or reduction in waste volumes to meet regulatory requirements.

DOE plans to close those sites which are receiving or may have received hazardous, low-level radioactive, or mixed waste. DOE is also planning the construction of new storage/disposal facilities at SRP for hazadous, low-level radioactive, and mixed waste. The new storage/disposal facilities would be used to accommodate wastes from ongoing operations, wastes from interim storage, wastes from planned waste treatment facilities, and could also be used for wastes from closure and/or remedial actions at existing waste sites if such actions become necessary. In addition, DOE is also considering alternatives for the continued management of filtered, deionized reactor disassembly-basin purge water discharges. These discharges contained very low concentrations of radionuclides, principally tritium, and are discharged to ensure that occupational exposure guidelines are achieved.

The purpose of the environmental impact statement is to assess the environmental impacts of the proposed modification of waste management activities for hazardous, low-level radioactive, nnd mixed wastes for the protection of groundwater, human health, and the environment at the Savannah River Plant. DOE does not intend the EIS to be a permit application for existing SRP facilities or a vehicle to resolve the applicability of Resource Conservation and Recovery Act (RCRA) requirements, as amended, to existing SRP facilities or waste sites. Regulatory activities and the expanded SRP groundwater monitoring and characterization program will provide the bases for the application of requirements to existing facilities and waste sites.

## III. Scope of Deis

The scope of the DEIS was developed using comments received during a public scoping period (April 29 through May 28, 1985) and public hearings in Aiken, South Carolina on May 14, 1985, and in Beaufort, South Carolina on May 16, 1985.

The U.S. Department of Energy (DOE) has prepared the dual purpose (programmatic and project-specific) DEIS to provide environmental input into the selection and implemention of modified waste management activities for hazardous, low-level radioactive, and mixed wastes for the protection of groundwater, human health, and the environment at its Savannah River Plant (SRP) in Aiken, South Carolina. The DEIS was prepared in accordance with section 102(2)(C) of the National Environmental Policy Act (NEPA) of 1969, as amended; it is intended to support broad decisions on future actions on SRP waste management activities, and to provide project-related environmental input and support for project—specific decisions on proceeding with cleanup activities at existing waste sites, establishing new waste disposal facilities, and discharging disassembly-basin purge water.

DOE could us several alternative strategies to implement modifications to the SRP waste management program for hazardous, low-level radiactive, and mixed wastes. These strategies differ in the concepts proposed for existing waste sites, new disposal facilities, and discharge of disassembly-basin purge water, and in the degree to which they require dedication of land areas and long-term monitoring and oversight to ensure that groundwater resources, human health, and the environment are adequately protected.

The No-Action strategy—continued protection of the offsite environment—consists of:

- No removal of waste or remedial or closure actions at existing waste sites;
- No establishment of new facilities for storage of wastes;
- Continued discharge of disassembly basin purge water to active reactor seepage basins;
- Some dedication of land for waste management purposes.

The Dedication strategy—compliance through dedication of existing and new disposal areas—includes:

- No waste removal, but closure and remedial actions as required at existing waste sites;
- Construction of new aboveground and belowground disposal facilities;
- Continued discharge of disassembly basin purge water as in the no-action strategy;
- Some dedication of land for waste management purposes.

The Elimination strategy—compliance through elimination of existing waste sites and storage of wastes—consists of:

- Removing wastes from all sites and remedial and closure actions as required;
- Construction of new retrievable storage facilities;
- Direct discharge of disassembly basin purge water to onsite surface streams or evaporation of the purge water with commercially available equipment;
- No dedication of land for waste management purposes following the end of the institutional control period.

The Combination strategy (DOE's preferred strategy)—compliance through a combination of dedication and elimination of existing waste sites and the construction of new storage and disposal facilities—includes:

- Removal of wastes at selected sites, plus remedial and closure actions as required;
- Construction of combinations of retrievable storage and above- and belowground disposal facilities;
- Continued discharge of disassembly basin purge water to reactor seepage basins, plus continued evaluation of tritium mitigation measures;
- Dedication of some land for waste management purposes.

## IV. Comment Procedures

### *A. Availability of Draft EIS*

Copies of the DEIS have been distributed to Federal, state, and local agencies, organizations, environmental groups, and individuals known to be interested in the waste management activities at the Savannah River Plant. Additional copies may be obtained by contacting Mr. S. R. Wright at the address given above.

Copies of the DEIS and copies of the documents referenced in the DEIS are available for public inspection at the U.S. Department of Energy's Reading Room at the University of South Carolina's Aiken Campus, Aiken, South Carolina, and the Freedom of Information Reading Room, Room 1E-190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC. Copies of the DEIS are also available for public inspection at the following locations:

Augusta Regional Library, 902 Greene Street, Augusta, Georgia 30901, (404) 724-1871

Richland County Public Library, 1400 Sumter Street, Columbia, South Carolina 29201, (803) 779-9084

South Carolina State Library, 1500 Senate Street, Columbia, South Carolina 29201, (803) 758-3181

Aiken-Bamberg-Barnwell-Edgefield Regional Library, 1307 Georgia Avenue, North Augusta, South Carolina 29841, (803) 648-9961

Allendale-Hampton-Jasper Regional Library, War Memorial Building, Court House Square, Allendale, South Carolina 29810, (803) 584-3513

Warren C. Gibbs Memorial Library, 326 North Bel Air Road, Evans, Georgia 30809, (404) 863-1946

Aiken County Public Library, 435 Newberry Street, Aiken, South Carolina 29801, (803) 649-2352.

### B. Written Comments

Interested parties are invited to provide comments on the DEIS to Mr. S. R. Wright at the above address. Comments should be identified on the outside of the envelope with the designation "Waste Management EIS." All comments and related information should be postmarked by June 30, 1987, to ensure consideration in preparing the final EIS. Comments postmarked after June 30, 1987, will be considered to the extent practicable.

### *C. Public Hearing*

1. Participation procedure. Public hearings have been scheduled on the DEIS as follows: Tuesday, June 2, 1987, at the Hyatt Regency, Savannah, Georgia, at 9:00 a.m. and 6:00 p.m.; and Thursday, June 4, 1987, at the Odell Weeks Activity Center, Aiken, South Carolina, at 9:00 a.m. and 6:00 p.m.

The public is invited to provide comments on the DEIS at the hearing. The hearing will not be a judicial or evidentiary-type hearing. Individuals desiring to make an oral presentation at the hearing should notify Mr. S. R. Wright at the address above as soon as possible after the appearance of this notice in the **Federal Register** so that the Department may arrange a schedule for the presentations. Persons who have not submitted a request to speak in advance may register to speak at the hearing before each hearing commences. Individuals and representatives of organizations will be called on to present comments as time permits. To ensure that everyone has the opportunity to present comments, 5 minutes will be allotted to individuals and 10 minutes will be allotted to individuals representing groups. Comments received at the hearing will be considered in the preparation of the final EIS. Individuals or representatives of organizations presenting comments at the hearing are requested to have written copies of their comments available at the hearing.

2. Conduct of hearing. The Department of Energy will arrange the schedule of commentors and will establish basic rules and procedures for conducting the hearing. Questions may be asked only by those conducting the hearing and there will be no cross-examination of persons presenting statements. Any participant who wishes to ask a question at the hearing may submit the question, in writing, to the presiding officer. Any further procedural rules needed for the proper conduct of the hearing will be announced by the presiding officer at the start of the hearing. A transcript of the hearing will be prepared, and the entire record of the hearing, including the transcript, will be retained by the Department of Energy for inspection at the Department's Freedom of Information Reading Room, Room 1E-190, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, and the U.S. Department of Energy's Reading Room at the University of South Carolina's Aiken Campus, Aiken, South Carolina.

Issued in Washington, DC, April 28, 1987.

Mary L. Walker,

*Assistant Secretary, Environment, Safety and Health.*

[FR Doc. 87-10073 Filed 5-1-87; 8:45 am]

BILLING CODE 6450-01-M

## Advance Notice of Intent To Prepare an Environmental Impact Statement for the Superconducting Super Collider

**AGENCY:** U.S. Department of Energy.

**ACTION:** Notice is hereby given that the U.S. Department of Energy intends to prepare an Environmental Impact Statement (EIS) on the siting, construction, operation, and decommissioning of the Superconducting Super Collider.

**SUMMARY:** The Department of Energy (DOE) proposes to build and operate a Superconducting Super Collider (SSC) accelerator for the study of high energy particle physics. DOE announces its intent to prepare an EIS in accordance with section 102(2)(C) of the National Environmental Policy Act (NEPA) on the siting, construction, operation, and decommissioning of the SSC. As currently planned, the SSC will be a racetrack-shaped particle accelerator in an underground tunnel 10 feet in diameter and approximately 53 miles in circumference. The site for the SSC has not been determined. DOE is in the process of soliciting states and others to propose to provide land to the U.S. Government on which to build and operate the SSC. The purpose of this Notice, as well as information on the conceptual design, the site selection process, and the proposed NEPA process for the SSC, and described below.

The purpose of this advance Notice of Intent (NOI) is to encourage early public involvement in the NEPA process and to solicit public comment on the proposed scope and content of the EIS. Because alternative sites for the proposed SSC to be included in the EIS will not be identified until December 1987, comments on the scope and content of the EIS should focus on generic issues related to the project and EIS preparation. DOE plans to publish a second NOI in December 1987 to solicit further comments on the scope and content of the EIS, particularly on site-specific issues related to alternative sites. No scoping meetings are scheduled now but will be scheduled in the vicinity of alternative sites when they are identified.

**DATE:** Comments on the scope of the EIS for the SSC are requested by June 3, 1987.

**ADDRESS:** Written comments or suggestions on the scope and content of the EIS should be sent to: SSC Site Task Force, Chairman: Dr. Wilmot N. Hess, ER-20, G-304, GTN, Office of Energy

Research, U.S. Department of Energy, Washington, DC 20545, 301-353-3713.

Requests to receive a copy of the draft EIS, when available, should also be sent to this Site Task Force address.

**FOR FURTHER INFORMATION CONTACT:** General information on the SSC project may be obtained from the Site Task Force Chairman at the above address.

General information on the procedures followed by DOE in complying with the requirements of NEPA may be obtained from: Office of NEPA Project Assistance, Office of the Assistant Secretary for Environment, Safety and Health, Attn: Raymond Pelletier, EH-25, E-125, GTN, U.S. Department of Energy, Washington, DC 20545, 301-353-6584.

**SUPPLEMENTARY INFORMATION:**

*Conceptual Design*

The SSC will be one of the largest scientific instruments ever made. Its major feature will be a collider ring in which the basic constituents of matter will be studied at an energy of 40 trillion electron volts, 20 times greater than at any existing facility.

When completed in the mid-1990's, the surface structures will present the appearance of a research center having a central office building, an auditorium, and various support and industrial buildings configured in a campus arrangement. Some 3,000 men and women will be working at the SSC facility—scientists, engineers, technicians, and administrative staff—including an estimated 500 transients annually taking part in research projects.

The tunnel will be buried with its centerline at least 35 ft underground. Service areas will be located approximately every five miles consisting of a cluster of surface buildings—contining cryogenic refrigerators, helium compressors, power supplies, support facilities, and points of access to the tunnel. Midway between two service areas will be a small building enclosing an access shaft to the collider tunnel.

The conceptual design described above is the result of substantial research and development (R&D) for the SSC, which was formally initiated late in 1983. The R&D was conducted at high energy physics laboratories and other institutions as a coordinated national effort under the guidance of the SSC Central Design Group (CDG) formed by the Universities Research Association, Inc., at the request of the Department of Energy (DOE). A detailed *Reference Designs Study*, completed in March 1984, established the basic feasibility of the SSC, provided a preliminary cost estimate, and identified R&D needs. Following this, a significant amount of R&D was done to verify the assumptions of the *Reference Designs Study*. In 1986, the CDG completed the SSC *Conceptual Design Report (CDR)* which was reviewed by the DOE with the aid of independent experts. This process led to the conclusion that the project was technically feasible and that the cost and schedule estimates were fiscally sound. The President requested construction authorization for the SSC in January 1987, and the FY 1988 budget submission, now before Congress, requests funds to initiate SSC project activities. The total estimated cost for the project is $4.4 billion in fiscal year 1988 dollars.

*Site Selection Process*

DOE issued an Invitation for Site Proposals on April 1, 1987. A preproposal conference is scheduled for April 29, 1987. Proposals were requested by August 3, 1987. Proposals will be screened by DOE to determine whether they are qualified for further consideration. Proposals that are qualified for further consideration will be provided to the National Academy of Sciences (NAS) and the National Academy of Engineering (NAE) in August 1987 for more detailed evaluation using the technical evaluation criteria and cost considerations described in the Invitation. In December 1987, NAS/NAE will recommend the proposals they believe to be the best. After reviewing the NAS/NAE recommendation, DOE will prepare a best qualified list of sites. DOE will conduct further analyses of the best qualified sites and identify a preferred site in July 1988. After completion of the NEPA process, a final site selection will be made by January 1989.

*The NEPA Process*

DOE has determined that the SSC is a major Federal action that requires an EIS. The EIS will address the siting, construction, operation, and decommissioning of the SSC. DOE will follow the NEPA process as outlined in the Council on Environmental Quality's "Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act" (40 CFR Parts 1500 through 1508) and the DOE's guidelines for "Compliance with the National Environmental Policy Act" (45 *FR* 10694), as amended.

After the close of the public comment period on this advance NOI, DOE will prepare a preliminary EIS Implementation Plan which will be used as guidance for the preparation of the EIS. DOE will begin generic work on the EIS and complete this work to the extent possible by the time the best qualified sites are identified in December 1987. This work would include activities that are not site-specific such as preparing the purpose and need section of the EIS, preparing the description of the proposed action, developing supporting information and analyses to be used later in developing cost estimates, and analyzing certain generic occupational safety and health issues. This will allow efforts after December 1987 to focus on the site-specific sections of the EIS.

The list of best qualified sites identified in December will be considered as the reasonable siting alternatives in the EIS. At the time DOE announces the best qualified sites, DOE will publish a second NOI in the **Federal Register**. That NOI will solicit public comments on the scope of the EIS, in particular, on stie-specific environmental issues. Public scoping meetings will be held in the vicinity of each of the best qualified sites. After the close of the public comment period on the NOI, DOE will revise the EIS Implementation Plan, as appropriate.

As preparation of the EIS continues, the preliminary findings of the EIS will be used by DOE in identifying a preferred site for the SSC in July 1988. The preferred site will be identified in the draft EIS. Draft EIS issuance is scheduled for late July 1988.

A 45-day public comment period on the draft EIS is planned and public hearings to receive oral comments will be held approximately one month after distributing the draft EIS. Availability of the draft EIS, the public comment period, and the public hearings will be announced in the **Federal Register** and in local news media when the draft EIS is distributed.

DOE will revise the draft EIS in response to comments received and plans to distribute the final EIS by the end of November 1988. No sooner than 30 days after the distribution of the final EIS, DOE expects to select the site for the SSC and issue a Record of Decision. The Record of Decision will be published in the **Federal Register**.

*EIS Issues/Content*

DOE's preliminary ideas for the EIS content and format are described below. Public comment is invited on the EIS content and format, including the proposed Table of Contents.

*Alternatives*

The EIS will present the environmental impacts of the

construction and operation of the SSC at each of the sites accepted by DOE as best qualified through the NAS/NAE evaluation process. The comparative analysis of the siting alternatives is expected to be the heart of the EIS. Other alternatives to be addressed include design alternatives to the SSC presented in the Conceptual Design Report and "no action." For the no action alternative, the EIS would present a discussion of the state of science without the SSC and would also present descriptions of the projected environment at each of the alternative sites without the project.

*Environmental Impacts*

The presentation in the EIS will focus on the following environmental impact parameters:

- Earth Resources,
- Land Resources,
- Water Resources,
- Air Quality,
- Health and Safety (public and occupational impacts),
- Noise Levels,
- Ecological Resources,
- Socioeconomics,
- Historical and Archaeological Resources,
- Scenic and Visual Resources.

*Decommissioning*

Decommissioning will also be addressed in this EIS to define any issues that might provide a clear basis for the choice among alternatives. The level of detail in the decommissioning analysis will be sufficient to identify any major differences among sites. Additional NEPA review would be required in the future to address decommissioning when such a propsal is made.

*Table of Contents*

A proposed Table of Contents for the EIS is presented below.

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Appendix 18.0 Wetlands and Floodplains Assessments.

The Conceptual Design Report and other supporting information are available for public review at the Public Reading Room, Room 1E-190, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, from 8:30 am to 4:00 pm.

Dated this 28th day of April, 1987, in Washington, DC.

**Grover A. Smithwick,**

*Principal Deputy Assistant Secretary, Office of the Assisstant Secretary for Environment, Safety and Health.*

[FR Doc. 87-10074 Filed 5-1-87; 8:45 am]

BILLING CODE 6450-01-M

## Procurement and Assistance Management Directorate; NPR-1 Crude Oil Sales Cycle

**AGENCY:** U.S. Department of Energy (DOE).

**ACTION:** Solicitation of Comments and Suggestions on NPR-1 Crude Oil Sales.

**SUMMARY:** The U.S. Department of Energy (DOE) solicits written comments and suggestions on the merits of extending the sales contract cycle for crude oil from the Naval Petroleum Reserve No. 1 (NPR-1), Kern County, California. For the last several NPR-1 crude oil sales, the contract durations have been for three months. Since the law permits contract terms up to one year, the DOE is considering the merits of extending the contract duration from three to six months. See Title 10, section 7430, United States Code, for the law governing DOE's sale of NPR-1 crude oil.

**DATES:** Those wishing to submit written comments and suggestions on the contract duration, should submit them to the address below. Comments need to be received by June 1, 1987, in order for DOE to fully consider them prior to the crude oil sale with deliveries commencing October 1, 1987

**ADDRESS:** Comments should be addressed to: Ms. Trudy Wood, Contracting Officer, United States Department of Energy, Office of Procurement Operations, MA-453.1, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-1220.

**FOR FURTHER INFORMATION CONTACT:** Ms Patricia A. Green, Contract Specialist, United States Department of Energy, Office of Procurement Operatons, MA-453.1, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-8248.

Issued in Washington, DC, on: April 27, 1987.

**Bertom J. Roth,**

*Director, Procurement and Assistance Management Directorate.*

[FR Doc. 87-10072 Filed 5-1-87;8:45am]

BILLING CODE 6450-01-M

## Energy Information Administration

## Agency Collections Under Review By The Office of Management and Budget

**AGENCY:** Energy Information Administration, DOE.

**ACTION:** Notice of requests submitted for clearance to the Office of Management and Budget.

**SUMMARY:** The Department of Energy (DOE) has submitted the energy information collection(s) listed at the end of this notice to the Office of Management and Budget (OMB) for approval under provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The listing does not contain information collection requirements contained in new or revised regulations which are to be submitted under 3504(h) of the Paperwork Reduction Act, nor management and procurement assistance requirements collected by DOE.

Each entry contains the following information: (1) The sponsor of the collection (DOE component or Federal Energy Regulatory Commission (FERC)); (2) Collection number(s); (3) Current OMB docket number (if applicable); (4) Collection title; (5) Type of request, e.g., new, revision, or extension; (6) Frequency of collection; (7) Response obligation; i.e., mandatory, voluntary, or required to obtain or retain benefit; (8) Affected public; (9) An estimate of the number of respondents per report period; (10) An estimate of the number of responses annually; (11) Annual respondent burden, i.e., an estimate of the total number of hours needed to respond to the collection; and (12) A brief abstract describing the proposed collection and the repondents.

**DATES:** Comments must be filed on or before June 3, 1987. Last notice published Thursday, April 9, 1987 (52 FR 11532).

**ADDRESS:** Copies of the materials submitted to OMB may be obtained from Mr. Gross at the address below. Address comments to the Department of Energy Desk Officer, Office of Management and Budget, 726 Jackson Place, NW., Washington, DC 20503. For comments relating to FERC data collections, send comments to the Attention of Mr. Rick Otis. Comments on all other DOE data collections should be sent to the Attention of Mr. Vartkes Broussalian. (Copies of your comments also should be addressed to Mr. Gross at the address below.)

**FOR FURTHER INFORMATION CONTACT:** John Gross, Director, Data Collection Services Division (EI-73), Energy Information Administration, M.S. 1H-023, Forrestal Building, 1000 Independence Ave., SW., Washington, DC 20585, (202) 586-2308.

**SUPPLEMENTARY INFORMATION:** If you anticipate commenting on a collection, but find that time to prepare these comments will prevent you from submitting comments promptly, you should advise the OMB DOE desk officer of your intent as early as possible.

The energy information collection submitted to OMB for review was:

1. Federal Energy Regulatory Commission.
2. FERC-558.
3. 1902-0109.
4. Format of Contract Summary, Applications for Certificates of Public Convenience and Necessity.
5. Extension.
6. On occasion.
7. Mandatory.
8. Businesses or other for profit.
9. 72 respondents.
10. 255 responses.
11. 255 hours.
12. FERC-558 is used by the Commission for collection of information needed to evaluate and process independent producer applications for the sale of natural gas in interstate commerce, and to evaluate and process independent producer rate schedules.

**Statutory Authority:** Sec. 5(a), 5(b), 13(b), and 52, Pub. L. 93-275, Federal Energy Administration Act of 1974 (15 U.S.C. 764(a), 764(b), 772(b), and 790a).

Issued in Washington, DC., April 21, 1987.

**Yvonne M. Bishop,**

*Director, Statistical Standards, Energy Information Administration.*

[FR Doc. 87-10075 Filed 5-1-87; 8:45 am]

BILLING CODE 6450-01-M

## Federal Energy Regulatory Commission

**[Docket Nos. ER87-347-000 et al.]**

## Idaho Power Co. et al; Electric Rate and Corporate Regulation Filings

April 24, 1987.

Take notice that the following filings have been made with the Commission:

### 1. Idaho Power Company

[Docket No. ER87-347-000]

Take notice that on April 17, 1987, Idaho Power Company (Idaho) tendered for filing the second part of a two part filing regarding Idaho and Sierra Pacific Power Company (Sierra) Interconnection Agreement dated September 1, 1976 and Idaho and Sierra Interconnection and Transmission Services Agreement dated May 29, 1981. The first part of this filing was filed March 25, 1987.

*Comment date:* May 11, 1987, in accordance with Standard Paragraph E at the end of this notice.

### El Paso Electric Company

[Docket No. ES87-25-000]

Take notice that on April 17, 1987, El Paso Electric Company filed an application with the Federal Energy Regulatory Commission (Commission) seeking authority pursuant to section 204 of the Federal Power Act to issue, either on a secured or unsecured basis,

short-term obligations and commercial paper, not to exceed in the aggregate $200,000,000 principal amount at any one time outstanding, and, in no case, to mature later than December 31, 1988.

*Comment date:* May 15, 1987, in accordance with Standard Paragraph E at the end of this notice.

**3. CEI-PJM Group Interconnection Agreement**

[Docket No. ER87-389-000]

The Cleveland Electric Illuminating Company (Referred to as CEI)
Public Service Electric and Gas Company
Philadelphia Electric Company
Pennsylvania Power & Light Company
Baltimore Gas and Electric Company
Jersey Central Power & Light Company
Metropolitan Edison Company
Pennsylvania Electric Company
Potomac Electric Power Company
Atlantic City Electric Company
Delmarva Power & Light Company
(Above referred to collectively as the PJM Group)

Take notice that on April 16, 1987, the Office of the Pennsylvania-New Jersey-Maryland (PJM) Interconnection made a filing on behalf of the above listed parties to the CEI-PJM Agreement, that Agreement consisting of the original agreement dated September 30, 1965, all supplemental agreements thereto, all schedules thereto currently in effect except Schedule 7.04, and Schedule 7.05 superseding Schedule 7.04 currently in effect.

The purpose of this filing is to supersede the current rate schedule designations for the individual parties of the PJM Group listed above with a single rate schedule designation for the PJM Group and to modify the Short Term Power Schedule as set forth in Schedule 7.05. The parties have requested an effective date of March 30, 1987 for the new rate schedule designation and Schedule 7.05.

The modifications to the Short Term Power Schedule include the provision for daily as well as weekly reservations; ceiling charges and adders for power generated by either party provided the total cost of services supplied is not less than 110% of the total out-of-pocket cost of supplying the Short Term Energy; ceiling charges and adders for power transmitted by CEI for others, and reduction in charges when transmission system constraints, unforeseen when the reservation was made, result in curtailment of Short Term Energy deliveries.

*Comment date:* May 8, 1987, in accordance with Standard Paragraph E at the end of this notice.

**4. Florida Power Corporation**

[Docket No. ER87-393-000]

Take notice that on April 20, 1987 Florida Power Corporation (Florida Power) tendered for filing revisions to the capacity charges, reservation fees and energy adder for various interchange services provided by Florida Power pursuant to interchange contracts with Florida Power & Light Company, Fort Pierce Utilities Authority, Jacksonville Electric Authority, Kissimmee Utility Authority, Orlando Utilities Commission, Sebring Utilities Commission, Seminole Electric Cooperative, Inc., Tampa Electric Company, and the Cities of Gainesville, Homestead, Key West, Lakeland, Lake Worth, New Smyrna Beach, St. Cloud, Starke, Tallahassee and Vero Beach, Florida. The interchange services which are affected by these revisions are Service Schedule B Short Term Firm, current negotiated commitments under Service Schedule D—Long Term Firm, Service Schedule F—Assured Capacity and Energy, Service Schedule G—Backup Service, Service Schedule H—Reserve Service, and the Contract for Assured Capacity and Energy with Florida Power & Light Company. Florida Power states that the revised capacity charges, reservation fees, and energy adder were developed using the same methodology as used in the original filings.

Florida Power requests that the revised capacity charges, reservation fees and energy adder be made effective on May 1, 1987, and therefore requests waiver of the sixty day notice requirement. According to Florida Power, the filing has been served on each of the affected utilities and the Florida Public Service Commission.

*Comment date:* May 8, 1987, in accordance with Standard Paragraph E at the end of this notice.

**Holyoke Water Power Company, Holyoke Power and Electric Company, Western Massachusetts Electric Company, and The Connecticut Light and Power Company**

[Docket Nos. ER85-689-005, ER85-707-005, and ER85-720-006]

Take notice that on April 15, 1987, the above named Companies (the Companies) tendered for fiing the Connecticut Decommissioning Financing Plan (the Plan). The Companies state that the Plan was approved by the Commission as part of the Offer of Settlement in this docket on May 6, 1986. The Plan is a supplement to the applicable rate schedules of the Companies and will be served on all parties involved.

*Comment date:* May 11, 1987, in accordance with Standard Paragraph E at the end of this document.

Standard Paragraphs:

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

**Kenneth F. Plumb,**
*Secretary.*

[FR Doc. 87-10015 Filed 5-1-87; 8:45 am]

BILLING CODE 6717-01-M

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**[Docket Nos. TA87-2-23-000, 001 and TA87-1-23-002]**

## Eastern Shore Natural Gas Co.; Tariff Filing

April 28, 1987.

Take notice that Eastern Shore Natural Gas Company (Eastern Shore) on April 21, 1987 tendered for filing the following tariff sheets to Original Volume No. 1 of its FERC Gas Tariff:

*Corrected Tariff Sheets*

Alternate Thirty-Third Revised Sheet No. 6
Alternate Thirty-Third Revised Sheet No. 12

*Revised Tariff Sheets*

Third Revised Sheet No. 245
Fourth Revised Sheet No. 246
Fourth Revised Sheet No. 247
Original Sheet No. 247A
Original Sheet No. 247B
Original Sheet No. 247C
Fourth Revised Sheet No. 248
Third Revised Sheet No. 249
Second Revised Sheet No. 250
Second Revised Sheet No. 251

*Proposed Tariff Sheets*

Thirty-Third Revised Sheet No. 5
Thirty-Third Revised Sheet No. 6
Sixteenth Revised Sheet No. 7

Thirty-Third Revised Sheet No. 10
Thirty-Third Revised Sheet No. 11
Thirty-Third Revised Sheet No. 12
Tenth Revised Sheet No. 13
Fourth Revised Sheet No. 14
Thirty-Fourth Revised Sheet No. 5
Thirty-Fourth Revised Sheet No. 6
Thirty-Fourth Revised Sheet No. 10
Thirty-Fourth Revised Sheet No. 11
Thirty-Fifth Revised Sheet No. 12
Eleventh Revised Sheet No. 13

*Alternate Tariff Sheets*

Alternate Thirty-Third Revised Sheet No. 5
Alternate Thirty-Third Revised Sheet No. 6
Alternate Thirty-Third Revised Sheet No. 10
Alternate Thirty-Third Revised Sheet No. 11
Alternate Thirty-Fourth Revised Sheet No. 12
Alternate Tenth Revised Sheet No. 13

Eastern Shore states that the purpose of the tariff sheets is to (1) correct and revise certain tariff sheets in compliance with the Commission's November 19, 1986 Order in Docket Nos. TA87-1-23-000 and 001, and (2) to reflect various adjustments to Eastern Shore's rates pursuant to the provisions contained in the revised PGA clause and the Stipulation and Agreement in Docket No. RP84-72. Such adjustments include the Current Purchased Gas Cost Rate Adjustment, the Deferred Gas Cost Adjustment and an adjustment to the base tariff rates to reflect the change in the Federal Income tax rate change.

Any person desiring to be heard or to protext said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before May 5, 1987. 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. 87-10017 Filed 5-1-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP87-59-000]

## Northern Natural Gas Company Division of Enron Corp.; Change in Rates and Tariff Revisions

April 28, 1987.

Take notice that on April 23, 1987, Northern Natural Gas Company, Division of Enron Corp. (Northern), tendered for filing with the Commission to be effective May 1, 1987 the following tariff sheets to be included in Northern's F.E.R.C. Gas Tariff, Third Revised Volume No. 1:

*Third Revised Volume No. 1*

Forty-Second Revised Sheet No. 4b
First Revised Sheet No. 51
First Revised Sheet No. 51a

**Reason for Filing**

Through this filing, Northern proposes to modify its currently effective Offsystem Sales Rate Schedule (OS-1) for a limited-term effective May 1, 1987 and extending through September 30, 1987 (summer period) to add flexible rate authority to charge a rate for service within a range of rates between a minimum and maximum. The maximum rate would be equal to the higher of Northern's system average load factor rate, based on its currently effective sales rates, or Northern's average NGPA Section 102 gas acquisition costs, based on Northern's currently effective purchased gas adjustment filing. The minimum rate would equal Northern's weighted average cost of flowing gas, plus fuel and variable costs of delivering the gas, plus GRI if applicable. The actual rate charged would be a negotiated rate, within the above-described range, and would be set forth in the sales agreement between Northern and the OS-1 purchaser.

Northern also requests a limited-term waiver of § 157.205 of the Commission's Regulations under the Natural Gas Act (NGA) to allow Northern automatic authorization under its blanket certificate authority issued in Docket No. CP82-401-000 to make sales for resale under Rate Schedule OS-1 to interstate pipelines for general system supply under § 157.210 of the Commission's Regulations and Rate Schedule OS-1, as modified, during the summer period.

Northern states that the requested tariff modification is designed to meet four objectives: (1) Avoidance of severe operational problems on Northern's system during the summer period; (2) protection of the reliability of Northern's long-term gas supply; (3) minimization of Northern's take-or-pay exposure; and (4) avoidance of the upward pressure on Northern's weighted average cost of gas (WACOG) that results from low production levels.

Northern states that off-system sales under Rate Schedule OS-1 as modified would alleviate an emergency situation on its system for the summer period due to severe operational problems that Northern anticipates at the production levels necessary to meet the forecasted market requirements of Northern's on-system customers. Northern states that increased sales for the summer period and corresponding increased production levels also are essential to maintaining the reliability of Northern's long-term gas supply; minimizing potenital take-or-pay exposure for the summer period; and avoiding upward pressure on Northern's WACOG.

Northern requests waiver of all Commission rules and regulations as necessary to permit tariff sheets to be effective at the beginning of the gas day on May 1, 1987.

Copies of the filing were served on all of Northern's jurisdictional customers and interested state Commissions.

Any person desiring to be heard or to protest said filing should file a Motion to Intervene or a Protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211). All such motions or protests should be filed on or before May 5, 1987. 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. 87-10018 Filed 5-1-87;8:45 am]

BILLING CODE 6717-01-M

## Office of Hearings and Appeals

## Cases Filed Week of March 27 Through April 3, 1987

During the week of March 27 through April 3, 1987, 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, DC 20585.

**George B. Breznay,**

*Director, Office of Hearings and Appeals.*

April 27, 1987.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of March 27 through April 3, 1987]

| Date | Name and location of applicant | Case No. | Type of submission |
|---|---|---|---|
| Mar. 30, 1987 | Committee to Bridge the Gap, Los Angeles, CA | KFA-0091 | Appeal of an information request denial. If granted: The March 19, 1987 Freedom of Information Request Denial issued by the Office of the Deputy Assistant Secretary for Nuclear Energy would be rescinded, and The Committee To Bridge the Gap would receive access to the SP-100 Technical Notes relating to the SP-100 Space Nuclear Reactor Program. |
| Mar. 31, 1987 | The Hartford Courant, Hartford, CT | KFA-0093 | Appeal of an information request denial. If granted: The March 12, 1987 Freedom of Information Request Denial issued by the Office of Naval Reactors would be rescinded, and the Hartford Courant would receive access to materials related to the General Electric, Knolls Atomic Power Laboratory in Windsor, Connecticut. |
| Mar. 31, 1987 | The Spokesman-Review, Spokane, WA | KFA-0092 | Appeal of an information request denial. If granted: The February 27, 1987 Freedom of Information Request Denial issued by the Richland Operations Office would be rescinded, and the Spokesman-Review would receive access to copies of the bi-monthly appraisal reports of Rockwell Hanford Operations done by the Department of Energy's Richland Office. |
| Apr. 1, 1987 | Clean Machine, Inc., Washington, DC | KRD-0024 and KRH-0024 | Motion 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 Clean Machine, Inc. in response to the May 20, 1982 Proposed Remedial Order (Case Nos. HRO-0048 and HRO-0049) issued to Clean Machine, Inc. |
| Apr. 3, 1987 | Export Fuel Company, Inc., Export, PA | KEE-0135 | Exception to the reporting requirements. If granted: Export Fuel Company, Inc. would not be required to file Form EIA-782-B, "Resellers/'Retailers' Monthly Petroleum Product Sales Report" and Form EIA-821, "Annual Fuel Oil & Kerosene Sales Report." |

Refund Applications Received

[Week of Mar. 27 to Apr. 3, 1987]

| Date received | Name of refund proceeding/name of refund applicant | Case No. |
|---|---|---|
| 03/27/87 through 04/03/87 | Getty Refund Applications. | RF265-935 through RF265-981. |
| 03/27/87 through 04/03/87 | Cranston Refund Applications. | RF276-47 through RF276-114. |
| 03/27/87 | Texas Utilities Electric Co. | RF292-5. |
| 03/30/87 | Huckins Oil Company, Inc. | RF264-17. |
| 05/02/86 | Charles W. Agar, Inc. | RF225-10721. |
| 03/27/87 | ITT Rayonier, Inc. | RF272-406. |
| 03/27/87 | Colgate Palmolive Company. | RF272-407. |
| 03/30/87 | Southland Corporation. | RF263-33. |
| 03/30/87 | Dick Parks Gas Company. | RF139-166. |
| 03/27/87 | Steve J. Dunne Cartage, Inc. | RF270-2480. |
| 03/31/87 | Hunters Woods Gulf Service, Inc. | RF40-3685. |
| 03/30/87 | B&L Motor Freight, Inc. | RF225-10722. |
| 03/30/87 | Hrobuchak's Service Station. | RF225-10723. |
| 03/30/87 | Briggs & Stratton Corporation. | RF272-408. |
| 04/02/87 | Raytheon Company. | RF272-409. |
| 04/02/87 | Knouse Foods | RF272-410. |
| 04/22/87 | Nathan Parker, Jr | RF225-10724. |
| 04/22/87 | Nathan Parker, Jr | RF225-10725. |
| 04/02/87 | Bonded Oil Co. Shareholders. | RF250-2721. |
| 04/03/87 | Office of the Mayor. | RF272-411. |
| 04/03/87 | Palestine Congractors, Inc. | RF272-412. |
| 04/03/87 | Yorktowne Paper Mills, Inc. | RF272-413. |

[FR Doc. 87-10076 Filed 5-1-87;8:45am]

BILLING CODE 6450-01-M

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL-3194-7]**

## Agency Information Collection Activities Under OMB Review

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** Section 3507(a)(2)(B) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) requires the Agency to publish in the **Federal Register** a notice of proposed information collection requests (ICRs) that EPA has forwarded to the Office of Management and Budget (OMB) for review. The ICR describes the nature of the solicitation and the expected impact, and where appropriate includes the actual data collection instrument. The ICRs that follow are available for review and comment.

**FOR FURTHER INFORMATION CONTACT:** Patricia Minami, (202) 382-2712 (FTS 382-2712) or Jackie Rivers, (202) 382-2740 (FTS 382-2740).

### Office of Pesticides and Toxic Substances

*Title:* National Human Adipose Tissue Survey (EAP ICR #0939). (This extends a currently approved collection without change.)

*Abstract:* EPA asks cooperating pathologists and medical examiners in the continental United States to collect human adipose tissue samples. EPA uses the statistical information generated by these samples to estimate the prevalence and levels of exposure to selected toxic substances and pesticides in the general populations.

*Respondents:* Pathologists and medical examiners in the continental United States.

*Estimated Annual Burden:* 1,600 hours.

### Office of Water

*Title:* State Drinking Water Supply Program Information (EPA ICR #0270). (This is a renewal of a currently approved collection without change.)

*Abstract:* Public water systems must monitor and report to States or EPA on compliance/non-compliance with regulations. States must report to EPA on violations, variances, or exemptions granted as well as changes to system inventories. The States and EPA use the information to protect public health through compliance with the Safe Drinking Water Act.

*Respondents:* Public water systems and State drinking water agencies.

*Estimated Annual Burden:* 1,218,110 hours.

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**Agency PRA Clearance Requests Completed by OMB**

EPA has received no action notices since its last Federal Register notice.

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Comments on the abstracts in this notice may be sent to:

Patricia Minami, U.S. Environmental Protection Agency, Office of Standards and Regulations (PM-223), Information and Regulatory Systems Division, 401 M Street, SW., Washington, DC 20460

and

Carlos Tellez, Office of Management and Budget, Office of Information and Regulatory Affairs, New Executive Office Building, 726 Jackson Place, NW., Washington, DC 20503

Dated: April 28, 1987.

**Daniel J. Fiorino,**

*Director, Information and Regulatory Systems Division.*

[FR Doc. 87-10049 Filed 5-1-87; 8:45 am]

BILLING CODE 6560-50-M

## FEDERAL HOME LOAN BANK BOARD

**[No. AC-597]**

### Evergreen Federal Savings Bank Charleston, WV; Final Action Approval of Conversion Application

Dated: April 23, 1987.

Notice is hereby given that on April 16, 1987, the Office of General Counsel of the Federal Home Loan Bank Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the application of Evergreen Federal Savings Bank (formerly First Federal Savings and Loan Association of Charleston), Charleston, West Virginia for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Office of the Secretariat at the Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552, and at the Office of the Supervisory Agent at the Federal Home Loan Bank of Pittsburgh, One Riverfront Center, Twenty Stanwix Street, Pittsburgh, Pennsylvania 15222-4893.

By the Federal Home Loan Bank Board

**Jeff Sconyers,**

*Secretary.*

[FR Doc. 87-10009 Filed 5-1-87; 8:45 am]

BILLING CODE 6720-01-M

## FEDERAL MARITIME COMMISSION

### Notice of Agreement Filed

The Federal Maritime Commission hereby gives notice that the following agreement(s) has been filed with the Commission pursuant to section 15 of the Shipping Act, 1916, and section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit protests or comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the Federal Register in which this notice appears. The requirements for comments and protests are found in § 560.7 and/or § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Any person filing a comment or protest with the Commission shall, at the same time, deliver a copy of that document to the person filing the agreement at the address shown below.

Agreement No.: 224-010780-001.

Title: Seattle Terminal Agreement.

Parties:

Port of Seattle

Matson Terminals, Inc.

Synopsis: The proposed agreement would delete from the lease the preferentially assigned container crane equipment and associated rental provisions. The parties have requested a shortened review period.

Filing Party: Frank H. Clark, Director, Marine Terminals, Port of Seattle, P.O. Box 1209, Seattle, WA 98111.

Dated: April 28, 1987.

By order of the Federal Maritime Commission.

**Joseph C. Polking,**

*Secretary.*

[FR Doc. 87-9985 Filed 5-1-87; 8:45 am]

BILLING CODE 6730-01-M

## FEDERAL RESERVE SYSTEM

### Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than May 15, 1987.

A. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Stephen W. Carveth,* Henry Cech, J.B. Dresselhaus, Alice Fransk, Ross E. Hecht, Con Keating, Harold Maude, and Paul C. Wilcoxen, Jr., all of Lincoln, Nebraska; to acquire 11.12 percent of the voting shares of Lincoln State Company, Inc., Lincoln, Nebraska, and thereby indirectly acquire Lincoln State Bank, Lincoln, Nebraska.

B. **Federal Reserve Bank of Dallas** (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Jery Gallagher,* De Soto, Texas; to acquire 56.31 percent of the voting shares of Red Oak Bancshares, Inc., Red Oak, Texas, and thereby indirectly acquire Red Oak State Bank, Red Oak, Texas.

C. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *Saul D. Binder,* Marshall J. Persky, both of Lincolnshire, Illinois, and Sherwin Williams, Phoenix, Arizona; to acquire 79.9 percent of the voting shares of Columbia Bancorp, Inc., Avondale, Arizona, and thereby indirectly acquire Columbia Bank, Avondale, Arizona.

Board of Governors of the Federal Reserve System, April 28, 1987.

**James McAfee,**

*Associate Secretary of the Board.*

[FR Doc. 87-9975 Filed 5-1-87; 8:45 am]

BILLING CODE 6210-01-M

## Credit and Commerce American Holdings, N.V., et al.; Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than May 22, 1987.

**A. Federal Reserve Bank at Richmond** (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *Credit and Commerce American Holdings, N.V.*, Curacao, Netherlands Antilles; Credit and Commerce American Investments, N.V., Amsterdam, Netherlands; First American Corporation, Washington, DC, and First American Bankshares, Inc., Washington, DC; to acquire 100 percent of the voting shares of NBG Financial Corporation, Atlanta, Georgia, and thereby indirectly acquire National Bank of Georgia, Atlanta, Georgia.

**B. Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *Northwest Georgia Financial Corporation*, Dallas, Georgia; to acquire 100 percent of the voting shares of Alcovy Banking Company (formerly Newton County Bank), Mansfield, Georgia.

**C. Federal Reserve Bank of Chicago** (David S. Epstein, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Pearl City Bancorp, Inc.*, Pearl City, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of The State Bank of Pearl City, Pearl City, Illinois.

Board of Governors of the Federal Reserve System, April 28, 1987.

**James McAfee,**

*Associate Secretary of the Board.*

[FR Doc. 87-9976 Filed 5-1-87; 8:45 am]

BILLING CODE 6210-01-M

## Security Pacific Corp., Formation of, Acquisition by, or Merger of Bank Holding Companies and Acquisition of Nonbanking Company

The company listed in this notice has applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed company has also applied under § 225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21.(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless othewise noted, these activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 22, 1987.

**A. Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *Security Pacific Corporation*, Los Angeles, California; to acquire 100 percent of the voting shares of Rainier Bancorporation, Seattle, Washington, and thereby indirectly acquire Rainier National Bank, Seattle, Washington; United Bank, A Savings Bank, Tacoma, Washington; Rainier Bank Oregon, N.A., Portland, Oregon; and Rainier Bank Alaska, N.A., Anchorage, Alaska.

In connection with this application, Applicant also proposes to acquire Rainier Brokerage Services, Inc., Seattle, Washington, and thereby engage in providing securities brokerage services and other incidental activities, including, without limitation, related securities credit and cash management service, to the extent authorized by § 225.25(b)(15) of the Board's Regulation Y; Rainier Credit Life Insurance Company, Seattle, Washington, and thereby indirectly act as an underwriter and reinsurer for credit life insurance, credit accident and health insurance directly related to extensions of credit by affiliates of Security Pacific Corporation to the extent authorized by § 225.25(b)(8) of the Board's Regulation Y; Rainier Mortgage Company, Seattle, Washington, and thereby engage in making, servicing, acquiring and selling of loans, for its own account and for the account of others, such as would be made by mortgage companies, to the extent authorized by § 225.25(b)(1) of the Board's Regulation Y; and Rainier Real Estate Advisors, Inc., Seattle, Washington, and thereby engage in offering real estate investment advice to real estate investment trusts and other persons to the extent authorized by § 225.25(b)(4) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, April 28, 1987.

**James McAfee,**

*Associate Secrertary of the Board.*

[FR Doc. 87-9977 Filed 5-1-87; 8:45 am]

BILLING CODE 6210-01-M

## Sovran Financial Corp., et al.; Applications to Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulaton Y (12 CFR 225.23(a)(1)) for the Board's

approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 22, 1987.

A. **Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *Sovran Financial Corporation*, Norfolk, Virginia; to engage *de novo* through its subsidiary, Sovran Investment Corporation, Richmond, Virginia, in offering discretionary investment management services to certain corporate or other institutional customers; to offer portfolio investment advice; to serve as investment adviser to an investment company; to provide financial advice to state and local governments, such as with respect to the issuance of their securities; to provide advice in connection with financing transactions for non-affiliated financial and nonfinancial institutions pursuant to § 225.25(b)(4) of the Board's Regulation Y.

B. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *International Bancorp of Miami, N.V.*, Miami, Florida; engage *de novo* through its subsidiary, Volcorp, S.A., Geneva, Switzerland, in investment management and related trust company activities pursuant to § 225.25(b)(3) of the Board's Regulation Y. These activities will be conducted in the State of Florida, Latin America, and the Caribbean.

Board of Governors of the Federal Reserve System, April 28, 1987.

**James McAfee,**

*Associate Secretary of the Board.*

[FR Doc. 87-9978 Filed 5-1-87; 8:45 am]

BILLING CODE 6210-01-M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Alcohol, Drug Abuse, and Mental Health Administration

### Advisory Committee; Meeting

**AGENCY:** Alcohol, Drug Abuse, and Mental Health Administration.

**ACTION:** Correction Notice.

**SUMMARY:** Public notice was given in the **Federal Register** April 14, 1987 on page 12078 that the Cognition, Emotion, and Personality Research Review Committee, NIMH, would meet on May 28-30. The notice is being corrected to read as follows:

Meeting Dates: May 29-30

All other information for this committee remains the same.

Dated: April 28, 1987.

**Estelle O. Brown,**

*Committee Management Assistant, Alcohol, Drug Abuse, and Mental Health Administration.*

[FR Doc. 87-9989 Filed 5-1-87; 8:45 am]

BILLING CODE 4160-20-M

## Food and Drug Administration

**[Docket No. 78P-0419 et al.]**

### Approved Variances for Laser Light Shows; Availability

**AGENCY:** Food and Drug Administration.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing that variances from the performance standard for laser products have been approved by FDA's Center for Devices and Radiological Health (CDRH) for 12 organizations that manufacture and produce laser light shows, light show projectors, or both. The projectors provide a laser light display to produce a variety of special lighting effects. The principal use of these products is to provide entertainment to general audiences.

**DATES:** The effective dates and termination dates of the variances are listed in the table below.

**ADDRESS:** The applications and all correspondence on the applications have been placed on display in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

**FOR FURTHER INFORMATION CONTACT:** Sally Friedman, Center for Devices and Radiological Health (HFZ-84), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4874.

**SUPPLEMENTARY INFORMATION:** Under § 1010.4 (21 CFR 1010.4) of the regulations governing establishment of performance standards under section 358 of the Radiation Control for Health and Safety Act of 1968 (42 U.S.C. 263f), FDA has granted each of the 12 organizations listed in the table below a variance from the requirements of § 1040.11(c) (21 CFR 1040.11(c)) of the performance standard for laser products.

Each variance permits the listed manufacturer to introduce into commerce a demonstration laser product assembled and produced by the manufacturer, which is its particular variety of laser light show, laser light show projector, or both. Each laser product involves levels of accessible laser radiation in excess of Class II levels but not exceeding those required to perform the intended function of the product.

CDRH has determined that suitable means of radiation safety and protection are provided by constraints on the physical and optical design and by warnings in the user manual and on the products. Therefore, on the effective dates specified in the table below, FDA approved the requested variances by a letter to each manufacturer from the Deputy Director of CDRH.

So that each product may show evidence of the variance approved for the manufacturer of the product, each product shall bear on the certification label required by § 1010.2(a) (21 CFR 1010.2(a)) a variance number, which is the FDA docket number, and the effective date of the variance as specified in the table below.

| Docket No. | Organization granted the variance | Demonstration laser product | Effective date/termination date |
|---|---|---|---|
| 78P-0419 (renewal) | Blue Lightning Laser Light Show, 496 Cullen, Pacifica, California 94044. | Laser light shows assembled and produced by Blue Lightning Laser Light Show incorporating Blue Lightning laser projectors Models HS-1, SFP-1, CH-1, S.S 4000, S.S 4001, and/or S.S 4000a. | January 16, 1987 February 1, 1989 |
| 81P-0278 (exension) | Raytel, 137 Second Street, Troy, New York 12180 | Raytel laser light shows incorporating projectors manufactured by Raytel which may use HeNe, Ar/Kr, HeCd, Nd:YAG, copper vapor or mercury vapor lasers with a maximum peak power of 20 watts. | January 8, 1987 July 21, 1988 |
| 81P-0412 (renewal) | Massachusetts Institute of Technology, Center for Advanced Visual Studies, 40 Massachusetts Avenue, Cambridge, Massachusetts 02139. | Laser light shows and the incorporated projection systems assembled and produced by the M.I.T. Center for Advanced Visual Studies. | February 12, 1987 December 30, 1989 |
| 85V-0305 | Sea World dba Sea World, California and Cypress Gardens, Florida, 1720 South Shores Road, San Diego, California 92109. | Sea World laser light shows, such as "Summer Nights" or "Starlight Spectacular," incorporating Laser Media LMS Series and Sea World Model SW-1 Class IV ion laser projectors. | February 5, 1987 December 31, 1987 |
| 85V-0375 (amendment) | Photon Marketing, Limited dba Photon Amusements, 12630 East Northwest Highway, Dallas, Texas 75228. | Photon Amusements laser light show assembled and produced by Photon Maketing, Ltd. incorporating the LaserMedia, Inc. Model LMS and Fiberay laser prjector devices with a Class IV argon ion laser and the LaserMedia helium-neon Class I Laser Pistols. | January 15, 1987 May 12, 1988 |
| 86V-0187 | Museum of Arts and Sciences Planetarium, 1040 Museum Boulevard, Daytona Beach, Florida 32014. | Laser light shows produced by the Museum of Arts and Science Planetarium incorporating a Laser Systems Development Corporation C-3 projector and Class IIIb or IV argon/krypton or argon ion laser systems. | January 15, 1987 June 2, 1988 |
| 86V-0366 | Magic Light Laser Imagery, P.O. Box 483, Kihei, Maui, Hawaii 96753. | Magic Light Laser Imagery Class IIIb helium-neon or argon laser projection systems and laser light shows assembled and produced by Magic Light laser Imagery incorporating these project systems. | February 24, 1987 February 24, 1989 |
| 86V-0417 | Military Airlift Command (MAC), Scott Air Force Base, Illinois 62225. | Military Airlift Command (MAC) laser video display incorporating the Visulux 1000 laser video projector. | January 16, 1987 January 16, 1989 |
| 86V-0446 | Bays Mountain Nature Center and Planetarium, Route 4, Kingsport, Tennessee 37660. | Laser light shows assembled and produced by Bays Mountain Nature Center and Planetarium incorporating a Model C-3 Laser Systems Development Corporation Class IV laser projector. | February 25, 1987 February 25, 1989 |
| 86V-0454 | Lasers, Incorporated dba Lasers Entertainment Complex, 880 Indian Trail Road, Suite R, Lilburn, Georgia 30340. | Lasers, Inc. laser light shows at the Lasers Entertainment Complex incorporating the firm's Model #1 Laserlite 1000 Class IV argon laser projection system. | February 27, 1987 February 27, 1989 |
| 86V-0466 | Laserlite Incorporated, 151 Nashdene Road, Unit 48 & 49, Scarborough, Ontario, MIV 2T3 Canada. | Laser light shows assembled and produced by Laserlite Inc. and for the firm's Model LGS 1000 Laser Graphics Projectors which may be incorporated into these shows. | January 10, 1987 January 10, 1989 |
| 87V-0048 | Roctronics Professional Corporation, 100-FDA Roctronics Park, Pembroke, Massachusetts 02359. | Roctronics LASERGRAPH laser projects and the laser light shows incorporating these projectors assembled and produced by Roctronics Professional Corporation. The projection systems will incorporate up to Class IV argon, krypton, argon/krypton, or helium-neon ion lasers. | February 20, 1987 August 20, 1987 |

In accordance with § 1010.4, the applications and all correspondence on the applications have been placed on public display under the designated docket numbers in the Dockets Management Brach (address above) and may be seen in that office between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Public Health Service Act as amended by the Radiation Control for Health and Safety Act of 1968 (sec. 358, 82 Stat 1177-1179 (42 U.S.C. 263f)) 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 5.86).

Dated: April 27, 1987.

**John C. Villforth,**

*Director, Center for Devices and Radiological Health.*

[FR Doc. 87-9993 Filed 5-1-87; 8:45 am]

BILLING CODE 4160-01-M

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**[Docket No. 87M-0124]**

## Ciba Vision Care; Premarket Approval of CIBATHIN ® (Tefilcon) Soft (Hydrophilic) Contact Lenses

**AGENCY:** Food and Drug Administration.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing its approval of the supplemental applications by Ciba Vision Care, Atlanta, GA, for premarket approval, under the Medical Device Amendments of 1976, of the spherical CIBATHIN ® (tefilcon) Soft (Hydrophilic) Contact Lenses (clear and tinted). After reviewing the recommendation of the Ophthalmic Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant of the approval of the applications.

**DATE:** Petitions for administrative review by June 3, 1987.

**ADDRESS:** Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

**FOR FURTHER INFORMATION CONTACT:** David M. Whipple, 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 August 19, 1986, Ciba Vision Care, Atlanta, GA 30348, submitted to CDRH supplemental applications for premarket approval of the CIBATHIN ® (tefilcon) Soft (Hydrophilic) Contact Lenses. The spherical CIBATHIN ® (tefilcon) Soft (Hydrophilic) Contact Lenses are indicated for extended wear from 1 to 30 days between removals for cleaning and disinfection as recommended by the eye care practitioner. The lenses are indicated for the correction of visual acuity in not-aphakic persons with nondiseased eyes that are myopic. The lenses may be worn by persons who may exhibit astigmatism of 1.50 diopters (D) or less that does not interfere with visual acuity. The lenses range in powers from plano to −10.00 D and are to be disinfected using either a heat or chemical lens care system. The lenses contain one or more of the color additives Reactive Blue 21, Reactive Black 5, Reactive Yellow 15, Reactive Orange 78, and Reactive Blue 19 in accordance with the color additive listing provisions of 21 CFR 73.3121.

On February 27, 1987, the Ophthalmic Devices Panel, an FDA advisory committee, reviewed and recommended approval of the supplemental applications. On March 31, 1987, CDRH approved the supplemental applications 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 David M. Whipple (HFZ-460), address above.

The labeling of the approved contact lenses 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 approval of a new solution for use with an approved lens, each contact lens manufacturer or PMA holder of such a lens 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 June 3, 1987, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h), 90 Stat. 554-555, 571 (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: April 24, 1987.

**John C. Villforth,**

*Director, Center for Devices and Radiological Health.*

[FR Doc. 87-9990 Filed 5-1-87; 8:45 am]

BILLING CODE 4160-01-M

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**[Docket No. 87M-0099]**

## Organon Teknika Corp.; Premarket Approval of HEPANOSTIKA® ANTICORE ™ Microelisa System

**AGENCY:** Food and Drug Administration.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing its approval of the application by Organon Teknika Corp., Durham, NC, for premarket approval, under the Medical Device Amendments of 1976, of the HEPANOSTIKA ® ANTICORE ™ Microelisa System. After reviewing the recommendation of the Microbiology 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 June 3, 1987.

**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:** Joseph L. Hackett, Center for Devices and Radiological Health (HFZ-440), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7550.

**SUPPLEMENTARY INFORMATION:** On July 1, 1986, Organon Teknika Corp., Durham, NC 27704-0969, submitted to CDRH an application for premarket approval of HEPANOSTIKA ® ANTICORE ™ Microelisa System. HEPANOSTIKA ® ANTICORE ™ Microelisa System is an enzyme-linked immunosorbent assay (ELISA) for the qualitative determination of total antibody to hepatitis B core antigen (anti-HBc) in human serum or plasma and is indicated as an aid in diagnosis of ongoing or previous hepatitis B virus infection.

On November 19, 1986, the Microbiology Devices Panel, an FDA advisory committee, reviewed and recommended approval of the application. On February 27, 1987, 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 Joseph L. Hackett (HFZ-440), address above.

**Opportunity for Administrative Review**

Section 515(d)(3) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under Part 12 (21 CFR Part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register.** If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before June 3, 1987, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h), 90 Stat. 554–555, 571 (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: April 27, 1987.

**John C. Villforth,**

*Director, Center for Devices and Radiological Health.*

[FR Doc. 87-9995 Filed 5-1-87; 8:45 am]

BILLING CODE 4160-01-M

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**[Docket No. 87M-0121]**

## Organon Teknika; Premarket Approval of HEPANOSTIKA™ Anti-HAV IgM MICROELISA System

**AGENCY:** Food and Drug Administration.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing its approval of the application by Organon Teknika Corp., Durham, NC, for premarket approval, under the Medical Device Amendments of 1976, of the HEPANOSTIKA™ Anti-HAV IgM MICROELISA System. After reviewing the recommendation of the Microbiology 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 June 3, 1987.

**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:** Joseph L. Hackett, Center for Devices and Radiological Health (HFZ-440), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7550.

**SUPPLEMENTARY INFORMATION:** On April 5, 1983, Organon Teknika Corp., Durham, NC 27704-0969, submitted to CDRH an application for premarket approval of HEPANOSTIKA™ Anti-HAV IgM MICROELISA System. The device is an in vitro diagnostic enzyme immunoassay indicated for the detection of IgM-class antibodies against hepatitis A virus (HAV) in human serum or plasma. The device is intended to diagnose viral hepatitis. A positive reaction on a symptomatic patient would indicate recent infection.

On December 9, 1983, the Microbiology Devices Panel, an FDA advisory committee, reviewed and recommended approval of the application. On March 31, 1987, 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 Joseph L. Hackett (HFZ-440), address above.

### Opportunity for Administrative Review

Section 515(d)(3) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under Part 12 (21 CFR Part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under $ 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register**. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before June 3, 1987, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h), 90 Stat. 554–555, 571 (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: April 27, 1987.

**John C. Villforth,**

*Director, Center for Devices and Radiological Health.*

[FR Doc. 87-9996 Filed 5-1-87; 8:45 am]

BILLING CODE 4160-01-M

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**[Docket No. 87M-0115]**

## Alcon Laboratories, Inc.; Premarket Approval of PERM-WET ™ Wetting and Soaking Solution and PERM-CLEAN ™ Daily Cleaner

**AGENCY:** Food and Drug Administration.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing its approval of the application by Alcon Laboratories, Inc., Fort Worth, TX, for premarket approval, under the Medical Device Amendments of 1976, of PERM-WET™ Wetting and Soaking Solution and PERM-CLEAN™ Daily Cleaner. After reviewing the recommendation of the Ophthalmic 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 June 3, 1987.

**ADDRESS:** Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

**FOR FURTHER INFORMATION CONTACT:** David M. Whipple, 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 October 19, 1983, Alcon Laboratories, Inc., Fort Worth, TX 76101, submitted to CDRH an application for premarket approval of PERM-WET ™ Wetting and Soaking Solution and PERM-CLEAN ™ Daily Cleaner. PERM-WET ™ Wetting and Soaking Solution and PERM-CLEAN ™ Daily Cleaner make up a two-solution system indicated for use in the cleaning and one-step wetting, soaking, and disinfection of hard and POLYCON® and POLYCON® II rigid gas permeable contact lenses.

On April 17, 1984, the Ophthalmic Devices Panel, an FDA advisory committee, reviewed and recommended approval of the application. On March 24, 1987, 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 David M. Whipple (HFZ-460), address above.

The labeling of the PERM-WET ™ Wetting and Soaking Solution and PERM-CLEAN ™ Daily Cleaner two-solution system states that the system is indicated for use in the cleaning and one-step wetting, soaking, and disinfection of hard and POLYCON ® and POLYCON ® 11 rigid gas permeable contact lenses. Sponsors of POLYCON ® and POLYCON ® II contact lenses that have been approved for marketing are advised that whenever CDRH publishes a notice in the **Federal Register** of the approval of a new solution for use with approved POLYCON ® and POLYCON ® II contact lenses, the manufacturer or PMA holder of each affected lens shall correct its labeling to refer to the new solution at the next printing or at such other time as CDRH prescribes by letter to the applicant.

**Opportunity for Administrative Review**

Section 515(d)(3) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under Part 12 (21 CFR Part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register.** If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before June 3, 1987, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h), 90 Stat. 554-555, 571 (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: April 27, 1987.

**John C. Villforth,**

*Director, Center for Devices and Radiological Health.*

[FR Doc. 87-9994 Filed 5-1-87; 8:45 am]

BILLING CODE 4160-01-M

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**[Docket No. 87M-0117]**

## Pharmafair, Inc.; Premarket Approval of Pharmafair Delicate Eyes Saline Solution for Soft Lenses, Pharmafair Cleaning Solution, and Pharmafair Lubricating and Rewetting Solution

**AGENCY:** Food and Drug Administration.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing its approval of the application by Pharmafair, Inc., Hauppauge, NY, for premarket approval, under the Medical Device Amendments of 1976, Pharmafair Delicate Eyes Saline Solution for Soft Lenses, Pharmafair Cleaning Solution, and Pharmafair Lubricating and Rewetting Solution for use with soft (hydrophilic) contact lenses. After reviewing the recommendation of the Ophthalmic 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 June 3, 1987.

**ADDRESS:** Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

**FOR FURTHER INFORMATION CONTACT:** David M. Whipple, 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 December 31, 1985, Pharmafair, Inc., Hauppauge, NY 11788, submitted to CDRH an application for premarket approval of Pharmafair Delicate Eyes Saline Solution for Soft Lenses, Pharmafair Cleaning Solution, and Pharmafair Lubricating and Rewetting Solution. The Pharmafair Delicate Eyes Saline Solution for Soft Lenses is indicated for use in the rinsing, heat disinfection, and storage of soft (hydrophilic) contact lenses. The Pharmafair Cleaning Solution is indicated for use to clean soft (hydrophilic) contact lenses. The Pharmafair Lubricating and Rewetting Solution is indicated for use to lubricate and rewet soft (hydrophilic) contact lenses, relieve minor irritation, discomfort, and/or blurring which may occur while wearing the lenses.

On July 18, 1986, the Ophthalmic Devices Panel, an FDA advisory committee, reviewed and recommended approval of the application. On March 24, 1987, 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 David M. Whipple (HFZ-460), address above.

The labeling of the devices states that the solutions are indicated for use in the cleaning, rinsing, heat disinfection, storage, and lubricating and rewetting of soft (hydrophilic) contact lenses. Manufacturers of soft (hydrophilic) contact lenses that have been approved for marketing are advised that whenever CDRH publishes in the **Federal Register** a notice of the approval of a new solution for use with an approved soft contact lens, the manufacturer or PMA holder of each lens shall correct its labeling to refer to the new solution at the next printing or at such other time as CDRH prescribes by letter to the applicant.

**Opportunity for Administrative Review**

Section 515(d)(3) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under Part 12 (21 CFR Part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register**. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before June 3, 1987, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h), 90 Stat. 554–555, 571 (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: April 27, 1987.

**John C. Villforth,**

*Director, Center for Devices and Radiological Health.*

[FR Doc. 87-9991 Filed 5-1-87; 8:45 am]

BILLING CODE 4160-01-M

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## Office of Human Development Services

### Administration for Children, Youth and Families; Notice of Meetings of the Advisory Committee on Adoption and Foster Care Information

Agency holding the Meeting: Administration for Children, Youth and Families.

Times and Dates: Each of the meetings will be two days in duration, to be held on the following dates—May 18–19; June 15–16; July 20–21; August 10–11; and September 8–9. All meetings will be scheduled from 9:00 a.m. to 5:00 p.m.

Place: The May 18–19 meeting will be held in Rooms 303–305A, Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201. The June 15–16 meeting will be held in Rooms 5167–5169, HHS Building (formerly North Building), 330 Independence Avenue, SW., Washington, DC 20201. All other meetings will be held in the Humphrey Building or other Federal facilities in the Washington area to be determined. For final information, contact the advisory Committee's Executive Secretary noted below.

Status: Meetings are open to the public. An interpreter for the deaf will be available upon advance request. All locations are barrier free.

Matters to be Considered: Deliberations of members of the Advisory Committee who are charged by Pub. L. 99–509, section 9443, of the Omnibus Budget Reconciliation Act of 1986, to conduct a study of various methods of creating a system for the collection of data with respect to adoption and foster care. Not later than October 1, 1987, the Advisory Committee shall submit to the Secretary and the Congress a report setting forth the results of the study together with its recommendations.

Contact Person for More Information: Raymond C. Collins, Ph.D., Executive Secretary, Advisory Committee on Adoption and Foster Care Information, Administration for Children, Youth and Families, Room 5008, 400 6th Street, SW., Washington, DC 20201, (202) 755-7547.

Dated: April 23, 1987.

**Raymond C. Collins,**

*Executive Secretary.*

[FR Doc. 87-10036 Filed 5-1-87; 8:45 am]

BILLING CODE 4130-01-M

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## Federal Council on the Aging, Notice of Meeting

**AGENCY HOLDING THE MEETING:** Federal Council on the Aging Pierre, South Dakota.

**TIME AND DATE:** Meeting begins at 9:00 am and ends at 5:00 pm on Wednesday, May 13, 1987, and begins at 9:30 am and ends at 5:30 pm on Thursday, May 14, 1987.

**PLACE:** On Wednesday, May 13 from 9:00 to 12:00 Noon, Department of Health and Human Services, Federal Council on the Aging, Executive Session (members & staff only), The Tower Room, Kings Inn, Pierre, South Dakota, and from 1:30 to 5:00 p.m., State Capitol Chambers of the South Dakota Senate Appropriations Committee. On Thursday, May 14, at 9:30 a.m., Field Trip to Cheyenne River Indian Reservation, hosted by Sioux Nation.

**STATUS:** Meeting is open to the public. Exception: May 13 Executive Session is closed to public.

**CONTACT PERSONS:** Pete Conroy, Room 4545, HHS North Building, 245–2451.

The Federal Council on the Aging was established by the 1973 Amendments to the Older Americans Act of 1965 (Pub. L. 93029, 42 U.S.C. 3015) for the purpose of advising the President, the Secretary of Health and Human Services, the Commissioner on Aging and the Congress on matters relating to the special needs of older Americans.

Notice is hereby given pursuant to the Federal Advisory Committee Act (Pub. L. 92–453, 5 U.S.C. App. 1, Sec. 10, 1976) that the Council will hold a meeting on May 13 and 14, 1987 from 9:00 am–5:00 pm and from 9:30 am–5:30 pm respectively. On May 13, the morning session will be an Executive Session, and the regular open meeting in the afternoon. On May 14 after the field trip, the Council committees will meet in the Kings Inn (meeting rooms to be announced), Pierre, South Dakota.

The agenda will include: a forum on Methods and Practices for Serving Rural and Native American Elderly. Witnesses before the Council on May 13 will include Dr. Jerry Jaeger, Bureau of Indian Affairs, Aberdeen, S.D.; Dr. Terrence Sloan, Aberdeen Office of

Indian Health Service; a persentation by the State aging directors of S.D., N.D., Colo., Mont., Wyo., and Utah concerning their activities and experiences in the delivery of services to older Americans living in the rural high plaines; particular attention will be given to interagency cooperation in the delivery of these services through the State Extension Service, Universities, Hospitals, Departments of Transportation, Education, Labor-commodity Distribution as well as Federal agencies and community organizations; Montana State University representative, Center of Geronotology, Gary Refsland; a State Unit representative; and a Farm organization representative.

On May 14 a field trip hosted by the Sioux Nation to Cheyenne River Indian Reservation. State directors will accompany FCoA members as will representatives of Sioux Nation who will discuss native American policy matters during the trip and then conduct tour of reservation. During return trip to Pierre, informal informational discussions concerning rural life and conditions on high plaines will be outlined for Council members. Following field trip, Council will convene committee meetings at Kings Inn at 4 pm followed by closing business items on agenda. Adjournment scheduled for 5:30 pm., 14 May 1987.

Dated: April 27, 1987.

**Ingrid Azvedo,**

*Chairperson Federal Council on the Aging.*

[FR Doc. 87-10037 Filed 5-1-87; 8:45 am]

BILLING CODE 4130-01-M

## Alcohol, Drug Abuse and Mental Health Administration

### Protection and Advocacy for Mentally Ill Individuals; Delegation of Authority; Public Health Service

Notice is hereby given that in furtherance of the delegation by the Secretary of Health and Human Services on March 19, 1987, to the Assistant Secretary for Health, the Assistant Secretary for Health has delegated to the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, with authority to redelegate, all the authority delegated to the Assistant Secretary for Health under Title I of the Protection and Advocacy for Mentally Ill Individuals Act of 1986 (42 U.S.C. 10801 *et seq.*), as amended, concerning protection and advocacy systems for mentally ill persons.

The delegation to the Administrator, Alcohol, Drug Abuse, and Mental Health Administration became effective on April 27, 1987.

Dated: April 27, 1987.

**Robert E. Windom,**

*Assistant Secretary for Health.*

[FR Doc. 87-10038 Filed 5-1-87; 8:45 am]

BILLING CODE 4160-20-M

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

### Office of the Secretary

**[Docket No. D-87-838; FR-2351]**

### Redelegation of Authority Regarding Liquidated Damages Under the Contract Work Hours and Safety Standards Act

**AGENCY:** Office of the Secretary, HUD.

**ACTION:** Notice of Redelegation of Authority.

**SUMMARY:** The Assistant to the Secretary for Labor Relations (HUD) redelegates to Labor Relations Officers in HUD Regional Offices and Directors of Labor Relations in HUD Field Offices, the authority in certain cases to issue a final order affirming a determination of liquidation damages and to waive or reduce liquidation damages against contractors and subcontractors for violations of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327 *et seq.*).

**EFFECTIVE DATE:** July 1, 1987.

**FOR FURTHER INFORMATION CONTACT:** Justin L. Logsdon, Assistant to the Secretary for Labor Relations, Office of the Secretary, Room 4110, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 755-5370. (This is not a toll-free number.)

**SUPPLEMENTARY INFORMATION:** This redelegation of authority is being published under 29 CFR 5.8(d), which delegates from the Secretary of Labor to the Secretary of Housing and Urban Development the authority to waive or reduce liquidated damages of $500 or less against contractors and subcontractors for violations of the Contract Work Hours and Safety Standards Act (CWHSSA), and under section 104(c) of CWHSSA and 29 CFR 5.8(d), which give the Secretary of Housing and Urban Development the authority to issue a final order affirming a determination of liquidated damages under CWHSSA.

The Secretary of HUD, under section 7(d) of the Department of Housing and Urban Development Act, has delegated his authority under 29 CFR 5.8 (b) and (d) and section 104(c) of CWHSSA to the Assistant to the Secretary for Labor Relations, with authority to redelegate. 52 FR 868 (January 9, 1987), authority citation corrected at 52 FR 13875 (April 27, 1987). The Assistant to the Secretary for Labor Relations, who administers HUD's Labor Standards Program, has determined that in certain cases the authority to issue a final order affirming a determination of liquidated damages and to waive or reduce liquidated damages should be exercised at the Regional and Field Office level.

Accordingly, the redelegation of authority shall read as follows:

#### Authority Redelegated

The Assistant to the Secretary for Labor Relations hereby redelegates: (1) To the Labor Relations Officer in each HUD Regional Office the authority to issue a final order affirming a determination of liquidated damages of $500 or less, and to waive or reduce liquidated damages of $500 or less, against contractors and subcontractors for violations of the Contract Work Hours and Safety Standards Act; and (2) to the Labor Relations Director in each HUD Filed Office the authority to issue a final order affirming the determination of liquidated damages of $100 or less, and to waive or reduce liquidated damages of $100 or less, against contractors and subcontractors for violations of the Contract Work Hours and Safety Standards Act.

**Authority:** 29 CFR 5.8 (b) and (d); sec. 104(c), Contract Work Hours and Safety Standards Act, 40 U.S.C. 330(c); sec. 7(d), Department of Housing and Urban Development Act, 42 U.S.C. 3535(d); and Delegation of Authority, 52 FR 868 (January 9, 1987), corrected at 52 FR 13875 (April 27, 1987).

Dated: Apirl 27, 1987.

**Justin L. Logsdon,**

*Assistant to the Secretary for Labor Relations.*

[FR Doc. 87-9981 Filed 5-1-87; 8:45 am]

BILLING CODE 4210-32-M

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

### Draft Supplemental Environmental Impact Statement; Devers-Palo Verde No. 2 500 kV Transmission Line

**AGENCY:** Bureau of Land Management, Department of the Interior (BLM).

**ACTION:** Notice of Availability of Draft Supplemental Environmental Impact Statement (SDEIS).

**SUMMARY:** Pursuant to section 102(C) of the National Environmental Policy Act of 1969, a SDEIS has been prepared for the proposed Devers-Palo Verde No. 2

500 kV Transmission Line Project in Arizona and California.

**SUPPLEMENTARY INFORMATION:** BLM has prepared a Supplemental DEIS for the Devers-Palo Verde No. 2 500 kV Transmission Line Project. Southern California Edison (SCE) proposes to build, operate and maintain a 238 mile long 500 kV transmission line from the Devers substation near North Palm Springs, California to the vicinity of the Palo Verde Nulcear Power Plant, about 50 miles west of Phoenix.

The proposed project will be the second single circuit 500 kV alternating current transmission line to be constructed along this route. Palo Verde No. 1 was analyzed in an EIS prepared in 1978–79.

The proposed project participants are SCE and eleven other Southern California utilities. The purpose of the proposed line is to deliver power from existing firm resources in the southwest for which the participants need a permanent transmission route, and to meet projected capacity resource requirements in the mid-to-late 1990's. In addition to SCE the participants are the City of Los Angeles, Department of Power and Water Modesto-Santa Clara-Redding (M-S-R), Imperial Irrigation District, Riverside, Vernon, Burbank, Glendale, Pasadena, Azusa, Banning and Colton. All but M-S-R are members of the Southern California Public Power Authority.

The SDEIS was prepared under contract by Western Ecological Services Company, Inc.

Public hearings to receive comments on the scope of the SDEIS and the adequacy of the impact analysis will be held at the following locations:

City Council Chambers, Palm Springs City Hall, 3200 East Tahquitz-McCallum Way, Palm Springs, CA, June 16, 1987–7 p.m.

Palo Verde Valley H.S., 667 N. Lovekin, Blythe, CA, June 17, 1987–7 p.m.

Embassy Suites Hotel, 3210 NW Grand Avenue, Phoenix, AZ, June 18, 1987–7 p.m.

**FOR FURTHER INFORMATION CONTACT:** William Haigh, Bureau of Land Mangement, California Desert District, 1695 Spruce St., Riverside, CA 92507, (714) 351–6428.

A limited number of copies of the SDEIS may be obtained by contacting the California Desert District at the above address. Copies of the SDEIS may be inspected at the following locations:

Bureau of Land Mangement, California Desert District, 1695 Spruce St., Riverside, CA 92507

Arizona State Office, 3707 North 7th St., Phoenix, AZ 85011

Yuma District Office, 3150 Winsor Ave., P.O. Box 5680, Yuma, AZ 85364

Indio Resource Area, 1900 Tahquitz-McCallum Way Suite B-1, Palm Springs, CA 92262

Phoenix District Office, 2015, W. Deer Valley Rd., Phoenix, AZ 85027

Bureau of Land Management, Public Affairs, Interior Building, 18th and C Streets, NW., Washington, DC 20240

Bureau of Land Management, California State Office, Federal Building, Attn: Carl Roundtree, 2800 Cottage Way—Rm. E–2841, Sacramento, CA 95825

**DATE:** The review period will run until July 8, 1987. Written comments must be submitted within this 60 day period.

**ADDRESS:** Comments should be addressed to William S. Haigh of the California Desert District at the address given above.

Dated: April 28, 1987.

H. W. Riecken,

*Acting District Manager.*

[FR Doc. 87–10057 Filed 5–1–87; 8:45 am]

BILLING CODE 4310–84–M

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**[NM–940–07–4220–11; NM NM 0559467, NM NM 10370, NM NM 12530, NM NM 12723]**

## Proposed Continuation of Withdrawals, New Mexico

**AGENCY:** Bureau of land Management, Interior.

**ACTION:** Notice.

**SUMMARY:** The Forest Service, U.S. Department of Agriculture, proposes that four separate land withdrawals continue for an additional 20 years. The land would remain closed to the United States mining laws but would remain open to leasing under the mineral leasing laws.

**DATE:** Comments should be received by August 3, 1987.

**ADDRESS:** Comments should be sent to: New Mexico State Director, P.O. Box 1449, Santa Fe, NM 87504–1449.

**FOR FURTHER INFORMATION CONTACT:** Kay Thomas, BLM, New Mexico State Office, 505–988–6589.

The Forest Service, U.S. Department of Agriculture, proposes that the existing land withdrawals made by Public Land Orders Nos. 4841 of June 5, 1970; 4871 of August 3, 1970; 5375 and 5380 of August 15, 1973, be continued for a period of 20 years pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714. The following described lands are involved:

**New Mexico Principal Meridian—Carson National Forest**

1. NM NM 0559467, Public Land Order No. 4841 of June 5, 1970. Mallette Canyon Campground located along Mallette Creek and adjacent to Forest Road No. 597 extending north, approximately one mile from the Town of Red River, Taos County, 40.94 acres, T. 29 N., R. 14 E., Secs. 25, 26, and 35.

2. NM NM 10370, Public Land Order No. 4871 of August 3, 1970. Hopewell Lake Campground located adjacent to State Highway 64, approximately 20 miles west of Tres Piedras, Rio Arriba County, 358.19 acres, T. 29 N., R. 7 E., Secs. 31 and 32.

3. NM NM 12530, Public Land Order No. 5380 of August 15, 1973. Angostura Recreation Area located south of Highway 3, approximately 20 miles southeast of Penasco, T. 22 N., R. 14 E., Secs. 29, 30, and 31.

Rio La Junta Recreation Area located approximately 27 miles east of Penasco, T. 22 N., R. 13 E., Sec. 24; T. 22 N., R. 14 E., Secs. 9, 16, 17, 19, and 20.

Tres Ritos Recreation Area located approximately 23 miles southeast of Penasco, T. 22 N., R. 13 E., Secs. 24 and 25; T. 22 N., R. 14 E., Sec. 30.

Sipapu Ski Area located adjacent to State Highway 3, approximately 12 miles east of Penasco, T. 22 N., R. 13 E., Secs. 9, 10, 15, and 16.

The areas described aggregate 1,507.48 acres in Taos County.

4. NM NM 12723, Public Land Order No. 5375 of August 15, 1973. Lagunitas Administrative Site and Campground located adjacent to Forest Road 87C in the headwaters area of Escondido Creek, approximately 27 air miles northwest of Tres Piedras, T. 31 N., R. 6 E., Secs. 28 and 33 (unsurveyed).

Potrero Box located adjacent to Forest Road 44, approximately 3½ miles north of the village of El Rito, T. 25 N., R. 7 E., Secs. 8, 9, 16, and 17.

Laguna Larga Campground located adjacent to Forest Road 78A and is approximately 24 air miles north, northwest of Tres Piedras, T. 31 N., R. 8 E., Secs. 28 and 33.

Tres Piedras Administrative Site located in Tres Piedras, approximately one mile north and in the northwest quadrant of the junction of U.S. Highways 64 and 285, T. 28 N., R. 9 E., Secs. 15 and 22.

The areas described above aggregate approximately 765.00 acres in Rio Arriba and Taos Counties.

The withdrawals are essential for protection of substantial capital improvements on the Tres Piedras, El Rito, Penasco, and Questa Ranger

Districts, Carson National Forest. The withdrawals closed the described lands to mining but not mineral leasing. No change in the segregative effect or use of the land is proposed by this action.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with the proposed withdrawals continuation may present their views in writing to the New Mexico State Director at the address indicated above.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the land and its resources. A report will also be prepared for consideration by the Secretary of the Interior, the President, and Congress, who will determine whether or not the withdrawals will be continued, and if so, for how long. The final determination on the continuation of the withdrawals will be published in the **Federal Register**. The existing withdrawals will continue until such final determination is made.

Dated: April 23, 1987

**Larry L. Woodard,**

*State Director.*

[FR Doc. 87-10056 Filed 5-1-87; 8:45 am]

BILLING CODE 4310-FB-M

## Minerals Management Service

### Central and Field Organization

**AGENCY:** Minerals Management Service, Interior.

**ACTION:** Notice.

Pursuant to 5 U.S.C. 552(a)(1)(A), notice is hereby given that the following changes have been made to the Minerals Management Service section of the Department of the Interior, Central and Field Organization, published in the **Federal Register** on December 17, 1985 (50 FR 51462), at column 3, and changes published on November 19, 1986 (51 FR 41839), at column 2.

The post office box number for the Alaska OCS Region and the Alaska Administrative Service Center will be phased out by September 30, 1987 Use of the street address for mail deliveries will begin immediately. The address and telephone numbers for both of these offices are as follows:

Alaska OCS Region, Room 110, 949 E. 36th Avenue, Anchorage, AK 99508-4302, Phone, 907-261-4010.

Alaska Administrative Service Center, Room 110, 949 E. 36th Avenue, Anchorage, AK 99508-4302, Phone, 907-261-4050.

The street name, and consequently, the mailing address for the Gulf of Mexico OCS Region and the Southern Administrative Service Center have been changed. Their address and telephone numbers are as follows:

Gulf of Mexico OCS Region, 1201 Elmwood Park Boulevard, New Orleans, LA 70123-2394, Phone, 504-736-0557

Southern Administrative Service Center, 1201 Elmwood Park Boulevard, New Orleans, LA 70123-2394, Phone, 504-736-2616.

**FOR FURTHER INFORMATION CONTACT:** Faye Quesenberry at 703-435-6179.

Dated: April 24, 1987

**Thomas Gernhofer,**

*Assistant Director for Administration.*

[FR Doc. 87-10051 Filed 5-1-87; 8:45 am]

BILLING CODE 4310-MR-M

## INTERSTATE COMMERCE COMMISSION

**[Docket No. AB-55 (Sub-No. 191)]**

### CSX Transportation, Inc., Findings on Abandonment Between Elmer and Kinston in Lenoir County, NC

The Commission has found that the public convenience and necessity permit CSX Transportation, Inc. to abandon a 4.1-mile portion of its Kinston Subdivision between Elmer (milepost AA-173.7) and Kinston (milepost AA-177.8), in Lenoir County, NC.

A certificate will be issued authorizing abandonment unless within 15 days after this publication the Commission also finds that: (1) A financially responsible person has offered assistance (through subsidy or purchase) to enable the rail service to be continued; and (2) it is likely that the assistance would fully compensate the railroad.

Any financial assistance offer must be filed with the Commission and the applicant no later than 10 days from publication of this Notice. The following notation must be typed in bold face on the lower left-hand corner of the envelope containing the offer: "Rail Section, AB-OFA." Any offer previously made must be remade within this 10 day period.

Information and procedures regarding financial assistance for continued rail service are contained in 49 U.S.C. 10905 and 49 CFR 1152.27

**Noreta R. McGee,**

*Secretary.*

[FR Doc. 87-10112 Filed 5-1-87; 8:45 am]

BILLING CODE 7035-01-M

## DEPARTMENT OF JUSTICE

### Antitrust Division

### Computer Aided Manufacturing-International, Inc., Additional Notification by CAM-I

Notice is hereby given that, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.*, Computer Aided Manufacturing-International, Inc. ("CAM-I") has filed an additional written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in the membership and research and development project areas of CAM-I. CAM-I previously filed a written notification disclosing changes in the membership of the organization. Notice of this filing was published in the **Federal Register** on February 26, 1986. The original notification disclosing (1) the identities of the parties to CAM-I and (2) the nature and objectives of CAM-I was published in the **Federal Register** on January 24, 1985. These notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the current parties to CAM-I and its general areas of planned activities are given below.

Computer Aided Manufacturing-International, Inc. was incorporated as a membership organization in May 1972, for the purpose of sponsoring joint research and development in the use of computer systems and software to improve the productivity of industry. Its members contribute to, and with the assistance of professional staff, plan and contract for, basic research and development projects in such areas as geometric modeling, process planning, advanced numerical control, sculptured surfaces, cost management systems, quality assurance, factory management, and electronics automation. Upon completion, including testing and evaluation, the results of the projects are made available to the public for a fee. The members include corporations, government agencies, and educational institutions located in the United States, Europe, and Japan.

The current industrial member companies in the United States are: The Bendix Co. Kansas City Division; Allied Automotive World Headquarters; General Motors Corp. Allison Gas Turbine Division; Arthur Andersen & Company; Arthur Young & Company; Harsco Corp. BMY Division; Boeing

Computer Services Co.; Boeing Military Airplane Co.; Caterpillar Tractor Company Manufacturing Engineering MEGO-W; Coopers & Lybrand; Deere & Company CAM Systems Division; Deloitte, Haskins & Sells; Digital Electronic Automation; Digital Equipment Corporation; E.I. Du Pont de Nemours & Co., Inc. Engineering Development Laboratory; Eastman Kodak Company CS & CT/ATO; Eaton Corporation Manufacturing Services Center Division; Electronic Data Systems Corp.; Ernst & Whinney; Ford Motor Company; Garrett Turbine Engine Co.; General Dynamics Corp. Fort Worth Division Manufacturing Systems; General Dynamics Corp. Data Systems Division; General Electric Company; Grumman Corp. Grumman Aircraft Systems Division; GTE Corp. Government Systems Division; Honeywell Information Systems, Inc.; Hughes Aircraft Co. Radar Systems Group; Lawrence Livermore National Laboratory Mechanical Engineering Materials; Litton—IST Industrial Automation Systems, Inc.; Lockheed Missiles & Space Co., Inc.; Lockheed California Company; Lockheed Georgia Company; Los Alamos National Laboratory; Martin-Marietta Energy Systems, Inc.; McDonnell Douglas Corporation; Morton-Thiokol, Inc. Wasatch Division; Motorola, Inc. Manufacturing Acct. Systems; Northrop Corporation Aircraft Division; Optical Gaging Products, Inc.; Peat, Marwick, Mitchell & Co.; Price Waterhouse; Rockwell International Cost Accounting Division; Sandia National Laboratories CAD Technical & Organizational Division; Sheffield Measurement Division, Warner & Swasey Co.; The Singer Company; Tektronix, Inc.; TRW Inc. Electronics & Defense Sector; U.S. Department of Energy; U.S. Navy Office of Naval Acquisition Support; United Technologies Research Center; United Technologies Corp. Pratt & Whitney Aircraft Group Hamilton Standard; USAF AF WAL/MLTC; Westinghouse Manufacturing Systems; and Williams International.

The current industrial member companies in Europe are: Aerospatiale (France); Alcatel NV AMT Center (Belgium); Asea AB (Sweden); British Aerospace PLC (United Kingdom); Construcciones Aeronauticas, S.A. (Spain); Daimler-Benz AG (West Germany); Factron Schlumberger (England); GEC Electrical Projects, Ltd. (England); Hewlett-Packard GmbH (Federal Republic of Germany); Ingersoll Engineers, Inc. (England); International Computers, Ltd. (England); IVF (Sweden); Lucas Group Services Limited (England); M.A.N. AG (Federal Republic of Germany); Matra-Datavision, S.A. (France); Messerschmitt-Bolkow-Blohm GmbH (West Germany); Nuovo Pignone S.p.A. (Italy); Nederlands Philips Bedrijven B.V. (The Netherlands); Plessey Company PLC (England); Raggrupamento Selenia Elsag (Italy); RHP Industrial Bearings Ltd. (England); Saab-Scania (Sweden); Siemens AG (West Germany); Sperry Corporation (UNISYS) (England); TNO Metaalinstituut (The Netherlands); Valmet Corporation (Finland); and Volkswagenwerk AG (West Germany).

Current industrial member companies in the Japan region are: Computer Services Corporation; Fujitsu Limited; Hitachi, Ltd.; Honda Engineering Co., Ltd., Institute of Japan Data Communications Assoc.; Kawasaki Heavy Industries, Ltd.; NEC Corporation; Oki Electric Industry Co., Ltd.; and the Australian Department of Defence.

Current educational members in the United States are: Bradley University; Brigham Young University; California Polytechnic State University; Carnegie-Mellon University; Cornell University; Iowa State University; Lehigh University; Massachusetts Institute of Technology; Michigan State University; New Mexico State University; North Carolina State University; Oklahoma State University; Pennsylvania State University; Rensselaer Polytechnic Institute; Texas A & M University; University of New Orleans; University of Oklahoma; University of Rochester; University of Texas at Arlington; and Wichita State University.

Current educational members in Europe are: Aachen Technical University (West Germany); Bordeaux 1 University; GRAI (France); Cambridge University (England); Cranfield Institute of Technology (England); Dosset Institute of Higher Education (England); Helsinki University of Technology (Finland); Katholieke Universiteit Leuven (Belgium); Loughborough University of Technology (England); Lund Institute of Technology (Sweden); Politecnico di Milano (Italy); Royal Institute of Technology (Sweden); Technical University of Berlin (West Germany); Universiteit Fredericiana Karlsruhe; University of Manchester (England); University of Nottingham (England); University of Oulu (Finland); and University Stuttgart (West Germany).

Current educational members in Japan are: Hokkaido University; Kobe University; and Tokyo University.

**Joseph H. Widmar,**

*Director of Operations, Antitrust Division.*

[FR Doc. 87-10064 Filed 5-1-87; 8:45 am]

BILLING CODE 4410-01-M

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## Federal Bureau of Investigation

### National Crime Information Center Advisory Policy Board; Meeting

The Advisory Policy Board of the National Crime Information Center (NCIC) will meet on June 2-3, 1987, from 9 a.m. until 5 p.m. at the Sheraton Hotel and Towers, 1400 Sixth Avenue, Seattle, Washington 98101.

The major topic to be discussed will be the development of user requirements to be recommended to the contractor for the NCIC 2000 Study.

The meeting will be open to the public with approximately 30 seats available for seating on a first-come, first-served basis. Any member of the public may file a written statement with the Advisory Policy Board before or after the meeting. Anyone wishing to address a session of the meeting should notify the Advisory Committee Management Officer, Mr. William A. Bayse, FBI, at least 24 hours prior to the start of the session. The notification may be by mail telegram, cable, or hand-delivered note. It should contain the name, corporate designation, consumer affiliation, or Government designation, along with a capsulized version of the statement an outline of the material to be offered. A person will be allowed not more than 15 minutes to present a topic, except with the special approval of the Chairman of the Board.

Inquiries may be addressed to Mr. David F. Nemecek, Committee Management Liaison Officer, NCIC, Federal bureau of Investigation Washington, DC 20535, Telephone number 202-324-2606.

Dated: April 28, 1987.

**William H. Webster,**

*Director.*

[FR Doc. 87-9974 filed 5-1-87; 8:45 am]

BILLING CODE 4410-02-M

## DEPARTMENT OF JUSTICE

### Civil Rights Division

## DEPARTMENT OF THE TREASURY

### Office of Revenue Sharing

### Inter-Agency Civil Rights Agreement on Revenue Sharing

**AGENCY:** Civil Rights Division, Department of Justice and Office of Revenue Sharing, Department of the Treasury.

**ACTION:** Notice.

**SUMMARY:** In view of the termination of the Revenue Sharing Program, the Office of Revenue Sharing and the Civil Rights Division of the Department of Justice are implementing a working arrangement to account for the civil rights requirements in the Revenue Sharing Act.

**FOR FURTHER INFORMATION CONTACT:** Stewart Oneglia, Chief, Coordination and Review Section, Civil Rights Division, Department of Justice, (202) 724-2222; or Richard S. Isen, Chief Counsel, Office of Revenue Sharing, Department of the Treasury, (202) 634-5182.

**SUPPLEMENTARY INFORMATION:**

**Background**

Title XIV of the Consolidated Omnibus Budget Reconciliation Act of 1985, Pub. L. 99-272 (COBRA), provides for the repeal of the Revenue Sharing Act (31 U.S.C. 6701 through 6724) effective December 31, 1986 or the adjournment *sine die* of the 99th Congress, whichever is earlier. The actual effective date of this repeal was October 18, 1986.

Although the sanction of fund withholding is no longer available to the Department of the Treasury, there remains an obligation to continue implementing the prohibition against discrimination that is contained in the Revenue Sharing Act. This obligation is based on section 14001(a)(5) of Pub. L. 99-272, which provides that recipient governments shall continue to be subject to the terms of the Revenue Sharing Act despite its repeal. In view of the Department of Justice's civil rights enforcement responsibilities under Executive Order 12250 and its continuing authority to institute litigation to remedy certain unlawful acts of discrimination funded with Revenue Sharing monies, the Office of Revenue Sharing and the Civil Rights Division of the Department of Justice have entered into a working arrangement to provide for the processing of complaints filed with the Office of Revenue Sharing alleging violations of the nondiscrimination requirements in the Revenue Sharing Act during the time in which the Federal revenue was received by a locality.

**Authority**

This notice is issued under the authority of Section XIV of the COBRA.

**Department of Justice, Civil Rights Division; Department of the Treasury, Office of Revenue Sharing**

The essential elements of the working arrangement are as follows:

1. To the extent permitted by available resources, the Office of Revenue Sharing will continue processing civil rights complaints through fiscal year 1987.
2. Cases in which voluntary compliance is not achieved, and which may warrant further enforcement action, will be forwarded by the Office of Revenue Sharing to the Civil Rights Division of the Department of Justice throughout fiscal year 1987.
3. All compliance agreements and unresolved cases will be forwarded for appropriate action to the Civil Rights Division of the Department of Justice when the Office of Revenue Sharing ceases to function. This is expected to occur during the final quarter of fiscal year 1987.
4. Complaints received by the Department of the Treasury after September 30, 1987 alleging a violation of the nondiscrimination requirements in the Revenue Sharing Act will be referred to the Civil Rights Division of the Department of Justice for appropriate action.

Date: February 2, 1987.

**Kent A. Peterson,**

*Acting Director, Office of Revenue Sharing, Department of the Treasury.*

Dated: April 23, 1987.

**William Bradford Reynolds,**

*Assistant Attorney General, Civil Rights Division, Department of Justice.*

This is hereby certified to be a true copy of the original.

[FR Doc. 87-10053 Filed 5-1-87; 8:45 am]

BILLING CODE 4810-28-M

## NUCLEAR REGULATORY COMMISSION

**[DOCKET NO. 50-334]**

### Duquesne Light Co.; Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR-66 issued to Duquesne Light Company (the licensee) for operation of the Beaver Valley Power Station, Unit 1 located in Shippingport, Pennsylvania.

The proposed amendment would revise the Technical Specifications to provide operability requirements, limiting conditions of operation and surveillance requirements on the habitability systems for the combined Unit 1 and Unit 2 control room. These revisions to the Technical Specifications would be made in response to the licensee's application for amendment dated October 9, 1986 and modified by revisions dated February 3, 1987 and April 16, 1987.

The October 9, 1986 amendment request was initially noticed on December 17, 1986 (51 FR 45198). This request included a proposal to remove the specifications for the Unit 2 fire detection instruments that are currently in the Unit 1 Technical Specifications. Subsequently, this request has been withdrawn. The specifications for fire detection instruments will be handled in a future separate action. In addition, it was determined that the operability requirements, Limiting Conditions of Operation and surveillance requirements for the Unit 2 habitability systems must be included in the Unit 1 Technical Specifications. The earlier notice had indicated that these specifications would be addressed only in the Unit 2 license. Because of these changes, this request for a license amendment is being renoticed.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the request for amendment involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The modifications to the Unit 1 systems and the additions to the Unit 2 systems do not reduce the level of control room habitability under

postulated accident conditions; thus ensuring no increase in the probability of occurrence or the consequences of an accident previously analyzed. Neither the addition of two independent trains of ventilation systems associated with Unit 2 nor increasing the capacity of the Unit 1 habitability systems, create the possibility of a new or different kind of accident. Furthermore, the modifications are made to maintain the same level of habitability in the combined control room as in the current Unit 1 control room, thus the current margin of safety will not be reduced.

Therefore, based on these considerations, the Commission has made a proposed determination that the amendment request involves no significant hazard considerations.

The Commission has determined that failure to act in a timely way would result in extending the shutdown of Beaver Valley, Unit 1 required to make these modifications. Therefore, the Commission has insufficient time to issue its usual 30-day notice of the proposed action for public comment.

If the proposed determination becomes final, an opportunity for a hearing will be published in the **Federal Register** at a later date and any hearing request will not delay the effective date of the amendment.

If the Commission decides in its final determination that the amendment does involve a significant hazards consideration, a notice of opportunity for a prior hearing will be published in the **Federal Register**, and, if a hearing is granted, it will be held before any amendment is issued.

The Commission is seeking public comments on this proposed determination of no significant hazards consideration. Comments on the proposed determination may be telephoned to John F. Stolz, Project Director, Project Directorate I-4, by collect call to (301-492-7040) or submitted in writing to the Rules and Procedures Branch, Division of Rules and Records, Office of Administration, Washington, DC. All comments received by May 19, 1987 will be considered in reaching a final determination. A copy of the application and any comments received may be examined at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the B.F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, Pennsylvania 15001.

Dated at Bethesda, Maryland, this 30th day of April, 1987.

For the Nuclear Regulatory Commission.

**John F. Stolz,**

*Director, Project Directorate I-4 Division of Reactor Projects I/II Office of Nuclear Reactor Regulation.*

[FR Doc. 87-10198 Filed 5-1-87; 8:45 am]

BILLING CODE 7590-01-M

## POSTAL SERVICE

### Privacy Act of 1974; Matching Program—Postal Service/State of Utah Department of Social Services

**AGENCY:** United States Postal Service.

**ACTION:** Notice of Matching Program—U.S. Postal Service/State of Utah Department of Social Services.

**SUMMARY:** This document publishes notice of the Postal Service's plan to participate in a computer matching program with the State of Utah Department of Social Services. The purpose of the program is to identify any postal employees who owe child support obligations in Utah or owe monies to Utah as a result of receiving public assistance benefits to which they are not entitled.

**DATE:** The match is expected to begin on or about May 1987.

**ADDRESS:** Send any comments to Records Officer, Room 8121, U.S. Postal Service, 475 L'Enfant Plaza, SW., Washington, DC 20260-5010. Copies of all written comments will be available for inspection and photocopying between 9:00 a.m. and 4:00 p.m. Monday through Friday in Room 8121 at the above address.

**FOR FURTHER INFORMATION CONTACT:** Betty Sheriff, Records Office (202) 268-5158.

**SUPPLEMENTARY INFORMATION:** The Office of Recovery Services of the State of Utah Department of Social Services has legal authority to enforce child support obligations and collect public assistance overpayments and other obligations owed to the State of Utah and its agencies. The Postal Service has agreed to assist that office in its efforts to identify current postal employees who are (1) absent parents owing child support obligations in the State of Utah, including those owed to the State as a result of benefits paid to dependents; and (2) recipients of Aid to Families with Dependent Children or medicaid benefits to which they are not entitled. Set forth below is the information required by paragraph 5.f.(1) of the Revised Supplemental Guidance for Conducting Computer Matching Programs issued by the Office of Management and Budget (47 FR 21656; May 19, 1982). A copy of this notice has been provided to both Houses of Congress and to the Office of Management and Budget.

**Report of a Matching Program: U.S. Postal Service (USPS) and State of Utah Department of Social Services (U-DSS).**

a. *Authority:* 39 U.S.C. 404.

b. *Program Description:* Under the planned program, the U-DSS will submit ot the USPS a computer tape of the names, social security account numbers (SSANs) and dates of birth of persons owing monies under any or all of the following three program areas for which the Office of Recovery Services of the U-DSS has collection enforcement responsibility: (1) Child support; (2) Aid to Families With Dependent Children; and (3) medicaid. The USPS will match that tape against its payroll system files (USPS 050.020, Finance Records—Payroll System) for the purpose of identifying postal employees who are obligors under any of these three programs and will disclose to the Office of Recovery Services of the U-DSS the following information about resultant "hits": Name, SSAN, date of birth, home address, facility where employed, and gross wage information.

The validity of "matched" employee/obligor information will be verified by an investigator of the Office of Recovery Services of the U-DSS. Subsequent actions to collect outstanding debts owed by those employees for delinquent child support or benefits paid may include enforcement of standing court orders, service of legal process when a court order has not been issued, or other appropriate action. In those cases involving State medicaid funding when insurance coverage was in effect, the recipient or insurance carrier will be contacted concerning reimbursement. Further, the Postal Inspection Service may participate in the investigation of hits as a result of this matching program and establish investigative case files within the parameters of Privacy Act system USPS 080.010, Inspection Requirements Investigative File System (last published in 48 FR 10975 of March 15, 1983). Disclosure of this information is authorized by routine use Nos. 28 and 32 in USPS 050.020, Payroll System, most recently published in 52 FR 6251 of March 2, 1987.

c. *Period of the Match:* The matching program will be on a one-time basis and is expected to begin in May 1987 and end no later than November 1988.

d. *Security:* The USPS personnel who perform the match will: (a) Have the only USPS access to the U-DSS computer tape; (b) use it for the purpose

of the match and for no other purpose; and (c) safeguard it from unauthorized access. Likewise, the postal employee information disclosed to the U-DSS will be used by authorized U-DSS personnel only for the purpose of the match and for no other purpose and will be safeguarded from unauthorized access.

e. *Disposition of Records:* The USPS will not retain or copy the tape provided by U-DSS and will return it upon completion of the match. All information compiled as a result of this matching effort must be destroyed as soon as the determination is made that no fraud or irregularity has occurred.

f. *Other Comments:* No bestowed rights, privileges or benefits will be terminated solely on the basis of a "hit" or the records provided by the USPS in connection with this program.

**Fred Eggleston,**

*Assistant General Counsel, Legislative Division.*

[FR Doc. 87-10033 Filed 5-1-87; 8:45 am]

BILLING CODE 7710-12-M

## RAILROAD RETIREMENT BOARD

### Agency Forms Submitted for 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: Gross Earnings Reports.

(2) Form(s) submitted: N.A.

(3) Type of request: Extension of the expiration date of a currently approved collection without any change in the substance or in the method of collection.

(4) Frequency of use: Annually, Monthly or quarterly at respondent's choice.

(5) Respondents: Businesses or other for-profit.

(6) Annual responses: 269

(7) Annual reporting hours: 85.

(8) Collection description: Section 7(c)(2) of the RR Act requires a financial interchange between the OASI trust funds and the railroad retirement account. The collection obtains gross earnings of railway employees on a 1% basis. The information will be used for determining the amount which would place the OASI trust funds in the position they would have been if railroad service had been covered by the Social Security and FIC Acts.

Additional information or comments: Copies of the proposed forms and supporting documents can 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, Elaina Norden (202-395-7316), Office of Management and Budget, Room 3002, New Executive Office Building, Washington, DC 20503.

**Pauline Lohens,**

*Director of Information and Data Management.*

[FR Doc. 87-9997 Filed 5-1-87; 8:45 am]

BILLING CODE 7905-01-M

## DEPARTMENT OF STATE

[CM-8/1076]

### Overseas Schools Advisory Council; Meeting

The Overseas Schools Advisory Council, Department of State, will hold its Annual Meeting on Thursday, June 11, 1987, at 9:30 a.m. in Conference Room 1406, Department of State Building, Washington, DC.

Agenda items scheduled for discussion are as follows:

I. Call the meeting to order
II. Greetings for the Department of State
III. Results of Surveys Concerning School Fund Raising Drives and Activities of Overseas Schools Regional Associations
IV. Highlights of Carnegie Foundation College Report and Its Significance for the Overseas Schools
V. Council Programs of Education Assistance
(a) Final Report of 1985 Program and Progress Report on 1986 Program
(b) Securing Contributions for 1987 Program
(c) Report on Meeting with Executive Directors of the several Overseas Schools Regional Associations in New Orleans, LA on February 18, 1987
VI. Council Communication with U.S. Corporations and Foundations
VII. Other Business

Access to the State Department is controlled, therefore members of the public desiring to attend the meeting should call Ms. Joyce Bruce, Office of Overseas Schools, Department of State, Washington, DC, Area Code 703-235-9600, prior to June 11. The public may participate in discussions at the Chairman's instructions.

Dated: April 28, 1987.

**Ernest N. Mannino,**

*Executive Secretary, Overseas Schools Advisory Council.*

[FR Doc. 87-10040 Filed 5-1-87; 8:45 am]

BILLING CODE 4710-24-M

## DEPARTMENT OF TRANSPORTATION

### Aviation Proceedings; Agreements Filed During the Week Ending April 24, 1987

The following agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 408, 409, 412, and 414. Answers may be filed within 21 days of date of filing.

**Docket No. 44828 R-1—R-15**

*Parties:* Members of International Air Transport Association.
*Date Filed:* April 21, 1987.
*Subject:* TC 2-3 Passenger Fares.
*Proposed Effective Date:* April 1, 1987.

**Docket No. 44829 R-1—R-70**

*Parties:* Members of International Air Transport Association.
*Date Filed:* April 21, 1987.
*Subject:* Europe Africa/India Fares.
*Proposed Effective Date:* April 1, 1987.

**Docket No. 44836**

*Parties:* Members of International Air Transport Association.
*Date Filed:* April 24, 1987.
*Subject:* TC2 Creative Fares Board Europe.
*Proposed Effective Date:* May 1, 1987.

**Docket No. 44837**

*Parties:* Members of International Air Transport Association.
*Date Filed:* April 26, 1987
*Subject:* Amendment Adjustment Factor from Canada to South Pacific.
*Proposed Effective Date:* June 1, 1987

**Phyllis T. Kaylor,**

*Chief, Documentary Services Division.*

[FR Doc. 87-10052 Filed 5-1-87; 8:45 am]

BILLING CODE 4910-62-M

## Federal Railroad Administration

[FRA Waiver Petition Docket Nos. SA-87-5 and PB-87-5]

### Exemption: CSX Logistics, Inc. for CSX Transportation, Inc., the Baltimore and Ohio Railroad Co. and the Chesapeake and Ohio Railway Co.

As required by 45 U.S.C. 431(c) and in accordance with 49 CFR 211.41 and 211.9 notice is hereby given that CSX Logistics, Inc. has submitted a waiver

petition to the Federal Railroad Administration requesting a waiver of compliance with several regulations. These regulations include 49 CFR Part 231 (Safety Appliance Standards) and 49 CFR Part 232 (Railroad Power Brakes and Drawbars).

CSX Logistics seeks a waiver of compliance on behalf of CSX Transportation Inc., the Baltimore and Ohio Railroad Company and the Chesapeake and Ohio Railway Company, to permit the operation of 250 railroad/highway vehicles which are designated as "RoadRailer" units. These vehicles are almost identical to the standard semi-trailer presently used to haul cargo over the highway, the only difference being that they are equipped with a special drawbar, railroad running wheels and a special railroad brake system.

The railroad wheels are mounted on a single axle, either to the rear of the normal tandem highway wheels of the semi-trailer of between the highway tandem wheels. The separate highway and railroad running gear are selectively operable. Each running gear is mounted on the body of the vehicle with an air suspension system so that while one unit is in running position the other unit is in a stored position.

The "RoadRailer" units, by design, cannot be subjected to traditional switching or classification procedures. The coupler assembly will only couple to another "RoadRailer" unit or to a specially designed adapter vehicle. In addition, the train air brake system is not compatible with the conventional system. The waiver sought by CSX would permit noncompliance with all the provisions of the safety appliance standards (49 CFR Part 231). These standards include provisions that provide the number, location and dimensional specification for the handholds, ladders and sill steps that are required for each railroad car. The requested waiver would also permit noncompliance with the power brakes regulation (49 CFR 232.2) which regulates height of drawbars.

In consideration of the unique handling of "RoadRailer" units and the fact that there is no necessity for a person to ride on this special equipment, safety appliances have not been required. Further, these vehicles are provided with a spring biased parking brake which has replaced the conventional type manually operated handbrake. In using the conventional type handbrake, it is necessary for a person to mount and dismount each car to apply or release the handbrake. The spring biased parking brake operates automatically in conjunction with the train air brake system. When the air pressure is reduced below a predetermined value, the spring activates, overcoming the reduced air pressure, and the parking brake applies on each wheel of each unit and remains applied until the air pressure in the system is restored.

The railroad air brake system being used on the "RoadRailer" equipment was developed and tested by the New York Air Brake Company and is known as the R-1 unit. This system consists of ABDW control valves (service and emergency) auxiliary and emergency reservoir, separate valves for load leveling, and a special air reservoir located in the adapter unit to provide air for the supply pipe and the air suspension system. The system is of a two-pipe design, a brake pipe and a supply pipe. The brake pipe has a ¾ inch inside diameter and is continuous from the locomotive to the last unit in the train. This pipe provides air supply for the ABDW control valves on each unit at locomotive feed valve pressure. The second pipe has an 11/16 inch inside diameter and is train lined to each unit in the train; however, the air supply for this pipe is provided from a reservoir located in the adapter car, which is connected to the locomotive main air reservoir and is charged to 120 pounds per square inch.

The second pipe has two functions. It provides air for the air suspension system and, by special valvular design, air is provided for the brake cylinders. In addition, special valves have been installed within this system to afford protection against loss of air through a leaking air bag or some other source which could result in braking problems. In case of leaking in the supply system beyond a predetermined value, brake pipe air will be vented, and the train brakes will apply in emergency and stop the train. The application and release times built into this system are almost identical to those of a conventional train of the same length.

The "RoadRailer" units for which CSX Logistics seeks this waiver are virtually identical for FRA purposes, to units that are currently in service under a test program sanctioned by FRA in 1979 (44 FR 25552). Pursuant to this test program, FRA has been monitoring the in service performance of an existing fleet of 250 units.

Based on this test program data, FRA has granted a temporary waiver of compliance to CSX Transportation, Inc., the Baltimore and Ohio Railroad and Chesapeake and Ohio Railroad to permit initiation of service with the new units, pending resolution of this request. This temporary waiver is subject to the same terms and conditions imposed under the test program. Data from the test program indicates that the original units have operated more than 22 million miles, and during this period there have only been two reported instances where it was necessary to set out a unit en route. Given the FRA limitation that this equipment not be commingled with conventional railroad rolling equipment and the units good safety record during the test program, FRA determined that granting a temporary waiver was consistent with railroad safety and in the public interest. Prior to responding to the CSX request for long-term waiver, FRA is seeking the views of all interested parties.

FRA does not anticipate providing an opportunity for oral comment in this proceeding since the facts do not appear to warrant it. Instead, all interested persons are invited to participate in this proceeding by submitting written data, views or comments. All communications concerning this proceeding must identify the appropriate docket (FRA Waiver Docket Numbers SA-87-5 and PB-87-5) and should be submitted in triplicate to the Docket Clerk, Office of the Chief Counsel, Federal Railroad Administration, 400 7th Street SW., Washington, DC 20590.

Communications received before June 15, 1987 will be considered by the Federal Railroad Administration before final action is taken. Comments received after that date will be considered to the extent practicable.

Issued in Washington, DC, on April 24, 1987.

J.W. Walsh,

*Associate Administrator for Safety.*

[FR Doc. 87-9919 Filed 5-1-87; 8:45 am]

BILLING CODE 4910-06-M

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**[FRA Waiver Petition Docket Numbers SA-87-2 and PB-87-4]**

## Exemption: Norfolk Southern Corp.

As required by 45 U.S.C. 431(c) and in accordance with 49 CFR 211.41 and 211.9 notice is hereby given that Norfolk Southern Corporation (NS) has submitted a waiver petition to the Federal Railroad Administration requesting a waiver of compliance with several regulations. These regulations include 49 CFR Part 231 (Safety Appliance Standards) and 49 CFR Part 232 (Railroad Power Brakes and Drawbars).

NS seeks a waiver of compliance on behalf of its operating subsidiaries, Norfolk and Western Railway Company and Southern Railway Company, to

permit the operation of 500 railroad/highway vehicles which are designated as "RoadRailer" units. These vehicles are almost identical to the standard semi-trailer presently used to haul cargo over the highway, the only difference being that they are equipped with a special drawbar, railroad running wheels and a special railroad brake system.

The railroad wheels are mounted on a single axle, either to the rear of the normal tandem highway wheels of the semi-trailer or between the highway tandem wheels. The separate highway and railroad running gear are selectively operable. Each running gear in mounted on the body of the vehicle with an air suspension system so that while one unit is in running position the other unit is in a stored position.

The "RoadRailer" units, by design, cannot be subjected to traditional switching or classification procedures. The coupler assembly will only couple to another "RoadRailer" unit or to a specially designed adapter vehicle. In addition, the train air brake system is not compatible with the conventional system. The waiver sought by NS would permit noncompliance with all the provisions of the safety appliance standards (49 CFR Part 231). These standards include provisions that provide the number, location and dimensional specification for the handholds, ladders and sill steps that are required for each railroad car. The requested waiver would also permit noncompliance with the power brake regulation (49 CFR 232.2) which regulates height of drawbars.

In consideration of the unique handling of "RoadRailer" units and the fact that there is no necessity for a person to ride on this special equipment, safety appliances have not been required. Further, these vehicles are provided with a spring biased parking brake which has replaced the conventional type manually operated handbrake. In using the conventional type handbrake, it is necessary for a person to mount and dismount each car to apply or release the handbrake. The spring biased parking brake operates automatically in conjunction with the train air brake system. When the air pressure is reduced below a predetermined value, the spring activates, overcoming the reduced air pressure, and the parking brake applies on each wheel of each unit and remains applied until the air pressure in the system is restored.

The railroad air brake system being used on the "RoadRailer" equipment was developed and tested by the New York Air Brake Company and is known as the R-1 unit. This system consists of ABDW control valves (service and emergency) auxiliary and emergency reservoir, separate valves for load leveling, and a special air reservoir located in the adapter unit to provide air for the supply pipe and the air suspension system. The system is of a two-pipe design, a brake pipe and a supply pipe. The brake pipe has a ¾ inch inside diameter and is continuous from the locomotive to the last unit in the train. This pipe provides air supply for the ABDW control valves on each unit at locomotive feed value pressure. The second pipe has an 1 1/16 inch inside diameter and is train lined to each unit in the train; however, the air supply for this pipe is provided from a reservoir located in the adapter car, which is connected to the locomotive main air reservoir and is charged to 120 pounds per square inch.

The second pipe has two functions. It provides air for the air suspension system and, by special valvular design, air is provided for the brake cylinders. In addition, special valves have been installed within this system to afford protection against loss of air through a leaking air bag or some other source which could result in braking problems. In case of leaking in the supply system beyond a predetermined value, brake pipe air will be vented, and the train brakes will apply in emergency and stop the train. The application and release times built into this system are almost identical to those of a conventional train of the same length.

The "RoadRailer" units for which NS seeks this waiver are virtually identical for FRA purposes, to units that are currently in service under a test program sanctioned by FRA in 1979 (44 FR 25552). Pursuant to this test program, FRA has been monitoring the in service performance of an existing fleet of 250 units.

Based on this test program data, FRA has granted a temporary waiver of compliance to NS to permit initiation of service with the new units, pending resolution of this request. This temporary waiver is subject to the same terms and conditions imposed under the test program. Data from the test program indicates that the original units have operated more than 22 million miles, and during this period there have only been two reported instances where it was necessary to set out a unit en route. Given the FRA limitation that this equipment not be commingled with conventional railroad rolling equipment and the units good safety record during the test program, FRA determined that granting a temporary waiver was consistent with railroad safety and in the public interest. Prior to responding to the NS request for long-term waiver, FRA is seeking the views of all interested parties.

FRA does not anticipate providing an opportunity for oral comment in this proceeding since the facts do not appear to warrant it. Instead, all interested persons are invited to participate in this proceeding by submitting written data, views or comments. All communications concerning this proceeding must identify the appropriate docket (FRA Waiver Docket Numbers SA-87-2 and PB-87-4) and should be submitted in triplicate to the Docket Clerk, Office of the Chief Counsel, Federal Railroad Administration, 400 7th Street SW., Washington, DC 20590.

Communications received before June 15, 1987, will be considered by the Federal Railroad Administration before final action is taken. Comments received after that date will be considered to the extent practicable.

Issued in Washington, DC, on April 24, 1987.

J.W. Walsh,

*Associate Administrator for Safety.*

[FR Doc. 87-9918 Filed 5-1-87; 8:45 am]

BILLING CODE 4910-06-M

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## DEPARTMENT OF THE TREASURY

### Customs Service

### User Fee Advisory Committee Meeting

**AGENCY:** U.S. Customs Service, Department of the Treasury.

**ACTION:** Notice of Meeting.

**SUMMARY:** In accordance with the Consolidated Omnibus Budget Reconcilation Act of 1985, and the Federal Advisory Committee Act, a User Fee Advisory Committee for the Customs Service has been established. This document lists the members of the Committee, its purpose, and announces a forthcoming meeting and the agenda for the meeting.

**DATE AND TIME:** May 19, 1987, 1:30 p.m.

**ADDRESS:** Customs Service Headquarters, 1301 Constitution Avenue NW., Room 3428, Washington, DC 20229.

**FOR FURTHER INFORMATION CONTACT:** Jean Maguire, Director, Customs User Fee Task Force, 202-566-8048.

**SUPPLEMENTARY INFORMATION:** The Consolidated Omnibus Budget Reconcilation Act of 1985 (Pub. L. 99-272), established a schedule of fees chargeable to users of various services provided by Customs in connection with the processing of persons, aircraft,

vehicles, vessels and dutiable mail arriving in the U.S., as well as for the payment of an annual fee by Customs brokers. Section 13033 of Pub. L. 99-272 provided that in accordance with the provisions of the Federal Advisory Committee Act (Pub. L. 92-463), the Secretary of the Treasury shall establish an advisory committee, whose membership shall consist of representatives from the airline, shipping, and other transportation industries, the general public, and others who may be subject to any fee or charge: (1) Authorized by law, or (2) proposed by the U.S. Customs Service for the purpose of covering expenses incurred by the Customs Service. Further, the advisory committee shall meet on a periodic basis and shall advise the Secretary on issues related to the performance of the Customs services. This advice shall include, but not be limited to, such issues as the time periods during which such services should be performed, the proper number and deployment of inspection officers, the level of fees, and the appropriations of any proposed fee. The Secretary shall give substantial consideration to the views of the advisory committee in the exercise of his duties.

In accordance with the Federal Advisory Committee Act the Secretary has established a charter for User Fee Advisory Committee for the Customs Service and approved the following members to serve on the Committee.

**Committee Members**

*Air Transport Association of America*, 1709 New York Avenue, NW., Washington, DC 20006
James Landry, Senior V.P. and General Counsel

*American President Lines*, 1800 Harrison Street, Oakland, California 94612
Gary S. Taylor, Corporate Director, Customer Service & Documentation Services

*American Association of Exporters and Importers*, 11 West 42nd Street, New York, New York 10036
Eugene Milosh, President

*American Trucking Association*, 2200 Mill Road, Alexandria, Virginia 22314
Lana R. Batts, V.P. Policy

*Association of American Railroads*, 50 F Street NW., Washington, DC 20001
J. Thomas Tidd, Vice President and General Counsel

*Board of Harbour Commissioners (Long Beach)*, P.O. Box 570, Long Beach, California 90801
Paul Brown, Director of Finance

*Board of Commissioners, Port of New Orleans*, P.O. Box 60046, New Orleans, Louisiana 70160
J. Ron Brinson, Executive Director, (Past President)

*UPS*, 3901 Atkinson Square, Louisville, Kentucky 40218
Edwin Reitman, Vice President

*3M Corporation*, 3M Center, Building 220-6E-02-Tax Division, St. Paul, Minnesota 55144-1000
Kenneth A. Kumm, Manager, Customs & Trade Affairs, (Chairman, Joint Industry Group)

*Rudolph Miles & Sons, Customs House Brokers*, 4950 Gateway East, P.O. Box 144, El Paso, Texas 79942
Michael M. Miles, Vice President

*National Business Aircraft Association*, 1200 18th Street, NW., 2nd floor, Washington, DC 20036
William Stine, Manager Plans & International Aviation

*National Customs Brokers & Forwarders Association of America*, 5 World Trade Center, New York, New York 10048
Arthur J. Fritz

*New York/New Jersey Port Authority*, 1 World Trade Center, New York, New York 10048
Robert J. Aaronson, Director, Aviation Department

*Price Waterhouse*, 1801 K. Street, NW., Washington, DC 20006
Robert P. Schaffer, Senior Manager

*Lehigh-Northampton Airport Authority*, A-B-E International Airport, Allentown, Pennsylvania 18101
Jack Yohe, Airport Director

*Pan American Airlines*, Pan Am Building, 200 Park Avenue, 46th floor, New York, New York 10166
Martin Shugrue, Vice Chairman

**Meeting Agenda**

As this is the first meeting of the Committee, the prime purposes of the meeting will be to introduce the members to each other and to organize a format for the conduct of future meetings. There will also be a general discussion of the various user fees Customs is now collecting and other issues relating to the performance of Customs services for which the fees are being charged. The Committee will be chaired by Michael H. Lane, Deputy Commissioner of Customs.

**Public Participation**

The committee meeting is open to the interested public, but limited to the space available. Persons wishing to attend should notify the contact person at least two days before the meeting. The committee chairman may permit members of the public to present oral statements at the meeting. Any member of the public may file a written statement with the committee before, during, or after the meeting. Minutes of the meeting will be available on request.

Dated: April 30, 1987.

**Michael H. Lane,**
*Deputy Commissioner of Customs.*

[FR Doc. 87-10140 Filed 5-1-87; 8:45 am]
BILLING CODE 4820-02-M

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[T.D. 87-65]

## Modification of Criteria for Establishing Ports of Entry

**AGENCY:** U.S. Customs Service, Department of the Treasury.

**ACTION:** Notice of revised criteria.

**SUMMARY:** This notice is to advise the public that Customs has modified the criteria it uses in determining whether to grant requests for the establishment of Customs ports of entry. The criteria require a commitment, by any applicant that is attempting to qualify for port status by satisfying the cargo workload standard, to make optimal use of electronic data transfer capability to permit integration with Customs system of electronic processing of entries.

Because of the high volume of entries that the major overnight courier services handle, under existing criteria, such courier services could qualify to be designated as ports of entry. As such, Customs inspectional services would be provided at all times at no additional cost to the courier service. All expenses for providing the service would be allocated out of the Customs budget appropriation. Currently, in accordance with the user charges statute, the courier services must reimburse Customs for inspectional services occurring at places other than established ports of entry. This user fee statute was enacted to ensure that governmental services provided to individual recipients, as opposed to the general public, are self-sustaining to the greatest extent possible. The potential establishment of separate ports of entry for individual couriers would, in effect, be contrary to the Congressional intent concerning the user fee statute.

Accordingly, the port of entry workload criteria are being slightly modified to provide that no more than half of the 2500 consumption entries can be attributed to one private party, which must generally compensate the Government for service provided for its benefit under the user fee statute.

**EFFECTIVE DATE:** May 4, 1987.

**FOR FURTHER INFORMATION CONTACT:** Richard C. Coleman, Office of Inspection, (202-566-9425).

**SUPPLEMENTARY INFORMATION:**

## Background

By T.D. 86-14, published in the **Federal Register** on February 5, 1986 (51 FR 4559), Customs revised the criteria it uses in determining whether to grant requests for the establishment of Customs ports of entry and stations. The criteria had originally been set forth as T.D. 82-37, published in the **Federal Register** on March 9, 1982 (47 FR 10137). One of the changes made as part of the 1986 revision was to require a commitment by an applicant that is attempting to qualify for port or station status by satisfying the cargo workload standard (2500 consumption entries each valued over $1000), to make optimal use of electronic data transfer capability to permit integration with Customs Automated Commercial System for electronic process of entries.

It has now been determined that because of the high volume of entries that the major overnight courier services handle under existing criteria, they could qualify to be designated as a port of entry. As such, Customs inspectional services would be provided at all times at no additional cost to the courier service. All expenses for providing the service would be allocated out of the annual Customs budget appropriations, as at other designated ports of entry. Currently, in accordance with the user charges statute (31 U.S.C. 9701), the courier services must reimburse Customs for inspectional services occurring at places other than established ports of entry. This user fee statute was enacted to ensure that governmental services provided to individual recipients, as opposed to the general public, are self-sustaining to the greatest extent possible. The potential establishment of separate ports of entry for individual couriers would, in effect, be contrary to the Congressional intent concerning the user fee statute.

As a result of these changes, number 2(b) under "Criteria listed in T.D. 82-37, as revised by T.D. 86-14, is modified to read as follows:

(b) 2,500 consumption entries (each valued over $1000). The applicant must commit to optimal use of electronic data input means to permit integration with any Customs system for electronic processing of entries. No more than half of 2500 consumption entries can be attributed to one private party, which must generally compensate the Government for services provided for its benefit under 31 U.S.C. 9701.

This change will permit Customs to obtain more efficient use of its personnel, facilities, and resources and provide improved service to carriers, importers, and the public.

All of the other criteria in T.D. 82-37, as revised by T.D. 86-14, will continue to be used in evaluating requests for new services.

## Drafting Information

The principle author of this document was Bruce J. Friedman, Regulations Control Branch, Office of Regulations and Rulings, Customs Headquarters. However, personnel from other Customs offices participated in its development.

Approved: April 10, 1987.

**William von Raab,**

*Commissioner of Customs.*

**John P. Simpson,**

*Acting Assistant Secretary of the Treasury (Enforcement).*

[FR Doc. 87-10025 Filed 5-1-87; 8:45 am]

BILLING CODE 4820-02-M

# Fiscal Service

[Dept. Circ. 570, 1986 Rev., Supp. No. 13]

## Surety Companies Acceptable on Federal Bonds—Termination of Authority; Imperial Casualty and Indemnity Co.

Notice is hereby given that the Certificate of Authority issued by the Treasury to Imperial Casualty and Indemnity Company, under the United States Code, Title 31, Sections 9304-9308, to qualify as an acceptable surety on Federal bonds is terminated effective this date.

The Company was last listed as an acceptable surety on Federal bonds at 51 FR 23939, July 2, 1986.

With respect to any bonds currently in force with Imperial Casualty and indemnity Company, bond-approving officers for the Government should secure new bonds with acceptable sureties in those instances where a significant amount of liability remains outstanding.

Questions concerning this notice may be directed to the Department of the Treasury, Financial Management Service, Finance Division, Surety Bond Branch, Washington, DC 20226, telephone (202) 634-2298.

Dated: April 22, 1987.

**Mitchell A. Levine,**

*Assistant Commissioner, Comptroller, Financial Management Service.*

[FR Doc. 87-9979 Filed 5-1-87; 8:45 am]

BILLING CODE 4810-35-M

# Sunshine Act Meetings

Federal Register
Vol. 52, No. 85
Monday, May 4, 1987

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).

**EQUAL EMPLOYMENT OPPORTUNITY COMMISSION.**

**"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT:** Volume 52, FR #13787, Friday, April 24, 1987

**PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING:** 2:00 p.m. (eastern time) Monday, May 4, 1987

**CHANGES IN THE MEETING:**

*Correction.*

This corrects Items #3 and #4 of the open agenda to read as follows:

3. Proposed Final Rule: Amendments to Federal Sector Complaint Processing Regulations
4. Proposed Final Rule: Adoption of the Commission's Remedies Policy Into the Federal Sector Regulations

*Cancellation.*

The closed portion of the meeting has been cancelled.

**CONTACT PERSON FOR MORE INFORMATION:** Cynthia C. Matthews, Executive Officer, Executive Secretariat at (202) 634-6784.

Dated: April 30, 1987

**Cynthia C. Matthews,**

*Executive Officer,*

*Executive Secretariat.*

This Notice Issued April 30, 1987

[FR Doc. 87-10143 Filed 4-30-87; 3:10 pm]

BILLING CODE 6750-06-M

**FEDERAL ENERGY REGULATORY COMMISSION**

**"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT:** April 27, 1987 52 FR 13907

**PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING:** April 29, 1987, 10:00 a.m.

**CHANGE IN THE MEETING:** The following docket numbers have been added to Items RP-4, RP-5, RP-6 and RP-8:

*Item No., Docket No., and Company*

RP-4
RP86-116-001 and RP86-116-005, Panhandle Eastern Pipe Line Company
RP-5
RP86-115-003 and RP87-15-000, Trunkline Gas Company
RP-6
RP86-85-000, Texas Gas Transmission Coroporation
RP-8
CI86-688-00 and CI86-689-000, Sea Robin Pipline Company

**Kenneth F. Plumb,**

*Secretary.*

[FR Doc. 87-10146 Filed 4-30-87; 3:24 pm]

BILLING CODE 6717-02-M

**NATIONAL COUNCIL ON THE HANDICAPPED**

Quarterly Meeting

**SUMMARY:** This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the National Council on the Handicapped. This notice also describes the functions of the Council. Notice of this meeting is required under section 522(b)(10) of the "Government in Sunshine Act" (Pub. L. 94-409.)

**DATES:**

May 18, 1987, 1:30 p.m. to 6:00 p.m.
May 19, 1987, 10:00 a.m. to 5:00 p.m.
May 20, 1987, 9:30 a.m. to 3:00 p.m.

**LOCATION:** Alexandria, Virginia, Old Town Holiday Inn.

**FOR FURTHER INFORMATION CONTACT:** Andrea Farbman, National Council on the Handicapped, 800 Independence Avenue, SW., Washington, DC 20591 (202) 267-3846, TDD: (202) 267-3232.

The National Council on the Handicapped is an independent Federal agency comprised of 15 members appointed by the President of the United States and confirmed by the Senate. Established by the 95th Congress in Title IV of the Rehabilitation Act of 1973 (as amended by Pub. L. 95-602 in 1978), the Council was initially an advisory board within the Department of Education. In 1984, however, the Council was transformed into an independent agency by the Rehabilitation Act Amendments of 1984 (Pub. L. 98-221).

The Council is charged with reviewing all laws, programs, and policies of the Federal Government affecting disabled individuals and making such recommendations as it deems necessary to the President, the Congress, the Secretary of the Department of Education, the Commissioner of the Rehabilitation Services Administration, and the Director of the National Institute on Disability and Rehabilitation Research (NIDRR).

The meeting of the Council shall be open to the Public. The proposed agenda includes:

Reports from Chairperson and Executive Director
White House Ceremony Honoring Disabled Employees
Review and Discussion of RSA Reorganization Plans
Legislative Update
Reports from the Research, Adult Services, Children's Services, and Public Affairs Committees
NCH's discussion of unfinished and new business

Records shall be kept of all Council proceedings and shall be available after the meeting for public inspection at the National Council on the Handicapped.

Signed at Washington, DC, on April 27, 1987

**Lex Frieden,**

*Executive Director.*

[FR Doc. 87-10085 Filed 4-30-87; 10:40 am]

BILLING CODE 9539-39-M

**SECURITIES AND EXCHANGE COMMISSION**

Agency Meeting

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 May 4, 1987.

A closed meeting will be held on Tuesday, May 5, 1987 at 2:30 p.m.

The Commissioners, Counsel to the Commissioners, the Secretary of the Commission, and recording secretaries will attend the closed meeting. 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 a closed meeting.

Commissioner Cox, as duty officer, voted to consider the items listed for the closed meeting in closed session.

The subject matter of the closed meeting scheduled for Tuesday, May 5, 1987 at 2:30 p.m., will be:

Formal orders of investigation.
Institution of administrative proceeding of an enforcement nature.
Settlement of administrative proceeding of an enforcement nature.
Opinion and order.
Consideration of *amicus* participation.

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: Douglas Michael at (202) 272-2457.

Jonathan G. Katz,

*Secretary.*

April 29, 1987.

[FR Doc. 87-10160 Filed 4-30-87; 3:54 pm]

BILLING CODE 8010-01-M

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**TENNESSEE VALLEY AUTHORITY**

**[Meeting No. 1385]**

**TIME AND DATE:** 10 a.m. (EDT), Wednesday, May 6, 1987.

**PLACE:** TVA West Tower Auditorium, 400 West Summit Hill Drive, Knoxville, Tennessee.

**STATUS:** Open.

**Agenda**

Approval of minutes of meeting held on April 21, 1987.

*Discussion Item*

1. Status of Agricultural Institute.

*Action Items*

A—Budget and Financing

A1. Modification of Fiscal Year 1987 Capital Budget Financed from Power Proceeds and Borrowings—Replacement of Low Pressure Turbine Blades at Bull Run Fossil Plant.

B—Purchase Awards

B1. Negotiation GB-40778A—Replacement LP Turbine Buckets for Bull Run Fossil Plant.

B2. Invitation for Bids No. AB-754931—Indefinite Quantity Term Contract for Partition Systems, Requested by the Division of Property and Services.

C—Power Items

C1. Amendment to Language Relating to Payments in Lieu of Texas Included in the Terms and Conditions of Power Contracts with Tennessee Municipal and County Electric Systems.

C2. Replacement Power Contract with Department of Army Covering Arrangements for Power Supply for the Operation of Fort Campbell.

D—Personnel Items

D1. Supplement No. 1 to Personal Services Contract with Shaw, Pittman, Potts, and Trowbridge, Washington, DC, for Legal Services, Requested by Office of the General Counsel.

D2. Employee Loan Agreement with Greene-Co., Inc., Madison, Alabama, for Services of Jonathan H. Greene.

E—Real Property Transactions

E1. Abandonment of Certain Rights Affecting 1.9 Acres of Norris Reservoir Land in Campbell County, Tennessee—Tract No. NR-386.

F—Unclassified

F1. Revised TVA Code on Navigation.

F2. Supplement No. 4 to Subagreement No. 15 to Memorandum of Agreement No. TV-23928A between TVA and U.S. Department of the Army, Corps of Engineers, Covering Arrangements for TVA To Perform Engineering and Design Work for Rehabilitation of Wilson Auxiliary Lock.

F3. Subagreement No. 22 of Memorandum of Agreement No. TV-23928A between TVA and U.S. Department of the Army, Corps of Engineers, Covering Arrangements for Cooperation in the Construction of a New Workshop and Storage Building at Chickamauga Lock.

**CONTACT PERSON FOR MORE INFORMATION:** Craven H. Crowell, Jr., Director of Information, or a member of his staff can respond to requests for information about this meeting. Call (615) 632-8000, Knoxville, Tennessee. Information is also available at TVA's Washington Office (202) 245-0101.

Dated: April 29, 1987.

W.F. Willis,

*General Manager.*

[FR Doc. 87-10077 Filed 4:30-87; 9:16 am]

BILLING CODE 8120-01-M

federal register

Monday
May 4, 1987

# Part II

# Environmental Protection Agency

## 40 CFR Part 60

## Standards of Performance for New Stationary Sources VOC Emissions From Petroleum Refinery Wastewater System; Proposed Rule and Notice of Public Hearing

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 60**

**[AD-FRL-3163-8]**

## Standards of Performance for New Stationary Sources; VOC Emissions From Petroleum Refinery Wastewater Systems

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule and notice of public hearing.

**SUMMARY:** The proposed standards would limit emissions of volatile organic compounds (VOC) from new, modified, and reconstructed refinery wastewater systems. The proposed standards implement section 111 of the Clean Air Act and are based on the Administrator's determination that VOC emissions from petroleum refinery fugitive emission sources cause, or contribute significantly to, air pollution which may reasonably be anticipated to endanger public health or welfare. Refinery wastewater systems are part of the refinery fugitive source category. The intent is to require new, modified, and reconstructed refinery wastewater systems to control emissions to the level achievable by the best demonstrated system of continuous emission reduction, considering costs, nonair quality health, and environmental and energy impacts.

A public hearing will be held, if requested, to provide interested parties an opportunity for oral presentations of data, views, or arguments concerning the proposed standards.

**DATES:** *Comments.* Comments must be received on or before July 20, 1987.

*Public Hearing.* If anyone contacts EPA requesting to speak at a public hearing by May 26, 1987, a public hearing will be held on June 16, 1987, beginning at 10:00 a.m. Persons interested in attending the hearing should call Ms. Ann Eleanor at (919) 541-5578 to verify that a hearing will be held.

*Request to Speak at Hearing.* Persons wishing to present oral testimony must contact EPA by May 26, 1987.

**ADDRESSES:** *Comments.* Comments should be submitted (in duplicate if possible) to: Central Docket Section (LE-131), Attention: Docket No. A-83-07, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

*Public Hearing.* If anyone contacts EPA requesting a public hearing, it will be held at the EPA's Office of Administration Auditorium, Research Triangle Park, North Carolina. Persons interested in attending the hearing or wishing to present oral testimony should notify Ms. Ann Eleanor, Standards Development Branch (MD-13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541-5578.

*Background Information Document.* The Background Information Document (BID) for the proposed standards may be obtained from the U.S. EPA Library (MD-35), Research Triangle Park, NC 27711, telephone number (919) 541-2777. Please refer to "Petroleum Refinery Wastewater Systems—Background Information for Proposed Standards," (EPA-450/3-85-001a).

*Docket.* Docket No. A-83-07, containing supporting information used in developing the proposed standards, is available for public inspection and copying between 8:00 a.m. and 4:00 p.m., Monday through Friday, at the 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. James F. Durham, Chemicals and Petroleum Branch, for the technology aspects at (919) 541-5671 or Mr. Gilbert H. Wood or Ms. Debbie W. Stackhouse, Standards Development Branch, for the regulatory aspects at (919) 541-5578, Emission Standards and Engineering Division (MD-13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

**SUPPLEMENTARY INFORMATION:**

### Introduction

#### *New Source Performance Standards—General*

New Source Performance Standards (NSPS or "standards") implement section 111 of the Clean Air Act. They are issued for categories of sources which cause, or contribute significantly to, air pollution which may reasonably be anticipated to endanger public health or welfare. They apply to new stationary sources of emissions, i.e., sources whose construction, reconstruction, or modification begins after a standard for them is proposed.

An NSPS requires these sources to control emissions to the level achievable by "best demonstrated technology," or "BDT," which is defined in item 3 below.

#### *NSPS Decision Scheme*

An NSPS is the product of a series of decisions related to certain key elements for the source category being considered for regulation. The elements identified in this "decision scheme" are generally the following:

1. Source category to be regulated—usually an entire industry but can be a process or group of processes within an industry.

2. Pollutant(s) to be regulated—the particular substance(s) emitted by the source that the standard will control.

3. Best demonstrated technology—the technology on which the Agency will base the standards, i.e.,

> * * * the best system of continuous emission reduction which (taking into consideration the cost of achieving such emission reduction, and any nonair quality health and environmental impact and energy requirements) the Administrator determines has been adequately demonstrated [Section 111(a)(1)].

For convenience, this will be referred to as "best demonstrated technology" or "BDT."

4. Affected facility—the pieces or groups of equipment that comprise the sources to which the standards would apply.

5. Emission points to be regulated—within the affected facility, the specific physical location emitting pollutants (e.g., vents, stacks, and equipment leaks).

6. Format for the standards—the form in which the standards are expressed, i.e., as a percent reduction in emissions, as pollutant concentrations, or as equipment standards.

7. Standards—based on what BDT can achieve, the maximum permissible emissions.

> **Note.**—In general, standards do not require that a specific technology be used to achieve them. The source owner/operator may select the method for achieving the pollution control required.

8. Other possible considerations—In addition, NSPS often include: modification/reconstruction considerations, monitoring requirements, performance test methods, and reporting and recordkeeping requirements.

#### *Overview of this Preamble*

This preamble will:

1. Summarize the important features of this NSPS by discussing the conclusions reached with respect to each of the elements in the decision scheme.

2. Describe the environmental, energy, and economic impacts of this NSPS.

3. Present a rationale for each of the decisions in the decision scheme.

4. Discuss administrative requirements relevant to this action. Summary of the NSPS.

*Source Category to be Regulated*

The source category to be regulated is petroleum refinery wastewater treatment systems. This is a subcategory of petroleum refinery fugitive emission sources. Refinery wastewater treatment systems include any component, piece of equipment, or installation that receives and processes oily water from refinery process units.

*Pollutants to be Regulated*

The proposed standards would control emissions of volatile organic compounds (VOC) from refinery wastewater systems.

*Best Demonstrated Technology*

The BDT for process drain systems is water seal controls consisting of a P-leg or seal pot for process drains and a tight-fitting cover and a vent pipe on junction boxes. For oil-water separators with a design capacity to treat more than 15.8 liters per second (250 gal/min), BDT is a fixed roof with vapors vented to a control device. For oil-water separators with a design capacity to treat 15.8 liters per second (250 gal/min) or less, BDT is a fixed roof. For dissolved air flotation (DAF) systems, BDT is a fixed roof. In the case of induced air flotation (IAF) systems with a design capacity to treat more than 15.8 liters per second (250 gal/min), BDT is operation of the unit in a gas-tight condition. For smaller IAF systems, BDT was identified as no additional control, and such systems would be exempt from the proposed standards.

*Alternatives to BDT*

For process drain systems, completely closed drain systems were not selected as BDT due to cost reasons, but are an acceptable alternative means of emission limitation. For oil-water separators, a floating roof with a liquid-mounted primary seal and a secondary seal is an equivalent alternative technology. For air flotation systems of any size, a fixed roof with vapors vented to a control device is allowed as an alternative technology.

*Affected Facility*

The affected facilities to which these standards would apply include: (1) Individual drain systems; (2) oil-water separators; (3) air flotation systems; and (4) individual drain systems with their ancillary downstream wastewater components including sewer lines, oil-water separators and air flotation systems. Individual drain systems include all process drains and sewer lines connected to the same junction box. The standards would not apply to separate stormwater drain systems used for the collection of stormwater runoff from plant premises. Each modified individual drain system which has a catch basin (as defined in § 60.691) in the existing configuration would be exempt from the proposed requirements for individual drain systems.

Each oil-water separator and air flotation system would constitute a separate affected facility. Oil-water separators include skimmers, sludge pumps, sludge hoppers, conditioning tanks, and other auxiliary tanks, basins, and equipment. Air flotation systems include flocculation tanks and other auxiliary tanks, basins and conditioning equipment, but would not include air flotation systems that are not used for oil separation. An example of an air flotation system not included in these standards is one used following a biological treatment system.

The affected facilities were defined in a way to provide for maximum emission reductions (considering the costs of these reductions) for the emission points covered by the proposed standards. Because refinery wastewater systems are highly interrelated sources of VOC emissions, VOC controls on entire wastewater systems appear environmentally prudent and within the range of reasonable costs. Thus, an affected facility would include all the emission points covered by the proposed standards that are functionally related; that is, each individual drain system together with its ancillary downstream treatment components (including sewer lines, oil-water separators and air flotation systems). However, because the emission points covered by the standards are often constructed or modified on an individual basis, the affected facilities also include each individual drain system, each oil-water separator, and each air flotation system.

*Emission Points to be Regulated*

The emission points to be regulated include: drain openings; junction box covers; sewer lines; oil-water separators; air flotation tanks; flocculation tanks and other auxiliary tanks, basins, and conditioning equipment; any connections or openings of these components from which VOC vapors might be emitted; and VOC control devices used to comply with the standards.

*Format for the Standards*

These standards include equipment, design, work practices, and operational standards. Performance standards were determined not to be feasible for this source category.

*Actual Standards*

For process drain systems, water seal controls must be installed on drains. Junction boxes must have tight-fitting covers. Junction boxes may include an open vent pipe to relieve buildups of vapor pressure. A modified individual drain system which has an existing catch basin in the existing configuration would be exempt from the requirements for individual drain systems. Each modified or reconstructed individual drain system that has an existing catch basin in the existing configuration would be exempt from these requirements for drain systems. Sewer lines would be required to be covered in all new, modified, and reconstructed facilities.

For oil-water separators with a design capacity to treat more than 15.8 liters per second (250 gal/min.), a fixed roof and closed vent system which directs vapors to a control device must be installed. The control device will be a vapor recovery or destruction device designed and operated to recover or destroy VOC with an efficiency of 95 percent or greater. Slop oil would need to be collected and reused or disposed of in an enclosed system. Smaller oil-water separators must be equipped with a fixed roof.

For air flotation systems, the standards depend on the type of unit. For DAF systems, which do not normally include a roof, a fixed roof must be installed. For IAF systems with a design capacity to treat more than 15.8 liters per second (250 gal/min), which are typically equipped with a fixed roof, the unit must be operated in a gas-tight condition. Smaller IAF systems would be exempt from the standards.

Certain technologies are specified as equivalent alternatives to BDT as defined above. Completely closed drain systems with no openings to the atmosphere would be allowed in lieu of water seal controls on process drains. In the case of oil-water separators, floating roofs would be allowed as an alternative technology. The roof would be required to have a liquid-mounted primary seal and a secondary seal, with both seals meeting certain minimum gap requirements. A fixed roof plus a closed vent system and control device would be allowed as an alternative technology on air flotation systems.

*Initial Compliance Testing and Inspections*

Initial performance tests would be required only for flares used as VOC control devices to comply with the standards. The performance test

required for flares would be a test to confirm operation according to specifications and would not be an emission test. Initial visual inspections of water seals on drains, covers on junction boxes, and joints on sewer lines would be required. Initial visual inspections of closed vent systems, fixed and floating roof seals, doors, hatches and other openings on oil-water separators and air flotation systems would also be required to identify cracks, gaps, or other problems which could result in VOC emissions. Initial monitoring of emissions from junction box covers or from closed vent systems, oil-water separators with a fixed roof and air flotation systems using a portable hydrocarbon analyzer would also be required to determine if there are detectable emissions (500 ppm above background levels). The EPA Method 21 would be the applicable test method.

*Monitoring and Inspection Requirements*

After initial inspections and monitoring, water seal controls on drains, as well as doors, hatches, or other openings on IAF systems would need to be visually inspected weekly. Initial and semiannual visual inspections of sewer line covers would be required to ensure that there are no cracks, gaps, or other problems. Semiannual inspections with a portable hydrocarbon analyzer would be required to determine whether any VOC emissions are detectable from junction box covers or from closed vent systems, fixed roof seals, doors and other openings in oil-water separators and air flotation systems. To ensure that a vapor recovery or destruction device is operating properly, the owner or operator would be required to monitor the vapor flow to the control device, outlet VOC emissions, or other parameters. All gauging and sampling devices on systems equipped with a control device must be kept gas-tight, except when gauging or sampling is taking place.

*Reporting and Recordkeeping*

The reporting and recordkeeping requirements of the General Provisions would apply. In addition, the design and operating specifications for all equipment used to comply with these standards would be required to be maintained in a readily accessible location. Such specification shall include the parameters to be monitored on all systems equipped with a closed vent system and control device. Initial and semiannual reports would be required which certify that all inspections have been carried out. Records of each inspection where a water seal is dry or breached, where emissions are detected, or where a problem is identified, including information about the repairs or corrective action taken, must be maintained in a readily accessible location and submitted semiannually in a summary report.

**Impacts of this NSPS**

*Facilities Affected by this NSPS*

Approximately 100 newly constructed process unit drain systems would be covered by the proposed standards during the 5-year period 1985–1989. These systems will include approximately 5,000 drains and 1,000 junction boxes. Approximately 30 new oil-water separators and 25 new air flotation systems would also be covered by the proposed standard during the 5-year period. In addition, it is expected that a total of at least 18 modified or reconstructed process drain systems would be affected by the proposed standards. A small number of modified or reconstructed oil-water separators and air flotation systems will also be affected by the proposed standards.

*Air*

The proposed standards of performance would reduce emissions of VOC from process drain systems by about 50 percent in comparison to the emissions that would result in the absence of the proposed standards. An emission reduction of about 88 percent would result from oil-water separators in comparison to the emissions that would result under existing State and local regulations. For separators that would be built in States that do not currently regulate them, the emission reductions achieved by these proposed standards would generally exceed 95 percent for individual facilities. Emissions of VOC would be reduced by 69 percent from air flotation systems that would be covered by these proposed standards. The overall emission reduction from all facilities covered by the proposed standards is estimated to be 2,080 Mg/yr (2,300 tons/yr) in 1989.

*Energy, Water, and Solid Waste*

The proposed standards would have essentially no energy or water impacts on the operation of process drain systems. The proposed standards would result in consumption of small quantities of steam, water, electricity and fuel gas for operation of control devices to destroy VOC captured from oil-water separators. There would be no significant amount of solid waste produced as a result of the proposed standards.

*Economic Effects*

The analysis of economic impacts indicates that the proposed standards would have no significant economic effects for the refining industry. The total annualized cost that would be incurred as a result of these proposed standards would be $1.1 million in 1989. The potential product price increase associated with the proposed standards would be about 0.1 percent.

**Rationale for Proposed Standards**

*Selection of Source Category*

The EPA Priority List (40 CFR 60.16, 44 FR 49222, August 21, 1979 and as amended by 47 FR 31876, July 23, 1982) includes, in order of priority for standards development, those major source categories which the Administrator has determined cause or contribute significantly to air pollution which may reasonably be anticipated to endanger public health or welfare. The order of the listed categories is based on consideration of the three factors specified in section 111(f) of the Clean Air Act: (1) The quantity of air pollutant which each category will be designed to emit, (2) the extent to which each such pollutant may reasonably be anticipated to endanger public health or welfare, and (3) the mobility and competitive nature of each category. The Priority List identifies the source categories for which EPA must promulgate standards of performance. The category "Petroleum Refineries: Fugitive Sources" ranks third on the list.

Fugitive sources at petroleum refineries include compressors, pumps, valves, flanges, pressure relief devices, open-ended valves, sampling connection systems, and cooling towers, as well as process drain systems, oil-water separators, air flotation systems and other components of refinery wastewater treatment systems. Standards of performance for compressors, pumps, valves, flanges, pressure relief devices, open-ended valves, and sampling connection systems were proposed on January 4, 1983 (48 FR 279) and were promulgated on May 30, 1984 (49 FR 22598). Data concerning control techniques for indirect cooling towers are being developed and may be sufficient to develop standards of performance in the future. The standards proposed by this notice are limited to fugitive sources at petroleum refineries which are part of the wastewater treatment systems.

Refinery wastewater treatment systems generally consist of three components: (1) Collection; (2) oil removal; and (3) biological treatment processes. Wastewater is collected by individual drains located throughout each process unit area. The drains feed into a series of lateral sewers that merge into junction boxes which provide access to the wastewater sewer system. Wastewater flows from the junction boxes to oil separation equipment. Primary oil removal is accomplished generally using an oil-water separator. The oil-water separator can be located within a process unit or separate from the process unit as part of an overall plant wastewater treatment facility. Secondary oil and suspended solids removal can be accomplished by using an air flotation system. Air flotation systems are typically located at the plant wastewater treatment facility. Following air flotation, additional treatment processes can be provided depending on the effluent guidelines requirements of the individual plant. Some refineries discharge wastewater to publicly-owned treatment systems. Others discharge wastewater directly into surface waters.

*Pollutant to be Regulated*

Refinery wastewater systems emit VOC. Current emissions of VOC from refinery wastewater treatment processes are estimated to be 55.5 gigagrams per year (Gg/yr). This includes 47.4 Gg/yr from process drain systems, 7.5 Gg/yr from oil-water separators, and 0.6 Gg/yr from air flotation systems.

The VOC emitted from wastewater treatment systems contribute to atmospheric photochemical reactions. These reactions form ozone, which is harmful to human health and welfare. In addition to contributing to the formation of ozone, VOC emissions from petroleum refinery wastewater systems include benzene and other potentially toxic constituents such as xylene and toluene. Benzene has been listed under Section 112 of the Clean Air Act as a hazardous pollutant because benzene emissions significantly increase the risk of cancer. Reduction of VOC emissions from newly constructed, modified, and reconstructed refinery wastewater systems would at the same time reduce emissions of benzene, toluene, xylene, and odorous substances.

*Selection of Best Demonstrated Technology*

Section 111 of the Clean Air Act requires that standards of performance reflect the best demonstrated technology, which is the technology that yields the greatest emission reduction without imposing unreasonable impacts [*Essex Chemical Corp.* v. *Ruckelshaus*, 486 F.2d 427 (D.C. Cir. 1973)].

The VOC emissions from petroleum refinery wastewater systems are the result of volatilization of the VOC from oily wastewater at points where the wastewater is exposed to the atmosphere. Methods of reducing these emissions depend on one or more of the following principles: (1) Reduction of VOC entering the wastewater system, (2) reduction of the surface area of the wastewater that is exposed to the atmosphere, and (3) enclosure of the system with captured VOC vented to a control device. Based on EPA's review of these control techniques, regulatory alternatives that reflect different levels of emission reduction for each facility covered by the proposed standards were developed and evaluated.

*Control Techniques.* The specific control techniques considered for each facility covered by the proposed standards are summarized below and are described more fully in Chapter 4 of the BID.

Process Drain Systems. The VOC emissions from process drain systems are influenced by the physical properties of the compounds found in the wastewater, the design characteristics of the drains and junction boxes, and climatic factors. Physical properties include the rate of molecular diffusion of compounds through air and water, solubility and vapor pressure of the compounds in the wastewater stream, the concentration of the compound in the wastewater, and the temperature of the wastewater. Design characteristics include the diameter of the drain opening, the diameter of the junction box open vent pipe, and the length of the drain or vent pipe. Climatic factors include wind speed and ambient temperature.

The basic principle used to control VOC emissions from drains is to limit the effects of diffusion and convection on volatilization of VOC from the wastewater. This can be accomplished by creating a barrier between the atmosphere and the wastewater. Other factors affecting emissions such as the composition of the wastewater and climatic factors are not controllable by physical means. Refineries do attempt to limit the amount of hydrocarbons lost to the drain system, but this is dependent on practices and maintenance at individual refineries and does not significantly reduce overall emissions.

A common control technique for reducing emissions from process drains is to place a water seal in the drain pipe. The water seal forms the barrier between the wastewater in the sewer system and the atmosphere. A water seal can be formed by installing a P-leg in the drain, which is similar to the water trap used for domestic sinks.

Another method for creating a water seal is to install a seal pot on the drain. The seal pot is created by placing a cap on the drain inlet. The cap rests on supports over the inlet, and wastewater can flow between the inside wall of the cap and the outside wall of the drain pipe. A circular sump about 6 to 8 inches deep and 12 inches in diameter surrounds the capped drain pipe. A water seal is formed between the inside annulus formed by the drain pipe and cap side, and the cap side and circular walls of the sump.

No State regulations require water seals as vapor control devices. However, water seal controls on drains are often used by refineries in certain sewer systems. The primary reason for installing water seals is for safety. Water seals prevent combustible vapors from passing through the sewer system and escaping near potential ignition sources. Because of this, drain seals are commonly used as a fire prevention measure.

The control efficiency of water-sealed drains has been estimated to be 50 percent or greater. This estimate was derived using data obtained in a drain screening study. Drains were screened at three refineries using a portable hydrocarbon analyzer. At one refinery, drains with seal pots were screened with the cap in place (controlled state), and with the cap removed (uncontrolled state). One of the other two refineries had uncontrolled drains (no water seals) while the other had controlled drains (P-leg). The average drain screening values of the controlled and uncontrolled drains were converted to leak rates using a correlation developed in an earlier EPA study. The average emission reduction was found to be approximately 50 percent.

Theoretical analyses of the effects of water seals on reducing the factors of convection and diffusion show that the effectiveness of water seals should be much greater than 50 percent. A water seal significantly reduces molecular diffusion of VOC to the atmosphere and completely eliminates the effects of convection. However, since the water forming the water seal may at times be contaminated with VOC, the water seals would be less effective than indicated by the theoretical analysis. Therefore, the emission reduction of 50 percent indicated by the screening analysis was judged to be a reasonable estimate of

emission reductions under actual conditions.

Water seals installed on junction box vents achieve emission reductions using the same principles as water-sealed drains. Water seals, if properly maintained, reduce the effects of diffusion and eliminate the effects of convection. It is estimated that water seals on a junction box will also achieve emission reductions of 50 percent or better.

In some circumstances, installation of water seals on junction boxes could pose a safety problem. A water-sealed junction box would tend to pressurize the drain system, thereby creating a potentially explosive condition. As a result, an open vent pipe to the atmosphere is necessary to relieve the buildup of vapor pressures. Vent pipes are normally tall enough to ensure that the vent opening is a safe distance from ignition sources and also to minimize the amount of emissions from the vent during normal operation.

As a result of safety considerations involving water seals on junction boxes, the most feasible method of reducing VOC emissions from junction boxes is to place a tight-fitting cover over the junction box and include an open vent pipe. This reduces the wastewater surface exposed to the atmosphere, minimizes the effects of wind and solar radiation, and also addresses safety concerns. Many petroleum refineries already install junction boxes with tight-fitting covers and vent pipes. Since this is current industry practice, no additional cost or emission reduction would result from a requirement for a cover and vent pipe on new junction boxes.

A second method for controlling VOC from process drains is to install a completely closed drain system. In this type of system, the mouth of each drain riser is closed with a flange. Equipment drain lines are piped into the flange or directly into the perimeter of the drain risers. The drains empty into sewer laterals and the wastewater flows to a buried collection tank. A fuel gas purge removes VOC to a control device. The efficiency of the closed drain system is dependent on the efficiency of the control device. Since the system is completely closed, only leaks or equipment failures will limit the efficiency. If the captured vapors are delivered to a smokeless flare system, the control efficiency may be as high as 98 percent.

The use of closed drain systems has generally been limited to process units handling extremely volatile or hazardous materials. An example of a process unit using a closed drain system would be a benzene-toluene-xylene (BTX) unit. In such cases, the higher cost and greater operating attention required by closed drain systems may be justified by the need for a higher level of control.

*Oil-Water Separators.* The VOC emissions from oil-water separators occur as a result of volatilization from the open surfaces of uncontrolled separators. The basic principles influencing volatilization from oil-water separators are the same as those discussed for drains and junction boxes. Factors affecting VOC emissions from oil-water separators include the ambient and wastewater temperatures, vapor pressure and VOC content of the incoming wastewater stream, the surface area of the separator, the wind speed over the separator, time of exposure (frequency of oil skimming), and solar radiation.

The most common method of controlling VOC emissions from an oil-water separator is to install a cover over the separator. This technology is commonly applied to separators in the refining industry. A cover on an oil-water separator reduces the effects of evaporation, wind speed, and solar radiation. The VOC emissions are suppressed into the outer layer where they can be removed by skimming. State regulations often require separators to be fully or partially covered.

Covers may be very simple, such as a prefabricated fixed roof or a piece of plywood placed over the separator. The control efficiency of a fixed roof or simple cover is estimated to be 85 percent. This estimate is based on a study conducted by the American Oil Company. In this study, separator oil was placed in pans and weighed. The pans were reweighed after a period of time and oil loss rates were calculated. It was found that placing a 2-inch thick slab of foamglass insulation on a separator could reduce these losses by as much as 85 percent. Other estimates of control efficiency have been found in the literature, but only the American Oil Company estimate has been based on a documented study. Therefore, 85 percent is considered the best available estimate of control efficiency for separators with fixed roofs or covers.

More sophisticated covers can achieve emission reductions considerably greater than the emission reductions achievable by a simple cover. These more sophisticated types of covers include floating roofs with sealing systems. Seals are used for reducing emissions from the space between the floating roof and the vessel wall. This space is sealed off by a primary seal. In some cases, a secondary seal, above the primary seal, may also be used.

There are two basic designs for primary seals on floating roofs that are applicable to oil-water separators: Vapor-mounted and liquid-mounted. Vapor-mounted primary seals are not in contact with the liquid surface. This allows for a vapor space between the underside of the seal and the liquid surface. One type of vapor-mounted seal is a resilient foam-filled seal. A resilient foam-filled seal is a tough fabric band filled with a resilient foam log. The resiliency of the foam log permits the seal to adapt itself to some imperfections in separator dimensions or in the surface of the separator wall.

A liquid-mounted primary seal is in direct contact with the liquid. The seals are similar in construction to resilient foam-filled seals. The seals may also be filled with a liquid in place of foam. Installation of a liquid-mounted primary seal rather than a vapor-mounted primary seal will reduce emissions from the seal area.

As previously mentioned, secondary seals may be installed over primary seals. The data show that installing a secondary seal over the primary seal will reduce emissions from the seal area. Rim-mounted secondary seals can be installed over any of the above primary seal types.

Based on theoretical considerations, EPA has determined that a floating roof with a liquid-mounted primary seal and a secondary seal can reduce VOC emissions from oil-water separators by about 95 percent. The precise emission reduction capability of a well-designed floating roof depends on the seal system and the effectiveness of the refinery's maintenance and repair program. The EPA requests comments on the effectiveness of different types of seals applicable to oil-water separators.

Another approach to controlling VOC emissions from separators is to place a fixed roof on the separator and vent the captured VOC to a control device. All petroleum refineries have an existing control device which may be used for recovery or destruction of VOC emissions. For example, flares, process heaters, and boilers are commonly used for thermal destruction of VOC emissions. The efficiency of control depends on the fixed roof design and efficiency of the vapor recovery or destruction device. A properly constructed fixed roof can capture and direct 99 percent of the vapors to the control device, and a properly designed vapor recovery system has a recovery efficiency of at least 95 percent. The

overall efficiency for this particular technique would be 94 percent.

Air Flotation Systems. The VOC emissions from air flotation systems occur as a result of many of the same factors which influence emissions from oil-water separators. These factors include the ambient and wastewater temperatures, vapor pressure, and VOC content in the wastewater stream, surface area, wind speed over the tank, residence time of wastewater in the tank, and solar radiation on the surface area of the tank. Additionally, factors unique to air flotation systems may also influence emissions. These factors include the quantity of gas or air used for flotation and the mechanical characteristics of the flotation system.

There are two general types of air flotation systems. These are dissolved air flotation (DAF) and induced air flotation (IAF) systems. Emission control for these two types of systems varies. The flotation tank of a DAF is usually open to the atmosphere. In contrast, IAF systems are usually equipped with a fixed roof. The roof has access doors which are used for visual inspection of the unit.

As mentioned above, a DAF system is usually operated with the flotation tank open to the atmosphere. Therefore, the factors affecting emissions described above have a greater influence on the DAF. Evaporation is the major mechanism of emission loss from a DAF system. The aeration mechanism of the DAF consists of forming small bubbles by pressurizing gas or air and returning the gas or air at atmospheric pressure. However, the effects of this air or gas are a minor source of emissions when compared to evaporation. One method of reducing VOC emissions from a DAF system is to place a fixed roof on the flotation tank. Placing a fixed roof on the flotation tank reduces emissions resulting from evaporation, wind effects, and solar radiation.

The control efficiency of covered DAF systems is generally less than that for covered separators because of the slight positive pressure created in the system by the flotation air. An atmospheric vent (or a vent controlled by a pressure control valve) must be provided in the DAF roof because of this pressure. Therefore, some losses will result from the vent. The control efficiency for a fixed roof on a DAF system is estimated to be at least 77 percent.

The aeration mechanism in an IAF system creates a net negative pressure in the unit. The majority of VOC losses from IAF systems are a result of evaporation losses from the flotation tank. Losses would be greater in a system that is operated with access doors open or where the access doors are not tightly closed. Leaving the access doors open results in emissions due to evaporation and wind effects. Most IAF systems are normally operated with the access doors shut, but not tightly closed. One method of controlling VOC emissions from an IAF system is to operate the system in a tightly closed state. Operation of an IAF in a closed state would include gasketing and sealing all access doors. The two major manufacturers of IAF systems supply systems that are capable of being operated gas-tight. Gas-tight operation is estimated to result in an emission reduction of at least 85 percent. This reduction is due to the minimization of evaporation and wind effects. The emission reduction due to gas-tight operation is estimated to be at least 23 percent over normal operating conditions (i.e., access doors shut, but not tightly closed.)

Another method of controlling VOC emissions from DAF and IAF systems is to operate both systems tightly sealed with the captured VOC vented to a control device. Venting the vapor space under a tightly sealed fixed roof would achieve about 99 percent capture of VOC. The overall control efficiency would depend on the vapor recovery or destruction device. For example, a tightly sealed DAF with VOC vented to a properly operated vapor recovery system would achieve reductions of 94 percent.

Other tanks or basins may be included as part of an air flotation system. In particular, DAF systems usually have mixing and flocculation tanks included in the system. In addition, some air flotation systems may include equalization basins. These tanks and basins may also be sources of emissions. The factors affecting emissions from these facilities are the same as those for separators and air flotation systems. These emissions can be controlled by placing a fixed or floating roof on the tank or basin. The roof will limit the effect of evaporation, wind and solar radiation, and result in an emission reduction of at least 85 percent. There are few State regulations controlling emissions from these sources at present.

VOC Control Devices. Captured VOC may be controlled by product recovery from gas stream or destruction through combustion. Methods of accomplishing this include: (1) Carbon adsorption, (2) flare systems, (3) condensation, (4) incineration, (5) use of industrial boilers or process heaters, and (6) catalytic oxidation. Of these, carbon adsorption and condensation are methods for VOC recovery, while the remaining techniques rely on VOC destruction. The efficiency of VOC control achieved varies with each method, but is generally between 95 and 99 percent. Each of these methods is discussed in detail in Chapter 4 of the BID.

Regulatory Alternatives. Three regulatory alternatives, which represent different levels of emissions reduction, were considered in developing the proposed standards. In general, Regulatory Alternative I coincides with no control beyond normal industry practice. Alternative II reflects use of some type of seal or cover, plus industry practices equivalent to State implementation plan (SIP) requirements. Alternative III reflects use of a sealed and gasketed fixed roof with VOC vapors vented to a control device, plus industry practices generally exceeding SIP requirements.

For individual drain systems, Regulatory Alternative I reflects drain systems with uncontrolled emissions. Because of safety concerns with requiring water seals on junction boxes, Alternative II was modified slightly from the alternative described in the BID. Alternative II, as evaluated for the proposed standards for individual drain systems, requires drains to be equipped with water seals and junction boxes to be covered, which would result in an emission reduction of about 50 percent. Alternative III requires a completely closed system which would achieve a 98 percent emission reduction.

For oil-water separators, Regulatory Alternative I reflects emissions from uncovered separators. Oil-water separators are the only emission source affected by some existing State and local air pollution control regulations. Approximately 85 percent of existing oil-water separators are controlled by at least a cover pursuant to State or local control regulations. These covers generally result in about an 85 percent reduction in VOC emissions compared to uncovered separators. Regulatory Alternative II reflects 85 percent control and requires installation of a fixed roof. Alternative III requires a fixed roof with VOC emissions vented to a control device. This alternative would result in at least a 94 percent reduction in VOC emissions from oil-water separators. This estimate is based on a 99 percent capture efficiency for the fixed roof and at least a 95 percent efficiency for the control device.

As a result of comments received at the August 1984 meeting of the National Air Pollution Control Techniques Advisory Committee (NAPCTAC), EPA further evaluated the effectiveness of floating roofs in controlling VOC from

oil-water separators. Industry comments made at that meeting indicated that a well-designed and well-maintained floating roof with at least a primary seal can reduce VOC from oil-water separators by greater than the 85 percent reduction reflected in Regulatory Alternative II. The EPA evaluated the application of floating roof designs commonly used on volatile organic liquid (VOL) storage tanks to oil-water separators. Based on this evaluation, EPA concluded that floating roofs on oil-water separators can capture VOC emissions with about the same degree of effectiveness as Regulatory Alternative III. It is estimated, based on theoretical analyses, that a well-designed and well-operated floating roof is capable of reducing VOC emissions from an oil-water separator by about 95 percent.

As a consequence, EPA elected to incorporate floating roofs as an alternative technology to a fixed roof plus a vapor control device, which is the basis for Regulatory Alternative III. Additional discussion of EPA's consideration of the role of floating roofs in these proposed standards is provided in the next section.

For air flotation systems, Regulatory Alternative I reflects no control beyond current industry practice. Few existing State or local regulations require emission reductions from air flotation systems. Regulatory Alternative II varies somewhat for each of the two principal types of air flotation systems. Alternative II requires DAF systems to be covered with a sealed and gasketed fixed roof, and IAF systems to be operated gas-tight in addition to being equipped with a well-designed fixed roof. Alternative II would result in emission reductions of at least 77 percent for DAF systems when compared to the uncontrolled state. For IAF systems, Alternative II will reduce emissions by at least 23 percent compared to the normal operating state (i.e., covered with a fixed roof, but not operated gas-tight). The incremental emission reduction achieved by this alternative for IAF systems is less than for DAF systems because the IAF is typically equipped with a fixed roof.

Alternative III requires a fixed roof and use of a control device to destroy or recover VOC from the vapor space of a DAF or IAF system. This alternative will result in at least a 94 percent reduction in VOC emissions from DAF systems, based on a 99 percent capture efficiency for the fixed roof and at least a 95 percent efficiency for the control device. For IAF systems, this alternative will result in at least an 85 percent reduction in VOC emissions over normal operating conditions. Again, the incremental emission reduction achieved for IAF systems is less due to the degree of existing control for an IAF operating under normal conditions.

*Evaluation of Alternatives.* Section 111 of the Clean Air Act requires that standards of performance be based on the best system of continuous emission reduction that has been adequately demonstrated, considering costs, nonair quality health and environmental impacts and energy requirements (best demonstrated technology or BDT). As a first step toward determining which control techniques should be selected as the basis of the proposed standards, EPA analyzed the annualized cost and cost effectiveness of controlling VOC emissions and the resultant VOC reduction for each alternative control technique. The EPA also considered the nonair quality health and environmental, energy, and economic impacts associated with selecting alternative control techniques as the basis for the proposed standards.

The cost effectiveness (control costs per megagram of VOC reduced) of each alternative is presented in Table 1. These costs do not represent the actual amounts of money spent at any particular plant site. The cost of VOC emission reduction systems will vary according to the production equipment, plant layout, geographic location, and company preferences and policies. However, these costs are considered typical of control techniques for wastewater treatment systems within petroleum refineries and can be used in making decisions about the level of control to be required.

TABLE 1.—BEST DEMONSTRATED TECHNOLOGY SELECTION FACTORS [a]

| Emission source and regulatory alternative and technology option [b] | Emission reduction Mg/yr | Cost effectiveness [c] $/Mg | Incremental cost [d] $/Mg |
|---|---|---|---|
| Process drain systems: | | | |
| I (no control) | 0.0 | | |
| *II (water seals—drains covers—junction boxes)* [i] | *6.2* | *300* | *300* |
| III (completely closed system) | 12.1 | 2,260 | 3,740 |
| Oil-water separators: [e] | | | |
| I (no control) | 0.0 | | |
| II (fixed roof) | 140.8 | 40 | 40 |
| *III (fixed roof and vapor collection)* [f,j] | *160.6* | *140* | *810* |
| Dissolved air flotation systems (DAF): [g] | | | |
| I (no control) | 0.0 | | |
| *II (fixed roof)* | *4.6* | *400* | *400* |
| III (fixed roof and vapor collection) [f] | 5.8 | 3,110 | 13,500 |
| Induced air flotation systems (IAF): [h] | | | |
| I (no control) | 0.0 | | |
| *II (gas-tight operation)* [h] | *0.3* | *370* | *370* |
| III (fixed roof and vapor collection) [f] | 1.0 | 16,500 | 22,700 |

[a] Based on Model Unit B in BID and third quarter 1983 dollars.
[b] Basis of proposed standards for typical size facilities is italicized.
[c] Cost Effectiveness equals net annualized cost per component divided by annual pollutant emission reduction per component, dollars per Mg.
[d] Incremental Cost equals (net annualized cost of control technique) minus (net annualized cost of next-less-restrictive control technique), divided by (annual emission reduction of control technique) minus (annual emission reduction of next-less-restrictive control technique), dollars per Mg.
[e] Cost calculations based on API separator without an existing cover or fixed roof.
[f] VOC emissions vented to an existing control device.
[g] Cost calculations based on DAF system without an existing fixed roof.

[h] Cost calculations based on IAF system which includes a fixed roof.
[i] Emissions reductions and cost differ slightly from Alternative II as shown in BID.
[j] Alternative II is recommended for oil-water separators with a design capacity to treat 15.8 liters per second (250 gal/min) or less of refinery wastewater.
[k] No additional control is recommended for the IAF systems with a design capacity to treat 15.8 liters per second (250 gal/min) or less.

After review of control costs per megagram of VOC reduced, EPA concluded that the cost effectiveness of certain regulatory alternatives would be unreasonably high. The analysis presented in Table 1 shows that Alternative III based on closed drain systems has an incremental cost effectiveness of about $3,740 per megagram of VOC reduced. The analysis also shows that Alternative III requiring that fixed roofs with vapors vented to a control device be installed on dissolved and induced air flotation systems would have incremental control costs per megagram of VOC reduced of about $13,500 and $22,700, respectively. After examining these costs and the resulting emission reductions, EPA determined the cost effectiveness of these control techniques to be unreasonably high compared to the attendant emission reduction benefits.

After eliminating the alternatives where the cost effectiveness would clearly be unreasonable for typical size facilities, EPA considered several factors that could influence the cost effectiveness of the remaining regulatory alternatives. These included wastewater flow rates, inlet oil concentrations, and vapor pressure. These factors were considered for Regulatory Alternative II for process drain systems and air flotation systems and Alternative III for oil-water separators. This was done to ensure that the proposed standards reflect best demonstrated technology for the range of facilities likely to be covered by the standards.

First, EPA analyzed the cost effectiveness of controlling VOC emissions from oil-water separators with inlet wastewater flow rates ranging from 3.2 to 94.6 liters per second (50 to 1,500 gal/min). The analysis shows that the incremental cost effectiveness for oil-water separators equipped with a floating roof with a liquid-mounted primary seal and a secondary seal compared to a fixed roof alone ranges from a high of $4,260 per megagram at a flow rate of 3.2 liters per second (50 gal/min) to a low of $260 per megagram at a flow rate of 94.6 liters per second (1,500 gal/min). As a result of the high incremental cost of requiring more stringent controls for smaller separators, together with the relatively small incremental VOC emissions reduction that would result, Regulatory Alternative II was selected rather than Regulatory Alternative III for oil-water separators with a design capacity to treat 15.8 liters per second (250 gal/min) or less. For these smaller units, a tightly sealed fixed roof alone would be required rather than a fixed roof with vapors vented to a control device. Selection of Regulatory Alternative II rather than Regulatory Alternative III for these smaller units is estimated to increase VOC emissions by about 22 megagrams per year nationally. Many small separators are manufactured as package units already equipped with a fixed roof. For any size separator, a floating roof would be allowed as an equivalent alternative technology. The incremental cost effectiveness of a floating roof at the 15.8 liters per second (250 gal/min) cutoff is about $930 per megagram.

Second, cost effectiveness was analyzed for a range of flow rates for DAF and IAF systems for Regulatory Alternative II. The analysis shows that the cost effectiveness for DAF systems is about $400 per megagram of VOC controlled or less, depending on the emission reduction attributed to a sealed and gasketed fixed roof. The cost effectiveness for IAF systems of Alternative II, which requires IAF systems to be operated in a gas-tight condition, ranges from about $180 per megagram at the higher flow rates to $3,500 per megagram at the lower flow rates. The annualized cost of this control technique is small, but the small emission reduction that would be achieved results in unreasonably high cost effectiveness for small IAF systems. The EPA determined that an IAF system with a design capacity to treat 15.8 liters per second (250 gal/min) or less should be excluded from the proposed standards. The cost effectiveness of Alternative II is less than $1,090 per megagram for IAF systems processing more than 15.8 liters per second (250 gal/min) of wastewater.

Next, the question of using inlet oil concentration or wastewater vapor pressure as a means of excluding facilities from the standards was raised by industry at the NAPCTAC meeting. When EPA evaluated inlet oil concentration, technical problems were encountered. These problems occur because a reliable method is not available to measure inlet oil concentrations. While methods evaluated by EPA are unreliable, EPA is continuing to survey industry in an effort to identify a reliable method. If a reliable method is available, it may be feasible to identify wastewater streams with a potential for emitting significant amounts of VOC and to regulate them accordingly. However, until such a method is identified, EPA has concluded that a lower size cutoff based on low inlet oil concentration is not a feasible approach for oil-water separators or air flotation systems.

In addition, a cutoff based on wastewater vapor pressure has not been incorporated into the proposed standards because there appears to be no basis for correlating vapor pressure with VOC emissions in the case of wastewater treatment systems. Vapor pressure is only one of several possible indicators of VOC emissions from oil-water separators and air flotation systems.

The EPA is interested in further evaluating the feasibility of a cutoff based on either inlet oil concentrations or wastewater vapor pressure. Any information supplied by industry or other commenters will be evaluated carefully and a cutoff based on inlet oil concentrations or wastewater vapor pressure will be included if such an approach is determined to be reasonable.

It is possible to consider inlet oil concentrations qualitatively in determining the cost effectiveness of controlling emissions from process drain systems and to draw certain conclusions as a result. For example, refinery stormwater runoff is generally characterized by low inlet oil concentrations. Stormwater runoff includes only small amounts of oil washed from refinery surfaces. The concentrations are usually very low and do not warrant separate treatment for removal of oil.

Many refineries collect stormwater runoff in the same collection system used for process wastewater. Some large refineries have separate collection systems, completely dedicated to stormwater runoff. Because the cost effectiveness of controlling VOC from refinery stormwater runoff is unreasonably high, EPA proposes to exclude from the standards drain systems that are designed and used as separate systems for the primary purpose of collecting refinery stormwater runoff.

Another factor concerns the use of catch basins. They serve as junction

boxes that collect stormwater runoff and process wastewater simultaneously. Catch basins pose special problems for the application of demonstrated techniques for controlling VOC from process drain systems. Therefore, EPA proposes to exclude from the proposed requirements for drain systems any modified or reconstructed facilities that have a catch basin in the existing configuration. The application of the proposed standards with respect to new, modified, and reconstructed facilities containing catch basins is further discussed in the "Selection of Affected Facilities" section.

Still another factor concerns an approach that goes further than the exclusion of facilities based on wastewater flow rates, inlet oil concentrations, or vapor pressure. This approach focuses on a wastewater source control program as an alternative to direct controls on wastewater system components. Such an approach would rely primarily on a system of identifying problematic wastewater streams and upset conditions, coupled with a series of housekeeping measures tailored to problems arising in each process unit. Although of interest to EPA, such an approach has not been included in the proposed standards. Alternative source control programs, while possibly reducing VOC emissions in some instances, are not based on control techniques that are demonstrated at this time. The EPA cannot establish standards based on control techniques that are not demonstrated. Thus, EPA has not evaluated the costs and emission reductions associated with these techniques. In addition, these control techniques may not reduce emissions continuously, and based on information supplied by industry to date, such a source control program could be difficult to adequately define and enforce. For these reasons, EPA has not based the proposed standards on such an approach.

An opportunity to pursue this approach, however, remains available. Included in the proposed rule is an alternative emission limitation provision that allows an owner or operator to request use of alternative control techniques which are determined to be equivalent to requirements of the standard in terms of emission reduction. Under this provision, an individual refiner may apply to EPA for approval of a source control program tailored to the circumstances at individual refineries.

*Summary.* From the analyses of cost effectiveness and other considerations, EPA concluded that, with appropriate exceptions, Regulatory Alternative II for process drain systems, Alternative III for medium and large oil-water separators, Alternative II for small oil-water separators, and Alternative II for air flotation systems are cost-effective approaches to controlling VOC emissions from each of these sources. These alternatives and the control techniques on which they are based are italicized in Table 1. The incremental control costs per megagram of VOC reduced for these control techniques range from $300 per megagram to about $810 per megagram for a typical facility. These cost-effectiveness levels are considered reasonable.

After selecting the regulatory alternatives that are cost effective for refinery wastewater systems, EPA evaluated the national environmental, economic, and other impacts of basing the proposed standards on these alternatives and control techniques. The selected regulatory alternatives and control techniques would result in a nationwide reduction of at least 2,000 Mg of VOC in the fifth year after proposal. Economic, energy, and nonair quality environmental impacts were then examined to determine if they would alter this selection of control techniques.

The economic analysis shows that no regulatory alternative could cause a significant adverse economic impact on petroleum refineries. The analysis shows that any combination of the control techniques presented in Table 1 would not have a significant adverse economic impact on petroleum refineries. The analysis shows that the control techniques for which the costs per megagram of VOC reduced are considered reasonable would result in no adverse impact on profitability (decrease less than 0.5 percent), would have a potential to slightly increase the consumer price of petroleum products (0.1 percent or less), and would have no adverse impact on capital availability for construction of petroleum refineries. Since consideration of costs per megagram of emission reduction did not include control techniques which could have contributed to an adverse economic impact, consideration of economic impacts played no further role in the selection of the basis of the proposed standards.

The EPA also examined the nonair quality environmental and energy impacts of the control techniques considered for each source. Analysis of these impacts for the various regulatory alternatives are presented in Chapter 7 of the BID. There were no significant adverse impacts identified; therefore, the nonair quality environmental and energy impacts did not affect the decision on the basis of the standards.

In summary, the most effective control techniques which were considered to have reasonable costs per megagram of VOC emissions reduced for each refinery wastewater system component were selected as the basis of the proposed standards. Then the instances where cost effectiveness would be unreasonably high were identified and the standards were adjusted accordingly. As a final step, EPA then verified that none of the control techniques selected would result in adverse economic or other impacts.

The control techniques selected as BDT include water seal controls on process drains, a cover with an open vent pipe on junction boxes, a fixed roof with vapors vented to a control device on medium and large oil-water separators, a fixed roof on small oil-water separators and DAF systems, and gas-tight operation on IAF systems. Less stringent control techniques were not considered further because they would achieve less emission reduction and there were no cost, economic, energy, or nonair quality environmental impacts which necessitated further examination of these control techniques.

*Selection of Affected Facilities*

The choice of the affected facility is based on the Agency's interpretation of section 111 of the Clean Air Act and on the judicial construction of its meaning. See *ASARCO, Inc.* v. *EPA*, 578 F.2d 319 (D.C. Cir. 1978). Under this section, standards of performance must apply to new stationary sources of pollution, i.e., sources that begin construction, reconstruction, or modification after EPA proposes the standards.

"Source" is defined as "any building, structure, facility, or installation which emits or may emit any air pollutant" [Section 111(a)(3)]. Most industrial plants, however, consist of numerous pieces or groups of equipment that emit air pollutants and that may be viewed as "sources." The EPA uses the term "affected facility" to designate the equipment, within a particular kind of plant, that is chosen as the "source" covered by a given standard.

In designating the affected facility, EPA determines which piece or group of equipment is the appropriate unit (the source) for separate emission standards in the particular industrial context involved. The determination is made in light of the terms and purpose of Section 111. One major consideration in this decision is that a narrow designation usually brings replacement equipment under standards of performance sooner.

If, for example, an entire plant is designated as the affected facility, the standard will cover no part of the plant unless the replacement causes the plant as a whole to be "modified" or "reconstructed." The plant as a whole is *modified* only if its aggregate emissions are increased by the physical change in it, or by the change in its method of operating. Similarly, the plant is *reconstructed* only if: (1) Its cost of replacement exceeds 50 percent of the fixed capital costs required to build a comparable new facility and (2) meeting the applicable standards is technologically and economically feasible.

On the other hand, if each piece of equipment is designated as the affected facility, then as each piece is replaced, the new piece will be a new source subject to the standard. Since the purpose of Section 111 is to minimize emissions by achieving emission limitation reflecting BDT at all new sources, a narrow designation of the affected facility is usually the best choice. It ensures that the standard would cover new emission sources within plants as they are installed.

This presumption can be eliminated, however, if a broader designation of the affected facility would: (1) Result in a greater emission reduction than would a narrow designation or (2) avoid exorbitant costs.

Affected facilities for standards that would cover emissions from wastewater treatment systems could be defined as individual emission sources (equipment components), groups of equipment components that are operated in conjunction with each other (collective units), groups of collective units at one location (plant sites), or a combination of the above groups. In determining which alternative definition of affected facilities to select for petroleum refinery wastewater systems, EPA first evaluated the assumption that the narrowest designation of an affected facility is proper for this source category. The EPA also considered the roles of modification and reconstruction and how they affect the overall emission reduction potential for this source category.

The alternative of defining facilities on the basis of equipment components was reviewed first. One part of refinery wastewater treatment systems, process drain systems, includes a large number of equipment components (drains and junction boxes) that are connected and emit VOC as a group of emission points. If EPA selected equipment components exclusively as the basis for defining affected facilities, situations could arise in which new, replaced or modified drains or junction boxes could be subject to the standards, while adjacent drains and junction boxes would not be subject to the standards. With such a mixture of regulated and unregulated components, the effectiveness of the control techniques for drains and junction boxes would be essentially zero. Thus, greater emission reductions would result from a broader definition of affected facility. For this reason, in the case of process drain systems, EPA rejected an equipment component approach in favor of a collective unit approach for designating affected facilities.

For process drains, EPA defined the affected facility in terms of groups of process drains that collectively comprise an individual drain system. An individual drain system is defined as all process drains and sewer lines connected to a common downstream junction box. A process unit may be made up of one or more individual drain systems.

In the case of oil-water separators and air flotation systems, EPA selected an equipment component approach to defining affected facilities. Oil-water separators and air flotation systems are comparable in size to emission sources normally defined as separate affected facilities under Section 111. These equipment components have the potential to emit significant amounts of VOC individually and available control techniques can be applied directly to these equipment components. Consequently, EPA selected each individual separator and air flotation system as a separate affected facility.

Next, EPA considered the roles of modification and reconstruction and how they affect the overall emission reduction potential for this source category. In the case of refinery wastewater systems, changes to individual system components may not result in increased emissions or significant replacement costs. However, it is possible that construction of new process units or equipment will result in increased VOC emissions from refinery wastewater systems. In many cases, new process units will discharge additional oily wastewater into new or modified drain systems which then carry the wastewater to existing oil-water separators and air flotation systems for treatment. Because of the physical and operational changes resulting from the addition of new process units, VOC emissions from existing oil-water separators and air flotation systems could increase substantially. Accordingly, EPA considered a definition of affected facility that would reflect this type of refinery wastewater system change.

In addition to the definitions selected for individual system components, EPA selected an aggregate facility definition which includes individual drain systems together with their ancillary downstream wastewater components (e.g., sewer lines, oil-water separator and air flotation system) as the definition of affected facility that would reflect the physical or operational changes mentioned above. The aggregate facility would become a modified facility if a physical or operational change were made to that aggregate facility which resulted in increased emissions from that facility. Under this definition, each piece of equipment or component of the aggregate facility could be covered by the standard.

The EPA evaluated the cost associated with the aggregate definition and concluded that downstream wastewater components that treat wastewater from new process units should be covered by the standards. Both the cost and cost effectiveness of controls on modified and reconstructed wastewater treatment systems were analyzed. The maximum cost of installing BDT on a modified or reconstructed oil-water separator or air flotation system is comparable to the cost for newly constructed systems. For example, the annual cost for a new oil-water separator to achieve BDT would be about $27,000 or less and the cost for a modified or reconstructed oil-water separator would be about $32,000 or less. Similarly, the cost effectiveness of controlling a modified or reconstructed component that receives and treats the wastewater from a new process unit is reasonable. The incremental cost effectiveness would be about $810 per megagram for newly constructed, modified, or reconstructed separators.

Because the addition of new refinery process units will typically increase VOC emissions from refinery wastewater systems and the cost of reducing these emissions is reasonable, selection of individual drain systems together with their ancillary downstream components as one of the affected facilities is considered a reasonable approach to covering these emission sources. The intent of this approach is to ensure the control of VOC from refinery wastewater sources emitted as a result of new refinery process unit construction.

An alternative approach to defining affected facilities would be to consider the capacity of the wastewater treatment system and its ability to treat

additional wastewater. Under this approach, increasing the capacity of the wastewater system would cause the system to become an affected facility. For example, an increase in the wastewater capacity beyond the normal daily fluctuations of the system would result in an increase in emissions. This would cause the system to become a modified facility.

The EPA requests comments on the proposed affected facility definitions as well as alternatives to defining the affected facilities in the wastewater treatment system.

*Summary.* The four specific components of refinery wastewater treatment systems selected as affected facilities include: (1) Individual drain systems; (2) oil-water separators; (3) air flotation systems; and (4) individual drain systems and their ancillary downstream treatment components.

Individual Drain System. For the purpose of defining affected facilities, process drain systems can be broken down into "individual drain systems." An individual drain system is all process drains and sewer lines which connect to a common downstream junction box. Under this definition, each new drain system is an affected facility. In addition, if new drains are added to an existing drain system, the entire individual drain system may constitute a modified facility and all existing and new drains within the drain system could become subject to the standards. This would occur if the increased emissions were not offset elsewhere within the individual drain system.

Oil-Water Separator. "Oil-water separators" would include all equipment from the inlet to the outlet of the separators, including skimmers, sludge pumps, sludge hoppers, conditioning tanks, surge tanks, as well as other auxiliary tanks, basins, or equipment.

Air Flotation System. Air flotation systems are usually located downstream of oil-water separators. The term "air flotation system" includes flocculation tanks, flotation chambers, pressurization tanks, chemical addition equipment, and other auxiliary tanks, basins, and conditioning equipment. Air flotation systems do not include components which are part of the biological treatment system.

Individual Drain Systems and Ancillary Downstream Treatment Components. This definition includes any individual drain system and downstream sewer lines, oil-water separators, and air flotation systems. These components are functionally related to the wastewater stream collected by the individual drain system. Under this definition, a new individual drain system or an emissions increase at an existing drain system could cause existing downstream components to be subject to the standards. Similarly, a modification of an existing oil-water separator or the addition of a new separator could cause existing downstream units to be affected under the aggregate affected facility definition. Only if the total emissions increases are offset would the wastewater components be exempt from this definition of affected facility. Offsetting of emissions increases would have to occur within the associated existing wastewater treatment system. Even though an individual drain system and existing downstream components may be exempt under this definition as a result of offsets, the new, modified or reconstructed individual drain system alone may constitute a separate affected facility under the individual drain system definition. Also, downstream oil-water separators or air flotation units may constitute separate affected facilities under the individual definitions.

*Modification/Reconstruction Considerations.* The proposed standards will have an effect on sources covered through the modification and reconstruction provisions. In developing the standards, EPA was careful to ensure that the cost of applying the standards to modified or reconstructed sources would be reasonable. The determination of whether an increase in emissions would result from a particular physical or operational change would be based on a case-by-case evaluation by EPA of VOC emissions before and after the proposed change. As an example, adding additional drains will in itself increase emissions and may constitute a modification. However, it may be feasible to add new drains, but also seal some existing drains within the same individual drain system and thereby have no net increase in emissions from the individual drain system.

The EPA evaluated the effect of the proposed standards on existing wastewater systems with uncovered sewer lines. The cost of covering such lines was determined to be minimal, especially in relation to the estimated emission reductions.

The EPA also considered situations where compliance with the proposed standards might have an adverse effect. First, to be economically feasible, installation of water seals on existing drains within a modified individual drain system or installation of a floating roof on an existing oil-water separator would need to be carried out without disruption to normal plant operations. Process unit or refinery shutdowns solely for the purpose of installing BDT would be impractical and unreasonably costly. To address this problem, EPA is proposing to include in the standards a delay of compliance if installation is impossible without process unit shutdown. The installation of control equipment necessary to meet the standards would be required at the next scheduled shutdown for repairs, maintenance, or other purposes. The cost of meeting the standards would be reasonable at that point. In the case of oil-water separators and air flotation units, installation of control equipment may be feasible during normal operation when it is possible to install roofs on compartments on a phased basis.

Second, EPA evaluated a unique wastewater system arrangement that contains a catch basin and is not cost-effective to retrofit. In this unique arrangement, an existing drain configuration includes a catch basin which receives surface stormwater runoff and process wastewater at the same time. Stormwater and process wastewater collected in the catch basin then flow to a downstream junction box which is part of the overall refinery sewer system. The cost of retrofitting the catch basin to separate the process wastewater from the stormwater runoff sewer lines was evaluated by EPA. This preliminary analysis shows the cost effectiveness of such changes to be about $2,100 per megagram, which is considered unreasonable. Therefore, EPA has decided to propose that water seal controls would not be required for existing individual drain systems that include catch basins in their existing configurations and that catch basins would not be required to be rebuilt. Each modified or reconstructed individual drain system that has an existing catch basin in the existing configuration would be exempt from these requirements for drain systems.

New individual drain systems and modified or reconstructed individual drain systems without catch basins would be required to comply with the standards. Under the aggregate affected facility definition as well, an individual drain system with an existing catch basin in its configuration would be exempt from the requirements for drain systems. However, a physical or operational change in this individual drain system could result in an emissions increase downstream (i.e., at the oil-water separator and air flotation system). Therefore, the downstream units would have to comply with the requirements of both the aggregate and individual affected facility definitions.

*Selection of Format for the Standard*

Several formats could be used to implement the control techniques selected as the basis for the proposed standards. Section 111 of the Clean Air Act requires that a standard of performance be prescribed unless, in the judgment of the Administrator, it is not feasible to prescribe or enforce such standards. Section 111(h) defines two conditions under which it is not feasible to prescribe or enforce a performance standard. These conditions are: (1) If the application of measurement methodology to a particular class of sources is not practicable due to technological or economic limitations, or (2) if the pollutants cannot be emitted through a conveyance device. If a standard of performance is not feasible to prescribe or enforce, then the Administrator may instead promulgate an equipment, work practice, design or operational standard or combination thereof.

A standard of performance allows for some flexibility in complying with the standards, since any control technique may be used if it achieves the level of emission reduction represented by the standard. However, for most refinery fugitive emission sources, it is not feasible to prescribe a performance standard because it is impractical or economically infeasible to measure emissions from these sources. Based on the considerations discussed below, it is not feasible to prescribe a performance standard for refinery wastewater systems except where a flare is used as the control device.

Determining compliance with a standard of performance for individual drain systems would be prohibitively expensive. Each drain would need to be bagged and vented in a manner that would allow the measurement of pollutant concentrations and flow rates. The cost of conducting performance tests on the numerous drains in an entire refinery or even a single refinery process unit would be unreasonably expensive.

In the case of oil-water separators and air flotation systems, the principal limitation with a standard of performance concerns the difficulty in measuring emission levels. Emission levels can vary considerably over relatively short periods of time depending on inlet oil concentrations, wastewater flow rates through the separator, and other factors. Even though in some cases, the flow rate to an oil-water separator or an air flotation system may remain relatively constant, the VOC emissions change periodically, as the time of day changes or the upstream process conditions change. In addition, vapor recovery or destruction devices are not expected to be dedicated to a specific wastewater stream. Emissions measurement of a nondedicated system would be complicated and perhaps meaningless. Thus, a standard of performance would require continuously measuring emission levels. This would be an unreasonably expensive and impracticable approach to setting the proposed standards.

Based on EPA's determination that it is not feasible to prescribe a performance standard for refinery wastewater systems except for flares, the alternative regulatory formats identified in section 111(h) of the Clean Air Act were considered. One possible format is an equipment standard. Equipment standards provide well-documented reductions. Compliance monitoring would require only an initial check to ensure that the equipment has been installed properly and periodic checks to ensure that the equipment is continuing to operate properly. However, an inherent disadvantage associated with this type of format is that less site-specific flexibility is provided than with a performance standard.

Another format is work practices. An example of this format would be a program for detecting and repairing leaks. Inspection methods, inspection time intervals, and time allowed for repair would be defined in detailing the work practices. Compliance with a work practices standard would be determined by judging success in implementing the work practices. Recordkeeping would be needed to serve as the basis for judging this success.

Design and operational standards are other possible regulatory approaches which may provide greater flexibility for the owner or operator to implement. Rather than requiring specific control equipment or work practices, a design or operational format would require that a certain level of control be attained or that certain procedures be followed during the operation of a process. For example, combustion devices may be required to achieve a specified level of control efficiency.

For petroleum refinery wastewater systems, a combination of equipment, work practice, design and operational standards was selected. Under this approach, equipment representing best demonstrated technology would be required. However, procedures would be included to allow alternative control equipment to be used if equivalent emission reductions can be demonstrated. Certain equivalent alternatives are expressly allowed in the proposed standards. For example, closed drain systems would be allowed as an acceptable alternative to water seal controls for individual drain systems.

The proposed standards would also require certain work practices to ensure that the control equipment installed is properly maintained. For example, regular inspection of water seals by owners or operators would be required to ensure that proper water levels are maintained. Design standards are proposed for control devices to ensure that the type of system installed has the design capability to achieve emission reductions determined by EPA to reflect best demonstrated technology. And in certain instances, such as IAF systems, operational standards were selected so that IAF systems will be operated in a manner to minimize VOC emissions. A requirement that IAF systems be operated under gas-tight conditions is an example of an operational standard included in this proposal.

*Selection of Actual Standards*

*Process Drain Systems.* Water seal controls were selected as the basis of the proposed standard for process drain systems. For individual process drains, a P-leg, seal pot, or other means of creating a water seal is required by the proposed standards. A tight-fitting cover would be required for junction boxes.

The equipment that is required by the proposed standards would be effective in reducing emissions only if proper maintenance procedures are followed. Water seals in drains will dry up if the water seal is not maintained through periodic inspections. Similarly, a cover on junction boxes will not be effective in reducing emissions if it is not kept in place. Therefore, along with equipment standards, work practice standards are being proposed for process drain systems. For each individual process drain, the water seal must be inspected at least on a weekly basis to ensure the presence of a water seal. If not checked, water seals can dry out by evaporation in approximately a week. If the water seal has dried up, the seal can be restored by introducing a small quantity of water to the P-leg, seal pot, or other type of seal.

Junction boxes will be inspected initially and semiannually thereafter to ensure that the cover is on the box and that a tight seal exists around the edge of the cover. There shall be no detectable emissions from around the edge of the cover (i.e., less than 500 ppm above background levels). For safety

reasons, junction boxes may include an open vent pipe to relieve the buildup of vapors.

In the case of modified process drain systems that become subject to these proposed standards, a delay of compliance may be allowed if installation of the control equipment is impossible without a refinery or process unit shutdown. The installation of control equipment necessary to meet the standards would be required at the next scheduled shutdown. As part of the notification required in § 60.7(a)(4), an owner or operator must indicate the reason why a shutdown is needed to comply with the standards and the estimated date for the next planned shutdown after the date of notification during which the installation of controls will occur. If a shutdown is scheduled prior to the completion date of the modified facility, a delay of compliance would not be allowed.

In the few instances where process wastewater is conveyed in open sewer lines at an existing facility, such sewer lines must be retrofitted with a cover, or otherwise enclosed, if a new, modified or reconstructed individual drain system is built upstream of the open sewer line. Sewer lines must be visually inspected initially and semiannually thereafter for gaps or cracks in joints or seals. If gaps or cracks are identified, repairs must be made within 15 days.

*Oil-Water Separators.* Fixed roofs with captured VOC vented through a closed vent system to a control device were selected as the basis of the proposed standard for oil-water separators with a design capacity to treat more than 15.8 liters per second (250 gal/min). Fixed roofs alone were selected as the basis of the proposed standard for oil-water separators 15.8 liters per second (250 gal/min) or less in size. Floating roofs with a liquid-mounted primary seal and a secondary seal were selected as an equivalent alternative technology for any size oil-water separator.

Fixed roofs shall be installed over the separator in a manner so as to have a tight seal between the separator walls and the roof. Tightly sealing the roof to the separator walls will reduce VOC emissions by limiting the effects of evaporation, wind, and solar radiation. The spaces between roof sections also must be gasketed and tightly sealed. If the fixed roof has access doors or hatches, these doors and hatches shall be completely sealed and kept closed at all times during operation of the separator, except during inspections and maintenance. Slop oil skimmed from the wastewater surface shall be collected and reused or disposed of in an enclosed system to limit VOC emissions.

For all separators with a fixed roof, the seals on the roof, access doors, and hatches shall be inspected initially and on a semiannual basis to ensure maintenance of a tight seal. Within that period of time, seals and gaskets can deteriorate and allow detectable VOC emissions. An instrument such as a portable hydrocarbon detector shall be used to detect emissions from the roof, access doors, hatches, or other openings. Repair of any detectable emissions shall be made within 15 calendar days of detection, which is considered a reasonable length of time to correct any such problems.

For separators with a control device, the VOC captured by the fixed roof will be vented to the control device using a closed vent system. The control device will be a vapor recovery or destruction device designed and operated to recover or destroy VOC with an efficiency of 95 percent or greater. All refineries have some type of vapor destruction or recovery device which may be used for recovery or destruction of VOC emissions. These devices include flares, boilers, heaters, incinerators, or carbon adsorbers.

The control devices used for destroying or recovering VOC must be operated and maintained in a way to achieve 95 percent efficiency. Enclosed combustion devices must achieve 95 percent efficiency or provide a minimum residence time of 0.75 seconds at a minimum temperature of 816 °C. Flares must be operated according to the methods specified in § 60.18. The methods specified in § 60.18 were determined by EPA studies regarding the destruction efficiency of flares for various streams of VOC.

The final requirements for flares used to comply with standards of performance and national emission standards include two basic requirements: a flame must be present at all times that emissions are being vented to the flare and the flare must be operated in a smokeless manner. The presence of a pilot flame is to be monitored using a thermocouple or other device. Smokeless operation is to be verified by measuring visible emissions using Reference Method 22. Allowances are made for the occurrence of visible emissions for a maximum of 5 minutes during any 2-hour period. In addition to these basic requirements, the final requirements include minimum heat content and exit velocity limitations. Steam-assisted and air-assisted flares must combust gases with the net heating value of the gas being combusted being 11.2 MJ/scm (300 Btu/scf) or greater. If the flare is nonassisted, the net heating value of the gas being combusted must be 7.45 MJ/scm (200 Btu/scf) or greater.

Steam-assisted and nonassisted flares must be designed and operated with an exit velocity either: (a) Less than 18.3 m/sec (60 ft/sec), (b) less than 122 m/sec (400 ft/sec) if the heat content of the gas being combusted is greater than 37.3 MJ/scm (1,000 Btu/scf), or (c) less than a velocity as determined by the methods specified by § 60.18(f)(5) which are based on the heat content if the gas being combusted is between 11.2 MJ/scm (300 Btu/scf) and 37.3 MJ/scm (1,000 Btu/scf).

Air-assisted flares must be designed and operated with an exit velocity less than a velocity as determined by the methods specified by § 60.18(f)(6) which are based on the heat content of the gas being combusted in the flare.

The control devices used to destroy or recover VOC shall be monitored to ensure that they are operated and maintained in conformance with their designs. Without monitoring certain operating parameters, destruction or recovery efficiencies can deteriorate to levels below what is considered best demonstrated technology. All gauges and sampling devices must be gas-tight except when gauging or sampling is taking place.

An equivalent technology to a fixed roof or a fixed roof with vapors vented to a control device is a well-designed floating roof with a liquid-mounted primary seal and a secondary seal. Each floating roof must meet specifications for both primary and secondary seals.

The primary seal shall be a liquid-mounted seal. A liquid-mounted seal means a foam- or liquid-filled seal mounted in contact with the liquid between the wall of the separator and the floating roof continuously around the circumference of the separator. The gap between the primary seal and the separator wall shall not exceed 3.8 cm (1.5 in) at any point. The total gap area shall not exceed 66.1 $cm^2/m$ (3.2 $in^2/ft$) of separator perimeter.

The secondary seal shall completely cover the annular space between the floating roof and the wall of the separator in a continuous fashion. The gap between the secondary seal and the separator wall shall not exceed 1.3 cm (0.5 in) at any point and the total gap area must not exceed 6.7 $cm^2/m$ (0.32 $in^2/ft$) of perimeter around the separator.

For separators equipped with a floating roof, access doors and hatches or other openings shall be visually inspected initially and on a semiannual

basis thereafter to ensure that there is a tight fit around the edge. Primary seals shall be inspected at least once every 5 years and secondary seals shall be inspected annually. The primary and secondary seals shall be inspected for tears, gaps, or other problems which might result in VOC emissions. Gap widths must be measured around the separator perimeter to ensure that allowable gap widths and total gap areas are not exceeded. Repair of seals or other components shall be made within 30 calendar days of identification, which is considered a reasonable length of time to carry out such repairs on floating roofs.

*Air Flotation Systems.* Fixed roofs are the basis of the proposed standard for dissolved air flotation systems. For DAF systems, a fixed roof must be installed over the flotation tank. The roof should fit tightly on the side walls of the flotation system so that no gaps exist between the roof and the side walls. The roof will reduce VOC emissions by limiting the effects of evaporation, wind, and solar radiation. A pressure control valve may be provided in the roof to relieve the periodic positive pressure which will build up in the vapor space due to the flotation process. The emissions that will be released through these vents were considered in selecting the proposed standards. Other auxiliary tanks and basins supplementing the operation of the DAF must also be provided with fixed roofs. These include tanks used for chemical mixing and flocculation and equalization basins.

The fixed roof, access doors, and other openings of a DAF system shall be inspected initially and on a semiannual basis both visually and with a portable hydrocarbon analyzer for deterioration due to temperature, exposure to the atmosphere, or other factors. Any detectable emissions or gaps found in the seal between the roof and the DAF system side walls shall be repaired within 15 calendar days after detection is made. The EPA considers 15 calendar days to be a reasonable length of time to correct such problems. Prompt repair of detectable emissions and gaps will ensure emission reductions consistent with the selection of best demonstrated technology by limiting evaporative and wind effects. The fixed roofs on flocculation tanks, mixing tanks, and other auxiliary tanks, and basins shall also be inspected initially and on a semiannual basis.

Inspection and monitoring of the roof for gaps or other problems shall also be undertaken after any maintenance has taken place on the DAF system which requires removal of the roof. The roof may need to be removed in some cases to repair the mechanical apparatus in the DAF system. The roof shall be visually inspected and monitored for detectable emissions after the roof has been replaced following such repairs.

The basis of the proposed standard for IAF systems is an operational standard requiring IAF systems with design capacities to treat more than 15.8 liters per second (250 gal/min) to be maintained gas-tight. Small IAF systems with design capacities to treat 15.8 liters per second (250 gal/min) or less are excluded from the proposed standard. Although IAF systems are already equipped with a fixed roof, specifications similar to those for a DAF system are included on the type of roof to be installed on IAF systems. All access doors and roof seams shall be gasketed and tightly sealed. There will be slight breathing losses if the water level rises in the flotation tank. These breathing losses may be released through a pressure control valve. Operation of the system in a gas-tight state will greatly reduce emissions by limiting the effects of evaporation, wind, and solar radiation.

Regular inspections and maintenance will be needed to ensure proper operation of the system. The access doors on IAF systems shall be visually inspected initially and thereafter on a weekly basis. The doors should be secured tightly after any visual inspections are made of the IAF system. Weekly inspections are necessary because of the frequency with which the doors may be opened during routine operation. Initial and semiannual inspections with a portable hydrocarbon analyzer will be required to determine whether VOC emissions are detectable (i.e., greater than 500 ppm above background). Any detectable emissions or gaps found in access door or roof seams shall be repaired within 15 calendar days of detection.

For both DAF and IAF systems, a completely closed vent system with vapors vented to a control device is the most effective means of reducing VOC emissions. Due to the high cost effectiveness of such controls on air flotation systems, however, closed vents plus a control device were not selected as the basis of the proposed standards. However, because of the effectiveness and demonstrated status of this control technology, the standards provide for use of a closed vent system and control device as an alternative means of emission limitation for air flotation systems. Initial and semiannual inspections conducted visually and with a portable hydrocarbon analyzer shall be required to determine whether VOC emissions are detectable (i.e., greater than 500 ppm above background) from any gap or opening. Any detectable emissions or gaps found in the closed vent system shall be repaired within 15 calendar days of detection.

*Selection of Test Methods and Procedures and Monitoring Requirements*

Several emissions measurement and monitoring methods were identified and analyzed in the development of the proposed standards. Evaluation of these alternative methods was based upon results of emission testing conducted at petroleum refineries.

One method of emissions measurement is the direct measurement of mass emissions per unit of time (e.g., kg/hr from each source). For process drain systems subject to these standards, direct measurement would require "bagging" techniques for the measurement of mass emissions. "Bagging" means to enclose a process drain with a shroud in order to capture all of the emissions from the source. The shroud must be attached securely to the drain in order to ensure complete capture of emissions and a flow measurement device is needed to measure the volumetric emission rate. After an appropriate equilibration time, which depends on the shroud and the volatilization rate (5 to 30 minutes), a sample of the effluent from the shroud is taken to determine the VOC concentration. The VOC mass emission rate is then calculated based on the low volumetric flow rate and VOC concentration. Because of the large numbers of process drains in an affected facility, as well as their diverse locations, direct measurements of emission rates would be costly, time-consuming, and impractical for routine testing. Therefore, direct measurement of VOC emissions was not selected as the emission measurement method for individual drain systems. This decision was one of the reasons for not selecting a performance standard as the format for the proposed standards for individual drain systems.

Indirect emissions measurement or monitoring methods that would yield qualitative indications of VOC emission levels were also evaluated. These methods include: (1) Periodic visual inspections of potential emission points for indications of emissions or equipment problems; (2) periodic measurements of VOC emissions with a portable hydrocarbon detector.

In the case of individual drain systems, the proposed standards call for

weekly visual or physical inspections of water seals in drains to ensure that proper water levels are maintained and that caps are in place. Determination of proper water levels can be done visually in most cases, or may require use of a dip stick or other probe. The standards also require semiannual visual inspections of junction box covers to determine if junction box covers are securely in place. These inspections would take only a few minutes at most and can be carried out as a part of routine plant activities.

The use of portable hydrocarbon detectors to measure emissions from process drain systems was considered. However, it would be difficult to distinguish between emissions escaping through the water seal and emissions from the process drain pipe. For this reason, use of a portable hydrocarbon analyzer would not be a good indicator of whether the water seal controls on process drains are effective. Because of this practical limitation, no monitoring other than periodic inspections of water levels and caps is proposed for individual drains.

For junction boxes, oil-water separators with fixed roofs, and air flotation systems, periodic monitoring with a portable hydrocarbon analyzer of VOC emissions from roof seals, around doors and other openings, and from control device seals is a practical and economical method. Use of portable hydrocarbon analyzers to detect emissions from junction box covers, oil-water separators with fixed roofs, and air flotation systems should occur initially and during semiannual inspections of seals, gaskets, and other equipment, and after repairs or maintenance. The proposed standards require that covers on junction boxes and fixed roofs, doors, and control devices on oil-water separators and air flotation systems be constructed in a manner so as to have no detectable VOC emissions from emission interfaces, defined as less than 500 ppm above background levels at the seal interface, according to Method 21 test procedures.

Test Method 21 incorporates the use of a portable hydrocarbon detector to measure the concentration of VOC at a source to yield a qualitative or semiquantitative indication of the VOC emission rate from the source. The general approach of this technique assumes that if VOC emissions exist, there is an increased hydrocarbon concentration in the vicinity of the emission interface. Tests in petroleum refineries have established general concentration versus mass emission relationships for various fugitive emission sources. Also, tests have indicated that local conditions cause variations in concentration readings at points removed from the surface of the interface on the component where emissions occur. Therefore, the proposed method requires the concentration to be measured at the emission interface.

As discussed in the "Selection of Standards" section of this preamble, the proposed standards would require no detectable emissions from junction box covers, fixed roof seams, access doors and openings, and closed vent systems. A concentration for no detectable emissions has been defined so that when emissions occur they can be detected and when emissions are not occurring they are not mistakenly detected. Based on considerations of the calibration procedures and monitor variability at low meter deflections, 500 ppm was selected as the definition of no detectable emissions. Thus, in this case, no detectable emissions means a VOC concentration of less than 500 ppm above background concentration at the emission interface.

The portable hydrocarbon detector used in the proposed monitoring program would be required to conform to several specifications to ensure consistent industry-wide monitoring practices, effective VOC emission reduction efforts, and safe emission detection programs. Equipment specifications are in Method 21 and are summarized as follows: (1) The instrument shall respond to total hydrocarbons or combustible gases. Detector types which may meet this requirement include catalytic oxidation, flame ionization, infrared absorption, and photoionization; (2) the instrument shall be safe for operation in explosive atmospheres; (3) the instrument shall incorporate an appropriate range or dilution option so that concentration levels of 10,000 ppmv can be measured; (4) the instrument shall be equipped with a pump so that a continuous sample can be provided to the detector. The nominal sample flow rate shall be 0.5-3 liters per minute; (5) the scale of the instrument readout meter shall be readable to ±5 percent at 10,000 ppmv.

The proposed standards would require that the monitoring instrument be calibrated before each inspection or monitoring survey. The proposed standards would require that the monitoring instrument be calibrated with methane or n-hexane. The required calibration gases would be a zero gas (air, less than 10 ppm hydrocarbon) and a methane-air or normal hexane-air mixture of approximately 10,000 ppmv. If cylinder calibration gas mixtures would be used, they would have to be analyzed and certified by the manufacturer to within ±2 percent accuracy as required in Method 21. Calibration gases prepared by the user according to an accepted gaseous standards preparation procedure would also have to be accurate within ±2 percent, as required in Method 21.

Method 21 requires that the monitoring instrument would be subjected to other performance requirements prior to being placed in service for the first time. The instrument would be subjected to these performance criteria every 6 months and after any modification or replacement of the instrument detector.

For oil-water separators and air flotation systems equipped with a closed vent system and control device, direct measurement of emissions to monitor operations would require use of continuous monitoring systems. There are at present no continuous monitoring systems available which can be used to monitor control device operation in units of VOC removal efficiency over an extended period. Continuous monitoring would require measurement not only of inlet and exhaust VOC concentrations, but also inlet and exhaust volumetric flow rates. An overall cost for a complete monitoring system is difficult to estimate due to the number of component combinations possible. The purchase and installation cost of an entire monitoring system (including VOC concentration monitors, flow measurement devices, recording devices, and automatic data reduction) is estimated to be $25,000. Operating costs are estimated at $25,000 per year. Thus, direct measurement of emissions for operative monitoring is not proposed for facilities equipped with a control device due to the potentially high cost and lack of a demonstrated monitoring system for extended use.

Monitoring equipment is commercially available, however, to monitor the operational or process variables associated with vapor recovery devices such as carbon adsorbers. The variable which would yield the best indication of system operation is VOC concentration at the adsorber outlet. Extremely accurate measurements would not be required because the purpose of the monitoring would not be to determine exact outlet emissions, but rather to indicate operational and maintenance practices regarding the control device. Thus, the accuracy of a Method 25A type instrument would not be needed and less accurate, less costly

instruments which use different detection principles would be sufficient. Monitors for this type of continuous monitoring cost about $6,000 to purchase and install, and $6,000 annually to calibrate, operate, maintain, and reduce the data.

For some vapor recovery devices, there may be another process parameter besides the exhaust VOC concentration which is an accurate indicator of the system operation. Substituting the monitoring of vapor recovery device process parameters for the monitoring of exhaust VOC concentration would be acceptable if it can be demonstrated that the value of the process parameter is an indicator of proper operation of the processing system. The parameters to be monitored at each affected facility with a vapor control device shall be indicated in plant records which shall be available for review by enforcement officials.

Incinerators used to comply with the proposed standards need to be maintained and operated properly if the standards are to be achieved on a continuous basis. Continuous inlet and outlet emission monitoring would be the preferred method of monitoring because it would provide a continuous, direct measurement of actual emissions and destruction efficiency. However, no continuous monitor measuring total VOC has been demonstrated for incinerators controlling vent streams. Moreover, such a monitoring system would be extremely complex and labor-intensive, and it would be relatively expensive when two monitors are required to ensure that a certain destruction efficiency is maintained.

The incinerator operating parameters that affect performance are temperature, type of compound, residence time, inlet concentration, and flow regime. Of these variables, inlet concentration and flow regime have the smallest impact on incinerator performance. Residence time is essentially set after incinerator construction unless the vent stream flow is changed. Moreover, at temperatures above 760 °C, compound type has little effect on combustion efficiency.

Test results and theoretical calculations show that low temperatures can cause significant decreases in control device efficiency. Test results also indicate that temperature increases can also adversely affect control device efficiency. In terms of cost, temperature monitors are relatively inexpensive, costing less than $5,000 installed with strip charts, and are easily and cheaply operated. Given the large effect of temperature on efficiency and the low cost of temperature monitors, this variable is clearly an effective parameter to monitor.

Where a combustion device is used to incinerate wastewater streams alone, flow rate can be an important measure of destruction efficiency since it relates directly to residence time in the combustion device. Flow rates of fugitive emission vent streams are typically small in comparison to other streams that may be ducted to the same incinerator. As a result, flow rate may not always give a reliable indication of the vent stream residence time in the incinerator. But an indication of emission vent stream flow rate to the incinerator ensures that VOC is being routed for proper destruction.

Because flares are not enclosed combustion devices, it is not feasible to measure combustion parameters. Moreover, temperatures and residence times are more variable throughout the combustion zone for flares than for enclosed devices and, therefore, such measurements would not necessarily provide a good indicator of flare performance even if measurable.

The typical method of monitoring continuous operation of a flare is visual inspection. However, if a flare is operating smokelessly, it can be difficult to determine if a flame is present and it may take several hours to discover. The presence of a flame can also be determined through the use of a heat sensing device, such as a thermocouple or ultra-violet (U-V) beam sensor on a flare's pilot flame. If a flame is absent, the temperature probe can be used to alert the plant operator.

The cost of available thermocouple sensors ranges in price from $800 to $3,000 per pilot. The cost of a U-V sensor is approximately $2,000. However, the U-V system would not be as accurate as a thermocouple in indicating the presence of a flame. The U-V beam is influenced by ambient infrared radiation that could affect the accuracy. Interference between different U-V beams would make it difficult to monitor flares with multiple pilots. The U-V sensors are designed primarily to monitor flames within enclosed combustion devices. To ensure that a vent stream is being continuously vented to a flare, a flow indicator can be installed on the vent stream.

*Selection of Recordkeeping and Reporting Requirements*

Recordkeeping and reporting would be required to provide documentation for the assessment of compliance with the proposed standards. Review of the reports and records would provide information for enforcement personnel to assess implementation of the proposed standards. Compliance with the proposed standards would be determined by inspection and review of records.

*Recordkeeping.* Two recordkeeping alternatives were considered in evaluating the amount of recorded information needed to assess compliance with the proposed standards. The first alternative would require no formal recordkeeping. However, failure to require documentation of the proposed equipment standards would be an inadequate mechanism for verifying compliance with the proposed standards. For example, the effectiveness of the proposed standards is dependent on the effectiveness of the closed vent systems and vapor control devices which are subject to failures and improper operation. Written records would be needed for enforcement personnel to evaluate inspection findings. Periodic inspection of these devices is necessary to ensure the effectiveness of the standards. Therefore, the alternative of no formal recordkeeping was rejected.

The second alternative would require recordkeeping to document information relating to equipment specifications, work practices, and design criteria. Information would be recorded in sufficient detail to enable owners or operators to demonstrate compliance with the proposed standards. This alternative would require only those records necessary to ensure the effective implementation of the proposed standards. Owners or operators would be required to keep records of design specifications of all equipment installed to comply with the proposed standards, such as traps, gas-tight covers, roof seals, control devices, and other equipment. This information will be used to ensure that equipment design and operating specifications are attained. Generally, this information will be readily available because it is needed for construction purposes. As a result, there should be no additional burden from this requirement.

The proposed standards would also require the owner or operator to record and maintain operating specifications for the closed vent systems and control devices used to comply with the standards. The operating specifications would include a description of the parameter (or parameters) to be monitored to ensure that the control device is operated in conformance with its design. The owner or operator would be required to maintain the specifications in a readily accessible location and to operate and monitor the parameters of the closed vent systems

and control devices in accordance with the specifications.

The proposed standards also require periodic inspections of the roof covers on junction boxes and of the roof seals, doors, and other openings on oil-water separators and air flotation systems. In some instances, these inspections would include detection of VOC emissions through the use of a portable hydrocarbon detector. The proposed standards would require that records on these inspections and monitoring tests be kept. In addition, because process drains must be visually or physically inspected to ensure the presence of water in P-leg traps and seal pots, and because IAF systems must be visually inspected to ensure that all doors and other openings are kept closed, records on the inspections where a problem is detected would be required to be kept. The records would be needed to ensure continuing proper use of the required equipment.

*Reporting.* Two alternatives were considered in evaluating the reporting information needed to assess compliance with the proposed standards. These alternatives represent varying levels of enforcement monitoring of the proposed standards. Enforcement personnel would review the reports prepared by industry personnel on the status of implementing the proposed standards. Review of reports reduces the Agency resource burden associated with in-plant inspections.

The first alternative would require no formal reporting of compliance with the proposed standards other than the initial reports required by the General Provisions of 40 CFR 60.7. These initial reports are needed for notification of construction or modification, reconstruction, and startup, shutdown, or malfunction. These reporting requirements only include notification by the owner or operator of an intention to comply with the proposed standards. No information to verify the success of the owner or operator's compliance with the proposed standards would be reported. Thus, compliance with the proposed standards would be assessed only through in-plant inspections. The EPA considers this approach unreasonable in light of the needs to ensure compliance and to effectively use Agency resources.

The second reporting alternative would require the submittal of information in sufficient detail to ensure the implementation and maintenance of the proposed standards. These requirements would require the submission of initial and semiannual reports. The initial report would attest to the proper installation of the equipment required by the proposed standards and to the completion of all initial inspections and monitoring surveys. Subsequent reports would include a certification that the required inspections of drains, junction boxes, sewer lines, oil-water separators, air flotation systems and closed vent systems have been carried out. Semiannual reports would also include a summary of the information required by the recordkeeping requirements (e.g., inspection dates where emissions or problems are identified, inspection results, corrective action taken, etc.).

The second alternative was selected as the reporting requirement for the proposed standards. This alternative provides for initial and semiannual reporting. The burden of reporting on industry would be reasonable and enforcement of the standards would be enhanced. Compliance would be assessed through these reports and periodic inspection of plant records and equipment.

## Administrative Requirements

### *Public Hearing*

A public hearing will be held, if requested, to discuss the proposed standards in accordance with section 307(d)(5) of the Clean Air Act. Persons wishing to make oral presentations should contact EPA at the address given in the **ADDRESSES** section of this preamble. Oral presentations will be limited to 15 minutes each. Any member of the public may file a written statement with EPA before, during, or within 30 days after the hearing. Written statements should be addressed to the Central Docket Section address given in the **ADDRESSES** section of this preamble.

A verbatim transcript of the hearing and written statements will be available for public inspection and copying during normal working hours at EPA's Central Docket Section in Washington, DC (see **ADDRESSES** section of this preamble).

### *Docket*

The docket is an organized and complete file of all the information submitted to or otherwise considered by EPA in the development of this proposed rulemaking. The principal purposes of the docket are: (1) To allow interested parties to identify and locate documents so that they can effectively participate in the rulemaking process; and (2) to serve as the record in case of judicial review (except for interagency review materials) [Section 307(d)(7)(A)].

### *Clean Air Act Procedural Requirements*

1. *Administrator Listing—Section 111.* As prescribed by section 111 of the Clean Air Act, as amended, establishment of standards of performance for petroleum refinery wastewater systems was preceded by the Administrator's determination (40 CFR 60.16, 44 FR 49222, dated August 21, 1979) that petroleum refinery fugitive sources contribute significantly to air pollution which may reasonably be anticipated to endanger public health or welfare.

2. *Periodic Review—Section 111.* This regulation will be reviewed 4 years from the date of promulgation as required by the Clean Air Act. This review will include an assessment of such factors as the need for integration with improvements in emission control technology and reporting requirements.

3. *External Participation—Section 117.* In accordance with section 117 of the Act, publication of this proposal was preceded by consultation with appropriate advisory committees, independent experts, and Federal departments and agencies. In addition, numerous meetings were held with industry representatives and trade associations during development of the proposed standards. The Administrator will welcome comments on all aspects of the proposed regulation, including economic and technological issues.

4. *Economic Impact Assessment—Section 317.* Section 317 of the Clean Air Act requires the Administrator to prepare an economic impact assessment for any new source standard of performance promulgated under section 111(b) of the Act. An economic impact assessment was prepared for the proposed regulations and for other regulatory alternatives. All aspects of the assessment were considered in the formulation of the proposed standards to insure that the proposed standards would represent the best system of emission reduction considering costs. The economic impact assessment is included in the BID.

### *Office of Management and Budget Reviews*

1. *Paperwork Reduction Act.* The information collection requirements in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* Comments on these requirements should be submitted to the Office of Information and Regulatory Affairs of OMB, marked "Attention: Desk Officer for EPA, as well as to the

EPA." The final rule will respond to any OMB or public comments on the information collection requirements.

2. *Executive Order 12291 Review.* Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This proposed regulation is not major because it 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 major. The industry-wide annualized costs in the fifth year after the standards would go into effect would be $1.1 million, less than the $100 million established as the first criterion for a major regulation in the Order. The estimated price increase of 0.1 percent associated with the proposed standards would not be considered a "major increase in costs or prices" specified as the second criterion in the Order. The economic analysis of the proposed standards' effect on the industry did not indicate any significant adverse effects on competition, investment, productivity, employment, innovation, or the ability of U.S. firms to compete with foreign firms (the third criterion in the Order.)

This regulation was submitted to OMB for review as required by Executive Order 12291. Any written comments from OMB to EPA and any EPA responses to those comments will be included in docket No. A-83-07. This docket is available for public inspection at EPA's Central Docket Section, which is listed under the **ADDRESSES** section of this notice.

*Regulatory Flexibility Act Compliance*

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this rule, if promulgated, will not have a significant economic impact on a substantial number of small business entities because the number of small entities that would be affected is not substantial.

**List of Subjects in 40 CFR Part 60**

Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements, Petroleum refining.

Dated: April 21, 1987.

**Lee M. Thomas,**

*Administrator.*

**PART 60—[AMENDED]**

It is proposed that 40 CFR Part 60 be 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, 7601).

2. By adding a new Subpart QQQ to read as follows:

## Subpart QQQ—Standards of Performance for VOC Emissions from Petroleum Refinery Wastewater Systems

Sec.
60.690 Applicability and designation of affected facility.
60.691 Definitions.
60.692-1 Standards: General.
60.692-2 Standards: Individual drain systems.
60.692-3 Standards: Oil-water separators.
60.692-4 Standards: Dissolved air flotation systems.
60.692-5 Standards: Induced air flotation systems.
60.692-6 Standards: Individual drain system and ancillary downstream sewer lines, oil-water separators, and air flotation systems (aggregate facility).
60.692-7 Standards: Closed vent systems and control devices.
60.692-8 Standards: Delay of repair.
60.692-9 Standards: Delay of compliance.
60.693-1 Alternative standards for individual drain systems.
60.693-2 Alternative standards for oil-water separators.
60.693-3 Alternative standards for air flotation systems.
60.694 Permission to use alternative means of emission limitation.
60.695 Test methods and procedures.
60.696 Recordkeeping requirements.
60.697 Reporting requirements.
60.698 Delegation of authority.

## Subpart QQQ—Standards of Performance for VOC Emissions from Petroleum Refinery Wastewater Systems

### § 60.690 Applicability and designation of affected facility.

(a)(1) The provisions of this subpart apply to affected facilities located in petroleum refineries for which construction, modification, or reconstruction is commenced after May 4, 1987.

(2) An individual drain system is a separate affected facility.

(3) An oil-water separator is a separate affected facility.

(4) An air flotation system is a separate affected facility.

(5) An individual drain system together with ancillary downstream sewer lines, oil-water separators, and air flotation systems is a separate affected facility.

### § 60.691 Definitions.

As used in this subpart, all terms not defined herein shall have the meaning given them in the Act or in Subpart A of 40 CFR Part 60, and the following terms shall have the specific meanings given them.

"Air flotation system" means equipment in which air or gas is introduced by mechanical means into wastewater, causing suspended, colloidal, emulsified, or dissolved substances to rise to the surface of the wastewater, from which they are removed. The term includes the flotation chamber, flotation tank, chemical addition equipment, auxiliary pumping equipment, flocculation tank, and other auxiliary tanks, basins, and equipment associated with the treatment of wastewater through the process of air flotation. The term does not include air flotation systems not used for the separation of oil and water.

"Catch basin" means an open drain which serves as a collection point for both stormwater runoff from refinery surfaces and refinery wastewater from process drains.

"Closed vent system" means a system that is not open to the atmosphere and is composed of piping, connections, and, if necessary, flow inducing devices that transport gas or vapor from an emission source to a control device.

"Completely closed drain system" means an individual drain system that is not open to the atmosphere and is equipped and operated with a closed vent system and control device complying with the requirements of § 60.692-7.

"Control device" means an enclosed combustion device, vapor recovery system or flare.

"Dissolved air flotation system" means an air flotation system in which the wastewater is saturated with air or gas under pressure and passed into a flotation chamber at atmospheric pressure. The term does not include dissolved air flotation systems not used for the separation of oil and water.

"Fixed roof" means a cover that is mounted to a tank or chamber in a stationary manner and which does not move with fluctuations in wastewater levels.

"Floating roof" means a pontoon-type or double-deck type cover that rests on the liquid surface in an oil-water separator.

"Gas-tight condition" means operated with no detectable emissions.

"Individual drain system" means all process drains connected to the first common downstream junction box. The term includes all such drains and common junction box, together with their associated sewer lines and other junction boxes down to the receiving oil-

water separator or other treatment unit, tank or basin.

"Induced air flotation system" means an air flotation system in which air or gas is introduced into wastewater by mechanical shearing, impellers or a nozzle. The term does not include induced air flotation systems not used for the separation of oil and water.

"Junction box" means a man-hole or access point to a wastewater sewer system line.

"No detectable emissions" means less than 500 ppm above background levels, as measured by a detection instrument in accordance with EPA Reference Method 21 in Appendix A of 40 CFR Part 60.

"Oil-water separator" means equipment that separates oil from water as part of a wastewater treatment system and is composed of a skimmer, pumps, hopper, and other auxiliary tanks, basins, and equipment.

"Petroleum refinery" means any facility engaged in producing gasoline, kerosene, distillate fuel oils, residual fuel oils, lubricants, or other products through the distillation of petroleum, or through the re-distillation of petroleum, cracking, or reforming unfinished petroleum derivatives.

"Petroleum" means the crude oil removed from the earth and the oils derived from tar sands, shale, and coal.

"Sewer line" means a lateral, trunk line, branch line, ditch, channel, or other conduit used to convey refinery wastewater to downstream components of a refinery wastewater treatment system.

"Slop oil" means the floating oil and solids which accumulate on the surface of an oil-water separator or air flotation system.

"Stormwater sewer system" means a drain and collection system designed and operated for the purpose of collection of stormwater and which is functionally segregated from the process wastewater collection system.

"Volatile organic compound (VOC)" means any organic compound that forms photochemical oxidants. An organic compound forms photochemical oxidants unless the Administrator determines it does not.

"Wastewater systems" include any component, piece of equipment, or installation that receives, treats or processes oily water from petroleum refinery process units.

"Water seal controls" means a seal pot, P-leg trap, or other type of trap filled with water which has a design capability to create a water barrier between the sewer and the atmosphere.

**§ 60.692-1 Standards: General.**

(a) Each owner or operator subject to the provisions of this subpart shall comply with the requirements of § 60.692-1 to § 60.692-7 except during periods of startup, shutdown, or malfunction.

(b) Compliance with 60.692-1 to § 60.692-7 will be determined by review of records and reports, review of performance test results, and inspection using the methods and procedures specified in § 60.695.

(c) Permission to use alternative means of emission limitation to the requirements of §§ 60.692-2, 60.692-3, 60.692-4, 60.692-5, 60.692-6 may be granted as provided in § 60.694.

(d)(1) Stormwater sewer systems are not subject to the requirements of this subpart.

(2) An owner or operator shall demonstrate compliance with this exclusion as provided in § 60.697(d).

**§ 60.692-2 Standards: Individual drain systems.**

(a)(1) Each drain shall be equipped with water seal controls.

(2) Each drain shall be checked by visual or physical inspection initially and each calendar week thereafter for indications of low water levels or other conditions that would reduce the effectiveness of the water seal controls.

(3) Whenever low water levels or other problems are detected, water shall be added or first efforts at repair shall be made as soon as practicable, but not later than 24 hours after detection, except as provided in § 60.692-8.

(b)(1) Junction boxes shall have a cover and may have an open vent pipe.

(2) Junction box covers shall have a tight seal around the edge and shall be kept in place at all times, except during inspection and maintenance.

(i) Junction boxes shall be visually inspected initially and thereafter semiannually to ensure that the cover is in place and to ensure that the cover has a tight seal around the edge.

(ii) The seal around the junction box cover shall be designed and operated with no detectable emissions, as indicated by an instrument reading of less than 500 ppm above background levels, as determined during an initial and semiannual inspections thereafter by the methods specified in § 60.695.

(iii) If a broken seal or gap is identified which results, or may result, in detectable emissions, first effort at repair shall be made as soon as practicable, but not later than 15 calendar days after the broken seal or gap is identified, except as provided in § 60.692-8.

(c)(1) Sewer lines shall not be open to the atmosphere and shall have no visual gaps or cracks in joints, seals, or other emission interfaces. Sewer lines that are part of a modified or reconstructed facility shall be covered or enclosed in a way so as to have no visual gaps or cracks in joints, seals, or other emission interfaces.

(2)(i) Each sewer line shall be visually inspected initially and semiannually thereafter for indication of cracks, gaps or other problems.

(ii) Whenever cracks, gaps or other problems are detected, repairs shall be made as soon as practicable, but not later than 15 calendar days after identification, except as provided in § 60.692-8.

(d) Each modified or reconstructed individual drain system which has a catch basin in the existing configuration shall be exempt from the provisions of this section.

**§ 60.692-3 Standards: Oil-water separators.**

(a) Each oil-water separator shall be equipped and operated with a fixed roof which meets the following specifications.

(1) The fixed roof shall be installed over the separator tank with no separation between the roof and the separator wall.

(2) If the roof has access doors or openings, such doors or openings shall be gasketed, latched and kept closed at all times during operation of the separator system, except during inspection and maintenance.

(3) The roof, access doors, and openings shall be designed and operated with no detectable emissions, as indicated by an instrument reading of less than 500 ppm above background, as determined during an initial and semiannual inspections thereafter by the methods specified in § 60.695.

(4) Roof seals, access doors and other openings shall be checked by visual inspection initially and semiannually thereafter, and shall be maintained in a gas-tight condition at all times, except during inspection and maintenance.

(5) When a broken seal or gasket is identified which results, or may result, in detectable emissions, first efforts at repair shall be made as soon as practicable, but not later than 15 calendar days after it is identified, except as provided in § 60.692-8.

(b) Slop oil from an oil-water separator shall be collected and reused or disposed of in an enclosed system.

(c) In addition to the requirements of paragraphs (a) and (b) of this section, each oil-water separator with a design

capacity to treat more than 15.8 liters per second (250 gal/min) of refinery wastewater shall be equipped and operated with a closed vent system and control device which meet the requirements of § 60.692-7.

(d) Oil-water separators that are not equipped and operated with a closed vent system and control device may be equipped with a pressure control valve to vent vapors for safety purposes; or as otherwise required for proper system operation.

**§ 60.692-4 Standards: Dissolved air flotation systems.**

(a) Each dissolved air flotation system shall be equipped with a fixed roof which meets the following specifications.

(1) The roof shall be installed over the flotation chamber, flocculation tank, or auxiliary tank, basin or other chamber in a manner so as to have no separation between the roof and the tank, basin or chamber wall.

(2) If the roof, tank, basin or chamber has access doors or other openings, such doors or openings shall be gasketed, latched and kept closed at all times during operation of the air flotation system, except during inspection and maintenance.

(b) Roofs, access doors, and other openings shall be designed and operated with no detectable emissions, as indicated by an instrument reading of less than 500 ppm above background, as determined during an initial and semiannual inspections thereafter by the methods specified in § 60.695.

(c) All seals, access doors, and other openings through which vapors or gases can escape shall be checked by visual inspection initially and semiannually thereafter, and shall be maintained in a gas-tight condition at all times, except during inspection and maintenance.

(d) If a broken seal or gasket is identified which results, or may result, in detectable emissions, first efforts at repair shall be made as soon as practicable, but not later than 15 calendar days after the broken seal or gasket is identified, except as provided in § 60.692-8.

(e) Dissolved air flotation systems may be equipped with a pressure control valve to vent vapors for safety purposes, or as otherwise required for proper system operation.

(f) Dissolved air flotation systems that are equipped with a closed vent system and control device shall be designed and operated to comply with the requirements of § 60.692-7.

**§ 60.692-5 Standards: Induced air flotation systems.**

(a) Each induced air flotation system with a design capacity to treat more than 15.8 liters per second (250 gal/min) of refinery wastewater shall be equipped with a fixed roof which meets the following specifications.

(1) The roof shall be installed over the flotation chamber, flocculation tank, or auxiliary tank, basin, or other chamber in a manner so as to have no separation between the roof and the tank, basin or chamber wall.

(2) If the roof, tank, basin or chamber has access doors or other openings, such doors or openings shall be gasketed, latched and kept closed at all times during operation of the air flotation system, except during inspection and maintenance.

(b) Roofs, access doors, and other openings shall be designed and operated with no detectable emissions, as indicated by an instrument reading of less than 500 ppm above background, as determined during an initial and during semiannual inspections thereafter by the methods specified in § 60.695.

(c) Access doors and other openings on induced air flotation systems shall be checked by visual inspection initially and weekly thereafter to ensure the system is being operated in a gas-tight condition.

(d) If a broken seal or gasket is identified which results, or may result, in detectable emissions, first efforts at repair shall be made as soon as practicable, but not later than 15 calendar days after it is identified, except as provided in § 60.692-8.

(e) Induced air flotation systems may be equipped with a pressure control valve to vent vapors for safety purposes, or as required for proper system operation.

(f) Induced air flotation systems that are equipped with a closed vent system and control device shall be designed and operated to comply with the requirements of § 60.692-7.

**§ 60.692-6 Standards: Individual drain system and ancillary downstream sewer lines, oil-water separators, and air flotation systems (aggregate facility).**

(a) The new, modified, or reconstructed component of the aggregate system and its downstream components shall comply with the requirements of § 60.692-2 to § 60.692-5.

(b) A modified or reconstructed individual drain system which has a catch basin in the existing configuration shall be exempt from the requirements of § 60.692-2.

**§ 60.692-7 Standards: Closed vent systems and control devices.**

(a) Vapor recovery systems (for example, condensers and adsorbers) shall be designed and operated to recover the VOC emissions vented to them with an efficiency of 95 percent or greater.

(b) Enclosed combustion devices shall be designed and operated to reduce the VOC emissions vented to them with an efficiency of 95 percent or greater or to provide a minimum residence time of 0.75 seconds at a minimum temperature of 816 °C.

(c) Flares used to comply with this subpart shall comply with the requirements of § 60.18.

(d)(1) Owners or operators of control devices used to comply with the provisions of this subpart shall monitor operational or process parameters associated with these control devices to ensure that they are operated and maintained in conformance with their design specifications.

(2) For vapor recovery devices, owners or operators shall monitor the concentration of VOC at the vapor recovery device outlet.

(3) For enclosed combustion devices, the operating temperature shall be monitored.

(4) For flares, the presence of a flame shall be monitored by use of a thermocouple or other heat sensing device on a flare's pilot flame.

(5) An alternative operational or process parameter to those specified in (d) (1) through (4) of this section may be monitored if it can be demonstrated that another parameter will ensure that the control device is operated in conformance with its design specifications.

(e) Closed vent systems and control devices used to comply with provisions of this subpart shall be operated at all times when emissions may be vented to them.

(f)(1) Closed vent systems shall be designed and operated with no detectable emissions, as indicated by an instrument reading of less than 500 ppm above background, as determined during a semiannual inspection by the methods specified in § 60.695.

(2) Closed vent systems shall be monitored initially to determine compliance with this section in accordance with § 60.8 and § 60.13, semiannually and at other times as requested by the Administrator.

(3) Closed vent systems shall be purged to direct vapor to the control device.

(4) A flow indicator shall be installed on a vent stream to a control device to

ensure that the stream is being continuously routed to the device.

(5) All gauging and sampling devices shall be gas-tight except when gauging or sampling is taking place.

**§ 60.692-8 Standards: Delay of repair.**

(a) Delay of repair of facilities that are subject to the provisions of this subpart will be allowed if the repair is technically impossible without a complete or partial refinery or process unit shutdown.

(b) Repair of such equipment shall occur before the end of the next refinery or process unit shutdown.

**§ 60.692-9 Standards: Delay of compliance.**

(a) Delay of compliance of modified individual drain systems with ancillary downstream treatment components will be allowed if compliance with the provisions of this subpart cannot be achieved without a refinery or process unit shutdown.

(b) Installation of equipment necessary to comply with the provisions of this subpart shall occur no later than the next scheduled refinery or process unit shutdown.

**§ 60.693-1 Alternative standards for individual drain systems.**

(a) An owner or operator may elect to construct and operate a completely closed drain system.

(b) Each drain and junction box in a completely closed system shall be designed and operated with no detectable emissions, as indicated by an instrument reading of less than 500 ppm above background, as determined during an initial and semiannual inspections thereafter by the methods specified in § 60.695.

(c) Completely closed drain systems shall be monitored to determine compliance with this section initially in accordance with § 60.8, semiannually, and at other times as requested by the Administrator.

(d) An owner or operator must notify the Administrator in the report required in § 60.7 that the owner or operator has elected to construct and operate a completely closed drain system.

(e) If an owner or operator elects to comply with the provisions of this section, then the owner or operator does not need to comply with the provisions of § 60.692-2 or § 60.694.

(f) Sewer lines shall not be open to the atmosphere and shall have no visual gaps or cracks in joints, seals or other emission interfaces. Sewer lines that are part of a modified or reconstructed facility shall be covered or enclosed in a manner so as to have no visual gaps or cracks in joints, seals, or other emission interfaces.

**§ 60.693-2 Alternative standards for oil-water separators.**

(a) An owner or operator may elect to construct and operate a floating roof which meets the following specifications.

(1) Each floating roof shall be equipped with a closure device between the wall of the separator and the roof edge. The closure device is to consist of a primary seal and a secondary seal.

(i) The primary seal shall be a liquid-mounted seal.

(A) A liquid-mounted seal means a foam- or liquid-filled seal mounted in contact with the liquid between the wall of the separator and the floating roof.

(B) The gap width between the primary seal and the separator wall shall not exceed 3.8 cm (1.5 in) at any point.

(C) The total gap area between the primary seal and the separator wall shall not exceed 66.1 $cm^2/m$ (3.2 $in^2/ft$) of separator wall perimeter.

(ii) The secondary seal shall be above the primary seal and cover the annular space between the floating roof and the wall of the separator.

(A) The gap width between the secondary seal and the separator wall shall not exceed 1.3 cm (0.5 in) at any point.

(B) The total gap area between the secondary seal and the separator wall shall not exceed 6.6 $cm^2/m$ (0.32 $in^2/ft$) of separator wall perimeter.

(iii) The maximum gap width and area shall be determined by the methods and procedures specified in § 60.695(f).

(A) Measurement of primary seal gaps shall be performed within 60 calendar days of initial introduction of refinery wastewater and once every 5 years thereafter.

(B) Measurement of secondary seal gaps shall be performed within 60 calendar days of initial introduction of refinery wastewater and once every year thereafter.

(iv) The owner or operator shall make necessary repairs within 30 calendar days of identification of seals not meeting the requirements listed in (a)(1)(i) and (ii) of this section.

(2) Each opening in the roof shall be equipped with a gasketed cover, seal, or lid which shall be maintained in a closed position at all times, except during inspection and maintenance.

(3) The roof shall be floating on the liquid (i.e., off the roof supports) at all times except during abnormal conditions (i.e., low flow rate).

(4)(i) Access doors and other openings shall be visually inspected initially and semiannually thereafter to ensure that there is a tight fit around the edges.

(ii) When a broken seal or gasket on an access door or other opening is identified, it shall be repaired as soon as practicable, but not later than 30 calendar days after it is identified, except as provided in § 60.692-8.

(b) Slop oil from an oil-water separator shall be collected and reused or disposed of in an enclosed system.

(c) If an owner or operator elects to comply with the provisions of this section, then the owner or operator does not need to comply with the provisions of § 60.692-3 or § 60.694.

**§ 60.693-3 Alternative standards for air flotation systems.**

(a) An owner or operator system may elect to construct and operate a closed vent system and control device which meet the requirements of § 60.692-7.

(b) If an owner or operator elects to comply with the provisions of this section, then the owner or operator does not need to comply with the provisions of §§ 60.692-4, -5, or § 60.694.

**§ 60.694 Permission to use alternative means of emission limitation.**

(a) If, in the Administrator's judgment, an alternative means of emission limitation will achieve a reduction in VOC emissions at least equivalent to the reduction in VOC emissions achieved by some requirement in § 60.692, the Administrator will publish in the **Federal Register** a notice permitting the use of the alternative means for purposes of compliance with that requirement. The notice may condition the permission on requirements related to the operation and maintenance of the alternative means.

(b) Any notice under subsection (a) shall be published only after notice and an opportunity for a hearing.

(c) Any person seeking permission under this section shall collect, verify, and submit to the Administrator information showing that the alternative means achieves equivalent emission reductions.

**§ 60.695 Test methods and procedures.**

(a) Each owner or operator of a facility subject to the provisions of this subpart shall comply with the test methods and procedures requirements provided in this section.

(b) Measurement of detectable emissions, as required in § 60.692, shall comply with the following requirements:

(1) Reference Method 21 shall be used.

(2) The hydrocarbon detection instrument shall meet the performance criteria of Reference Method 21.

(3) The instrument shall be calibrated before use on each day of its use by the methods specified in Method 21.

(4) Calibration gases shall be:

(i) Zero air (less than 10 ppm of hydrocarbon in air); and

(ii) A mixture of either methane or n-hexane and air at a concentration of approximately, but less than, 10,000 ppm methane or n-hexane.

(5) The instrument probe shall be traversed around all potential emission interfaces as close to the interface as possible as described in Reference Method 21.

(c) When junction boxes, completely closed drain systems, fixed roofs, or closed vent systems are tested for compliance with the no detectable emission limit, as required in § 60.692 or § 60.693, the test shall comply with the following requirements:

(1) The requirements of §§ 60.695(b)(1)–(4) shall apply.

(2) The background level shall be determined as described in Reference Method 21.

(3) The instrument probe shall be traversed around all potential emission interfaces as close to the interface as possible as described in Reference Method 21.

(4) The arithmetic difference between the maximum concentration indicated by the instrument and the background level is compared with 500 ppm for determining compliance.

(d) Test methods and procedures for flares used to comply with this subpart shall comply with the requirements of § 60.18.

(e) After installation and prior to use of any equipment installed in compliance with the requirements of §§ 60.692–2, 60.692–3, 60.692–4, 60.692–5, 60.692–6, 60.692–7 or § 60.693, owners or operators shall inspect such equipment for indications of potential emissions, defects, or other problems that may cause the requirements of this subpart not to be met. Points of inspection shall include, but not be limited to seals, flanges, joints, gaskets, hatches, and caps.

(f) After installing the control equipment required to meet § 60.693–2(a), the owner or operator shall:

(1) Determine the maximum gap widths between the primary seal and the wall and the secondary seal and the wall of the separator according to the following frequency:

(i) Measurements of gaps between the separator wall and the primary seal shall be performed within 60 calendar days of the initial introduction of refinery wastewater and once every 5 years thereafter.

(ii) Measurements of gaps between the separator wall and the secondary seal shall be performed within 60 calendar days of the initial introduction of refinery wastewater and once every year thereafter.

(iii) If any source ceases to treat refinery wastewater for a period of 1 year or more, subsequent introduction of refinery wastewater into the separator shall be considered an initial introduction of refinery wastewater for the purposes of paragraphs (f)(1)(i) and (f)(1)(ii) of this section.

(2) Measure gap widths and areas in the primary and secondary seals individually by the following procedures.

(i) Measure seal gaps when the separator is filled to the design operating level and when the roof is floating off the roof supports.

(ii) Measure seal gaps around the entire perimeter of the separator in each place where a 0.3 cm (0.125 in) diameter uniform probe passes freely (without forcing or binding against seal) between the seal and the wall of the separator and measure the gap width and peripheral distance of each such location.

(iii) The total surface area of each gap described in (f)(2)(ii) of this section shall be determined by using probes of various widths to measure accurately the actual distance from the wall to the seal and multiplying each such width by its respective perimetrical distance.

(iv) Add the gap surface area of each gap location for the primary seal and the secondary seal individually, divide the sum for each seal by the nominal perimeter of the separator basin and compare each to the maximum gap area as specified in § 60.693–2.

**§ 60.696 Recordkeeping requirements.**

(a) Each owner or operator of a facility subject to the provisions of this subpart shall comply with the recordkeeping requirements of this section.

(b)(1) For individual drain systems subject to § 60.692–2, the location, date, and corrective action shall be recorded for each drain where the water seal is dry or otherwise breached, as determined during the weekly visual or physical inspection.

(2) For junction boxes subject to § 60.692–2, the location, date, and corrective action shall be recorded for inspections required by § 60.692–2(b) during which detectable emissions are measured or where a problem is identified.

(3) For sewer lines subject to § 60.692–2, the location, date, and corrective action shall be recorded for inspections required by § 60.692–2(c) where a problem is identified.

(c) For oil-water separators, air flotation systems, and completely closed drain systems, the location, date, and corrective action shall be recorded for inspections required by §§ 60.692–3, § 60.692–4, § 60.692–5, or § 60.692–7 or § 60.693 during which detectable emissions are measured or where a problem is identified.

(d)(1) Where emissions are detected or a problem is identified, the expected date of a successful repair shall be recorded if an emission point or equipment problem is not repaired or corrected in 15 calendar days with the exception of drains and floating roofs. Drains shall be corrected as soon as practicable but no later than 24 hours after detection, except as provided in § 60.692–8. Floating roofs shall be repaired as soon as practicable but no later than 30 calendar days after the problem is identified, except as provided in § 60.692–8.

(2) The reason for the delay as specified in § 60.692–8 shall be recorded if an emission point or equipment problem is not repaired or corrected in the specified amount of time.

(3) The signature of the owner or operator (or designee) whose decision it was that repair could not be effected without refinery or process shutdown shall be recorded.

(4) The date of successful repair or corrective action shall be recorded.

(e)(1) A copy of the design specifications for all equipment used to comply with the provisions of this subpart shall be kept for the life of the source in a readily accessible location.

(2) The following information pertaining to the design requirements shall be recorded and kept in a readily accessible location.

(i) Detailed schematics, design specifications, and piping and instrumentation diagrams.

(ii) The dates and descriptions of any changes in the design specifications.

(3) The following information pertaining to the operation and maintenance of closed drain systems and closed vent systems shall be kept in a readily accessible location.

(i) A description of the operating parameters monitored.

(ii) Periods when the closed vent systems and control devices required in § 60.692 are not operated as designed, including periods when a flare pilot does not have a flame.

(iii) Dates of startup and shutdown of the closed vent system and control devices required in § 60.692.

(iv) The dates of each measurement of detectable emissions required in § 60.692 or § 60.693.

(v) The background level measured during each detectable emissions measurement.

(vi) The maximum instrument reading measured during each detectable emission measurement.

**§ 60.697 Reporting requirements.**

(a) An owner or operator electing to comply with the provisions of § 60.693 shall notify the Administrator of the alternative standard selected in the report required in § 60.7.

(b) An owner or operator of a facility subject to this subpart shall submit to the Administrator within 60 days after initial startup a certification that the equipment necessary to comply with these standards has been installed and that the required inspections of process drains, induced air flotation systems, sewer lines, junction boxes, oil-water separators, closed vent systems and control devices, and air flotation systems have been carried out in accordance with these standards. Thereafter, the owner or operator shall submit to the Administrator semiannually a certification that all of the required inspections have been carried out in accordance with these standards.

(c) A report which summarizes all inspections where a water seal is dry or otherwise breached, where emissions are detected, or a problem is identified, including information about the repairs or corrective action taken, shall be submitted initially and semiannually thereafter to the Administrator.

(d) For stormwater sewer systems subject to the exclusion in § 60.692-1(d), an owner or operator shall keep in a readily accessible location plans and specifications which demonstrate that no wastewater from any process units or equipment is directly discharged to the stormwater sewer system.

(e) If compliance with the provisions of this subpart is delayed pursuant to § 60.692-9, the notification required under § 60.7(a)(4) shall include the estimated date of the next scheduled refinery or process unit shutdown after the date of notification and the reason why compliance with the standards is technically impossible without a refinery or process unit shutdown.

**§ 60.698 Delegation of authority.**

(a) In delegating implementation and enforcement authority to a State under section 111(c) of the Act, the authorities contained in paragraph (b) of this section shall be retained by the Administrator and not transferred to a State.

(b) Authorities which will not be delegated to States: Section 60.694.

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Monday
May 4, 1987

# Part III

# Department of Education

## Office of Special Education and Rehabilitative Services

## Projects With Industry; Notice of Fiscal Year 1987 Funding Priorities and Invitation for Applications

## DEPARTMENT OF EDUCATION

### Office of Special Education and Rehabilitative Services

### Projects With Industry; Fiscal Year 1987 Funding Priorities

**AGENCY:** Department of Education.

**ACTION:** Notice of Final Annual Funding Priorities for Fiscal Year 1987.

**SUMMARY:** The Secretary announces annual funding priorities for the Projects With Industry program. The Secretary announces two priorities to direct funds to the areas of greatest need during fiscal year 1987. The final priorities will support applications which propose to: (1) Provide training and employment through formal agreements with businesses and industries, coalitions, and consortia among businesses, industries and labor unions; and (2) provide training and employment to handicapped individuals as they prepare to leave educational settings. These priorities will ensure wide and effective use of program funds.

**EFFECTIVE DATE:** These final annual funding priorities take effect either 45 days after publication in the **Federal Register** or later if Congress takes certain adjournments. If you want to know the effective date of these final priorities, call or write the Department of Education contact person.

**FOR FURTHER INFORMATION CONTACT:** Art Cox, Office of Developmental Programs, Rehabilitation Services Administration, Department of Education, Room 3320, Switzer Building, 400 Maryland Avenue SW., MS 2312, Washington, DC 20202, Telephone: (202) 732-1333.

**SUPPLEMENTARY INFORMATION:** The Projects With Industry (PWI) program was established under Pub. L. 90-391 in 1968 and is currently authorized by section 621 of Title VI of the Rehabilitation Act of 1973, as amended, by Pub. L. 95-602, Pub. L. 98-221, and Pub. L. 99-506. Program regulations are established at 34 CFR Parts 369 and 379. Amendments to these regulations were published in the **Federal Register** on September 23, 1985 (50 FR 38628). The purpose of the program is to promote and develop working partnerships between the rehabilitation community and business, industry, labor organizations or trade associations. Through the development of such partnerships, handicapped individuals are to be provided with training, employment, and supportive services within business, industry or other realistic work settings to prepare them for competitive employment. In addition, projects will provide supportive services as required to maintain the handicapped individual's employment. Projects may also provide other services including: (a) The development and modification of jobs to accommodate the expected needs of such individuals, (b) the distribution of special aids, appliances, or adapted equipment, and (c) the modification of facilities or equipment of the employer that are to be used by handicapped individuals.

Section 621(a)(2) of the Act specifies that agreements under the PWI program shall be jointly developed by the Commissioner of the Rehabilitation Services Administration, the prospective employer, and to the extent practical, the appropriate designated State unit and the handicapped individual involved. Such agreements are to specify the terms of training and employment under the project and other provisions required by law or agreed upon by the participating parties.

#### Funds Available

In fiscal year 1986, $14,547,000 was available for the required continued funding of the 98 PWI projects funded in fiscal year 1985. For fiscal year 1987, $16,070,000 has been made available for the PWI program.

To carry out the provisions of Section 621 of the Rehabilitation Act, as amended, concerning continued receipt of assistance by existing grantees, $14,547,000 will be used to fund the current 98 PWI projects. The remaining $1,523,000 will be used to fund new projects under the two final program priorities.

#### Summary of Comments and Responses

A Notice of Proposed Annual Funding Priorities was published in the **Federal Register** on August 11, 1986, at 51 FR 28742 for the Projects With Industry Program. Ten comments were received in response to the notice.

*Comment.* Eight of the commenters expressed concern that under the proposed priorities the needs of psychiatrically disabled individuals would not be met to the same degree as persons with physical disabilities and requested a special priority to address specifically the needs of this disability group.

*Response.* The purpose of the priorities is to expand PWI services to substantial numbers of disabled individuals having a wide variety of disabilities including mental illness, and not to limit services to one particular disability group.

*Comment.* One commenter suggested that the priorities include a statement of intent to preserve existing successful projects that have viable links with the business and industry community already in place. One commenter suggested that all the priorities be withdrawn as they do not reflect Congressional intent to continue funding for existing projects.

*Response.* In accordance with Pub. L. 99-506, all current projects funded in fiscal year 1986 will again be funded in fiscal year 1987. Since existing projects must be continued, thereby reducing the amount of funds available for new projects, only two program priorities are needed for fiscal year 1987.

Therefore, the priority emphasizing the training and employment of disabled individuals through formal agreements with businesses and industries, and the priority emphasizing the training and employment of disabled individuals ready to leave educational settings, have been selected. These priorities best meet the legislation's intent.

#### Final Priorities

In accordance with Education Department General Administrative Regulations (EDGAR) at 34 CFR 75.105(c), the Secretary will give absolute preference to applications submitted in fiscal year 1987, in response to one of the following priorities.

*Priority 1*

Priority will be given to applications proposing to provide training, supportive services, job development and placement with a number of different businesses and industries. For example, this could include coalitions of independent industries with formal agreements to provide training and job placement, labor unions having agreements with a number of different industries, or single industries with multiple work sites. Under this priority the provision of training and other services would lead to job placement at a variety of work sites.

*Priority 2*

Priority will be given to applications proposing to provide training and supportive services to prepare handicapped individuals for competitive employment as they begin to leave the educational system, including postsecondary educational programs.

(Catalog of Federal Domestic Assistance No. 84.128, Rehabilitation Services—Special Projects)

(29 U.S.C. 795g)

Dated: March 23, 1987.

**William J. Bennett,**

*Secretary of Education.*

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[CFDA No.: 84.128B]

## Applications for New Awards Under the Projects With Industry Program for Fiscal Year 1987; Invitation

### Purpose

Provide grants to industrial, business or commercial enterprises; labor organizations; trade associations; rehabilitation facilities; or designated State units for the purpose of providing handicapped individuals with training, employment, and supportive services in order to prepare them for competitive employment.

*Deadline for Transmittal of Applications:* June 26, 1987.

*Applications Available:* May 13, 1987; *Available Funds:* $1,523,000.

*Estimated Range of Awards:* $100,000-$200,000.

*Estimated Average Size of Awards:* $150,000.

*Estimated Number of Awards:* 10.

*Project Period:* 36 months.

### Applicable Regulations

(a) Regulations governing the Projects With Industry Program (34 CFR Parts 369 and 379); (b) Education Department General Administrative Regulations (34 CFR Parts 74, 75, 77 and 78); and (c) The Notice of Final Priorities published in this issue of the **Federal Register.**

### Priority for Geographic Distribution of Projects

In the 1986 amendments to the Rehabilitation Act, Pub. L. 99-506, Congress mandated that priority be given to geographical areas among the States which are currently not served or underserved by the Projects With Industry program. Pursuant to 29 U.S.C. 795g(i) and 34 CFR 75.105(c)(2)(i), a competitive performance will be given to those applications that demonstrate that the proposed project will serve geographic areas which are currently not served or underserved by the Projects With Industry program.

Any applicant who wishes to be accorded a competitive preference must demonstrate in the application that it is proposing to serve disabled individuals in an underserved area, or is proposing to establish a project in one of the following States currently not served by the Projects With Industry program: Alaska, Hawaii, Mississippi, North Dakota, Oregon, South Carolina, South Dakota, West Virginia, and Wyoming. This competitive preference will be implemented by awarding to those applications meeting this priority up to 20 points in addition to those earned by the applicant under 34 CFR 379.30.

*For Applications or Information Contact:* Art Cox, U.S. Department of Education, 400 Maryland Avenue, SW, Room 3320 Mary E. Switzer Building, MS 2312, Washington, DC 20202. Telephone: (202) 732-1333.

### Program Authority:

29 U.S.C. 795g.

Dated: April 28, 1987.

**Madeleine Will,**

*Assistant Secretary for Special Education and Rehabilitative Services.*

[FR Doc. 87-10063 Filed 5-1-87; 8:45 am]

BILLING CODE 4000-01-M

federal register

Monday
May 4, 1987

# Part IV

# Department of Education

## 34 CFR Part 762

**Office of Educational Research and Improvement Fellows Program; Notice of Proposed Rulemaking and Notice Inviting Applications for Fellowship Awards for Fiscal Year 1987**

**DEPARTMENT OF EDUCATION**

**34 CFR Part 762**

## Office of Educational Research and Improvement Fellows Program

**AGENCY:** Department of Education.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Secretary proposes regulations to govern the Office of Educational Research and Improvement (OERI) Fellows Program. Under this program, the Secretary may award fellowships to individuals to enable them to conduct independent research in the field of education and in fields related to education. These regulations specify how an individual applies for a fellowship, what conditions for eligibility must be met by an applicant, where the fellowship will be conducted, how a fellow is selected, what the responsibilities of a fellow will be, and how the amount of a fellowship is determined.

**DATES:** Comments must be received on or before June 3, 1987.

**ADDRESSES:** All comments concerning these proposed regulations should be addressed to Shannon Weatherly, U.S. Department of Education, Office of Educational Research and Improvement, 555 New Jersey Avenue, NW., Room 600, Washington, DC 20208.

A copy of any comments that concern information collection requirements should also be sent to the Office of Management and Budget at the address listed in the Paperwork Reduction Act section of this preamble.

**FOR FURTHER INFORMATION CONTACT:** Shannon Weatherly, (202) 357-6050.

**SUPPLEMENTARY INFORMATION:**

### Background

The OERI Fellows Program is authorized under section 405(d)(5) of the General Education Provisions Act (20 U.S.C. 1221e(d)(5)). Fellowships may include stipends and allowances for subsistence and travel expenses as provided under Title 5 of the United States Code.

### Executive Order 12291

These proposed regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the Order.

### Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities. Because these provisions would affect only individuals, the regulations would not have an impact on small entities. Individuals are not defined as "small entities" in the Regulatory Flexibility Act.

### Paperwork Reduction Act of 1980

Section 762.32 contains an information collection requirement. As required by section 3504(h) of the Paperwork Reduction Act of 1980, the Department of Education will submit a copy of these proposed regulations to the Office of Management and Budget (OMB) for its review. Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, OMB, Room 3002, New Executive Office Building, Washington, DC 20503; Attention: Joseph F. Lackey, Jr.

### Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding these proposed regulations.

All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in Room 600, 555 New Jersey Avenue, NW., Washington, DC, between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday of each week except Federal holidays.

To assist the Department in complying with the specific requirements of Executive Order 12291 and the Paperwork Reduction Act of 1980 and their overall requirement of reducing regulatory burden, the Secretary invites comment on whether there may be further opportunities to reduce any regulatory burdens found in these proposed regulations.

### Assessment of Educational Impact

The Secretary particularly requests comments on whether the regulations in this document would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

### List of Subjects in 34 CFR Part 762

Education, Educational research, Fellowships, Teachers.

(Catalog of Federal Domestic Assistance Number 84.117, Educational Research and Development)

Dated: April 30, 1987.

**William J. Bennett,**

*Secretary of Education.*

The Secretary proposes to amend Title 34 of the Code of Federal Regulations by adding a new Part 762 to read as follows:

## PART 762—OFFICE OF EDUCATIONAL RESEARCH AND IMPROVEMENT FELLOWS PROGRAM

**Subpart A—General**

Sec.
762.1 What is the Office of Educational Research and Improvement Fellows Program?
762.2 Who is eligible for a fellowship?
762.3 What types of projects may a fellow conduct under this program?
762.4 What regulations apply?
762.5 What definitions apply?

**Subpart B—How Does an Individual Apply for a Fellowship?**

762.10 How does an individual apply for a fellowship?

**Subpart C—How Does the Secretary Award a Fellowship?**

762.20 How is a fellow selected?
762.21 What criteria does the Secretary use to select the fellow?
762.22 How does the Secretary determine the amount of a fellowship?
762.23 What payment methods may the Secretary use?
762.24 What are the procedures for payment of a fellowship award directly to a fellow?
762.25 What are the procedures for payment of a fellowship award through the fellow's employer?

**Subpart D—What Conditions Must Be Met by a Fellow?**

762.30 Where may the fellowship project be conducted?
762.31 What is the duration of a fellowship?
762.32 What reports are required?

Authority: 20 U.S.C. 1221e, unless otherwise noted.

## Subpart A—General

### § 762.1 What is the Office of Educational Research and Improvement Fellows Program?

Under the Office of Educational Research and Improvement (OERI) Fellows Program, the Secretary provides Federal financial assistance enabling individuals to make contributions to the improvement of education by engaging in educational research.

(Authority: 20 U.S.C. 1221e)

### § 762.2 Who is eligible for a fellowship?

(a) Only individuals are eligible to be recipients of fellowships.

(b) Any individual who has training and experience that indicates that he or she has the potential to conduct educational research is eligible to apply for assistance under this program.

(c) An individual must be a citizen of the United States to be eligible for a fellowship under this program.

(Authority: 20 U.S.C. 1221e)

**§ 762.3 What types of projects may a fellow conduct under this program?**

A fellow shall conduct an educational research project addressing one or more areas—

(a) Teaching and learning, including educational institutions and academic disciplines, the economic, social, and policy context of education, and research findings and proven exemplary practices which may be adopted to improve the quality of educational practice;

(b) Education statistics, pertinent to the present condition of education, trends in education and what does and does not work in education;

(c) Library resources and services;

(d) Procedures and techniques for dissemination of education information to policymakers at the Federal, State, and local levels, the education community and the general public; and

(e) Other areas either proposed by the applicant and determined by the Secretary to be worthy of support or established by the Secretary.

(Authority: 20 U.S.C. 1221e)

**§ 762.4 What regulations apply?**

The regulations in this Part 762 apply to this program.

(Authority: 20 U.S.C. 1221e)

**§ 762.5 What definitions apply?**

(a) *Definitions in EDGAR.*

(1) The following terms used in this part are defined in 34 CFR 77.1:

Department
EDGAR
Secretary

(2) The definitions in 34 CFR 77.1 of "Applicant", "Application", "Award", and "Project" do not apply to this part.

(b) *Other definitions.* The following definitions also apply to this part:

"Applicant" means an individual requesting a fellowship under this program.

"Application" means a written request for a fellowship under this program.

"Award" means an amount of funds provided for fellowship activities.

"Educational research" means one or more of the following activities in education or fields related to education: basic and applied research, planning, surveys, assessments, evaluations, investigations, experiments, development, and demonstrations.

"Fellow" means a fellowship recipient under this part.

"Fellowship" means an award made to an individual to carry out an educational research project in OERI.

"Project" means the work to be engaged in by the fellow during the period of the fellowship.

(Authority: 20 U.S.C. 1221e)

## Subpart B—How Does an Individual Apply for a Fellowship?

**§ 762.10 How does an individual apply for a fellowship?**

An individual shall apply to the Secretary for a fellowship award in response to an application notice published by the Secretary in the **Federal Register.**

(Authority: 20 U.S.C. 1221e)

## Subpart C—How Does the Secretary Award a Fellowship?

**§ 762.20 How is a fellow selected?**

The Secretary rates applications using the criteria in § 762.21 and then determines the order in which the applications will be selected. The Secretary may consider the following in making this determination:

(a) The rating of the applications based on the criteria.

(b) Whether the selection of an application would increase the subject matter diversity of fellowship projects awarded under this program.

(Authority: 20 U.S.C. 1221e)

**§ 762.21 What criteria does the Secretary use to rate the fellows?**

The Secretary uses the following criteria in evaluating each applicant for a fellowship:

(a) *Quality of the plan for the proposed activity.* (40 Points) The Secretary reviews the quality of each proposed project to ensure that—

(1) The design of the project is of high quality;

(2) The applicant's project relates to the purposes of the fellowship program; and

(3) The applicant's project is feasible.

(b) *Significance of the proposed project.* (20 Points) The Secretary assesses the significance of each proposed project to ensure that—

(1) The project addresses important issues in American education;

(2) Project results will benefit American education; and

(3) The project will enhance education practice.

(c) *Qualification of the applicant.* (40 Points) The Secretary reviews the qualifications of each applicant to ensure—

(1) The appropriateness and quality of the education and experience of the applicant as they may be related to the proposed project; and

(2) Demonstrated ability to produce a final product which is comprehensive and useful.

(Authority: 20 U.S.C. 1221e)

**§ 762.22 How does the Secretary determine the amount of a fellowship?**

The amount of a fellowship includes—

(a) A stipend, based on—

(1) The fellow's current annual salary prorated for the length of the fellowship; or

(2) If a fellow has no current salary, the fellow's education and experience; and

(b) A subsistence allowance and necessary travel expenses related to the fellowship, consistent with Title 5 U.S.C. Chapter 57.

(Authority: 20 U.S.C. 1221e)

**§ 762.23 What payment methods may the Secretary use?**

(a) The Secretary may pay a fellowship award directly to the fellow or through the fellow's employer.

(b) The Secretary considers the preferences of the fellow in determining whether to pay a fellowship award directly to the fellow or through the fellow's employer; however, the Secretary pays a fellowship award through the fellow's employer only if the employer enters into an agreement with the Secretary to comply with the provisions of § 762.25.

(Authority: 20 U.S.C. 1221e)

**§ 762.24 What are the procedures for payment of a fellowship award directly to the fellow?**

(a) If the Secretary pays a fellowship award directly to the fellow, after the Secretary determines the amount of a fellowship award, the fellowship recipient shall submit a payment schedule to the Secretary for approval. The Secretary advises the recipient to the approved schedule.

(b) If the fellow does not complete the fellowships, the fellow shall return to the Secretary a prorated portion of the stipend and any unused subsistence allowance and travel funds at the time and in the manner required by the Secretary.

(Authority: 20 U.S.C. 1221e)

**§ 762.25 What are the procedures for payment of a fellowship award through the fellow's employer?**

(a) If the Secretary pays a fellowship award through the fellow's employer, the employer shall submit a payment schedule to the Secretary for approval.

(b) The employer shall pay the fellow the stipend and subsistence allowance according to the payment schedule approved by the Secretary. If the fellow does not complete the fellowship, the fellow shall return to the employer a prorated portion of the stipend and any unused subsistence allowance and travel funds. The employer shall return the funds to the Secretary at the time and in the manner required by the Secretary. The employer shall also return to the Secretary any portion of the stipend and subsistence allowance and travel funds not yet paid by the employer to the fellow.

(Authority: 20 U.S.C. 1221e)

## Subpart D—What Conditions Must be Met by a Fellow?

### § 762.30 Where may the fellowship project be conducted?

A fellow carries out a project at OERI in Washington, D.C. unless the Secretary determines that unusual circumstances exist and authorizes the fellow to carry out all or part of the project elsewhere.

(Authority: 20 U.S.C. 1221e)

### § 762.31 What is the duration of a fellowship?

The Secretary awards a fellowship for at least four and no more than 12 months of full-time activity, or the equivalent in less than full-time participation.

(Authority: 20 U.S.C. 1221e)

### § 762.32 What reports are required?

A fellow shall submit a final report to the Secretary no later than 90 days after the completion of the fellowship. Each report must contain a description of the activities conducted by the fellow and a thorough analysis of the degree to which the objectives of the project have been achieved. In addition, the report must include a detailed discussion of how the results of the educational research could be utilized to enhance educational practice in the United States.

(Authority: 20 U.S.C. 1221e)

[FR Doc. 87-10128 Filed 5-1-87; 8:45 am]

BILLING CODE 4000-01-M

## DEPARTMENT OF EDUCATION

### Notice Inviting Applications for Fellowship Awards Under the Office of Educational Research and Improvement Fellows Program for Fiscal Year 1987 (CFDA No.: 84.117)

*Purpose:* To provide Federal financial assistance enabling individuals to make contributions to the improvement of education by engaging in educational research.

*Deadlines for transmittal of application:* June 3, 1987.

*Available funds:* $180,000.

*Estimated range of awards:* $25,000–$60,000.

*Estimated average size of awards:* $40,000.

*Estimated number of awards:* 3–5.

*Project period:* Projects will be no less than four nor more than 12 months of full-time activity or the equivalent in less than full-time participation.

*Applicable regulations:* Regulations governing the Office of Educational Research and Improvement Fellows Program as proposed to be codified in 34 CFR Part 762. (Applications are being accepted based on the Notice of Proposed Rulemaking which is published in this issue of the **Federal Register**. If any subsequent substantive changes are made in the final regulations for this program, applicants will be given an opportunity to revise or resubmit their applications.)

**Transmittal of Applications**

Applications for awards must be mailed or hand delivered on or before the deadline date.

*Applications delivered by mail.* Applications sent by mail must be addressed to the U.S. Department of Education, Office of Educational Research and Improvement, Attention: (CFDA No. 84.117), 555 New Jersey Avenue NW., Room 600, Washington, DC 20208.

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; (2) a mail receipt that is not dated by the U.S. Postal Service.

An applicant should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

An applicant is encouraged to use registered or at least first-class mail. Each late applicant will be notified that its application will not be considered.

*Applications delivered by hand.* Applications that are hand delivered must be taken to the U.S. Department of Education, Office of Educational Research and Improvement, 555 New Jersey Avenue NW., Room 600, Washington, DC.

The Department 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. Applications that are hand-delivered will not be accepted by the Department after 4:30 p.m. on the closing date.

*Application forms*: The Department has no application forms or prescribed format for the Fellows Program. Applicants are encouraged to submit their curriculum vitae and sufficient information to allow the Secretary to determine the merits of the proposed activities.

*For information contact*: Shannon Weatherly, Office of Educational Research and Improvement, 555 New Jersey Avenue NW., Room 600, Washington, DC 20208. Telephone Number (202) 357–6050.

*Program authority*: 20 U.S.C. 1221e.

Dated: April 30, 1987.

**William J. Bennett,**

*Secretary.*

[FR Doc. 87–10129 Filed 5–1–87; 8:45 am]

BILLING CODE 4000–01–M

# Reader Aids

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Monday, May 4, 1987

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## LIST OF PUBLIC LAWS

**Last List April 29, 1987**

This is a continuing list of public bills from the current session of Congress which have become Federal laws. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone 202-275-3030).

**S.J. Res. 58/Pub. L. 100-29**

To designate the month of April 1987, as "National Child Abuse Prevention Month." (Apr. 29, 1987; 101 Stat. 293; 2 pages) Price: $1.00

**S.J. Res. 89/Pub. L. 100-30**

To authorize and request the President to issue a proclamation designating April 26, through May 2, 1987, as "National Organ and Tissue Donor Awareness Week." (Apr. 29, 1987; 101 Stat. 295; 1 page) Price: $1.00

## CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

New units issued during the week are announced on the back cover of the daily **Federal Register** as they become available.

A checklist of current CFR volumes comprising a complete CFR set, also appears in the latest issue of the LSA (List of CFR Sections Affected), which is revised monthly.

The annual rate for subscription to all revised volumes is $595.00 domestic, $148.75 additional for foreign mailing.

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| 1, 2 (2 Reserved) | $9.00 | Jan. 1, 1987 |
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| 4 | 14.00 | Jan. 1, 1987 |
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| 1200-End, 6 (6 Reserved) | 9.50 | Jan. 1, 1987 |
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| **9 Parts:** | | |
| 1-199 | 18.00 | Jan. 1, 1987 |
| 200-End | 16.00 | Jan. 1, 1987 |
| **10 Parts:** | | |
| 0-199 | 29.00 | Jan. 1, 1987 |
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| *500-End | 24.00 | Jan. 1, 1987 |
| 11 | 7.00 | Jan. 1, 1986 |
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| 300-499 | 13.00 | Jan. 1, 1987 |
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| **14 Parts:** | | |
| *1-59 | 21.00 | Jan. 1, 1987 |
| 60-139 | 19.00 | Jan. 1, 1987 |
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| *300-399 | 20.00 | Jan. 1, 1987 |
| 400-End | 14.00 | Jan. 1, 1987 |
| **16 Parts:** | | |
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| 1-399 | 10.00 | Apr. 1, 1986 |
| 400-499 | 22.00 | Apr. 1, 1986 |
| 500-End | 23.00 | Apr. 1, 1986 |
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| §§ 1.0-1.169 | 29.00 | Apr. 1, 1986 |
| §§ 1.170-1.300 | 16.00 | Apr. 1, 1986 |
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[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] No amendments to this volume were promulgated during the period Apr. 1, 1980 to March 31, 1986. The CFR volume issued as of Apr. 1, 1980, should be retained.

[3] No amendments to this volume were promulgated during the period July 1, 1984 to June 30, 1986. The CFR volume issued as of July 1, 1984, should be retained.

[4] No amendments to this volume were promulgated during the period July 1, 1985 to June 30, 1986. The CFR volume issued as of July 1, 1985 should be retained.

[5] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[6] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[7] No amendments to this volume were promulgated during the period Oct. 1, 1985 to Sept. 30, 1986. The CFR volume issued as of Oct. 1, 1985 should be retained.