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FEDERAL HOME LOAN BANK BOARD

12 CFR Parts 522, 563, and 592

[No. 87-936]

Assessments by the Financing Corporation, FSLIC Insurance Premiums, Book-Entry Procedure for Financing Corporation Securities, and Office of Finance Functions

August 28, 1987.

AGENCY: Federal Home Loan Bank Board.

ACTION: Final rule; request for comments.

SUMMARY: On August 10, 1987, the Federal Savings and Loan Insurance Corporation Recapitalization Act of 1987 (the "Recapitalization Act") was enacted into law. The Recapitalization Act authorizes the Federal Home Loan Bank Board ("Board") to charter a corporation known as the Financing Corporation. The Financing Corporation will issue debt securities in the capital markets, and with the net proceeds thereof, it will purchase capital instruments to be issued by the Federal Savings and Loan Insurance Corporation (the "FSLIC" or "Corporation").

The Board today is adopting regulations to clarify the manner in which the Financing Corporation will exercise its assessment authority and to make minor conforming technical amendments to the regulations concerning FSLIC insurance premiums. Additionally, the Board is adopting rules regarding book-entry procedure for Financing Corporation securities. Finally, the Board is amending a procedural rule governing the responsibilities of the Office of Finance of the Federal Home Loan Bank System ("Office of Finance"), so as to reflect the responsibilities of that office with regard to the Financing Corporation's activities.

DATES: This regulation is effective September 3, 1987. Comments on the regulations concerning Financing Corporation assessments and FSLIC insurance premiums must be received on or before October 5, 1987.

ADDRESS: Send comment letters to: Director, Information Services Section, Office of the Secretariat, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552. Comments will be available for inspection at this address.

FOR FURTHER INFORMATION CONTACT: Steven A. Rosenberg, Acting Deputy Director, Legislation, (202) 377-6455, or Carol J. Johnson, Attorney, (202) 377-6357, Regulations and Legislation Division, Office of General Counsel, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552; or K. Diane Boyle, Manager, Special Projects Division, (202) 272-4978, Office of Finance, Federal Home Loan Bank System, 655 15th Street, NW., Washington, DC 20005.

SUPPLEMENTARY INFORMATION:

A. General

The Recapitalization Act was enacted as Title III of the Competitive Equality Banking Act of 1987, Pub. L. No. 100-86, 101 Stat. 552. Section 302 of the Recapitalization Act amends the Federal Home Loan Bank Act (the "Bank Act"), 12 U.S.C. 1421 *et seq.*, by adding a new section 21 concerning the Financing Corporation.

Pursuant to section 21 of the Bank Act, the Board has chartered the Financing Corporation, which is under the management of a directorate (the "Directorate") composed of three members. Paragraph (8) of section 21(b) of the Bank Act provides that: "[T]he Directorate shall be subject to such regulations, orders, and directions as the Board may prescribe." Additionally, section 21(c) of the Bank Act provides that the exercise by the Financing Corporation of its statutory powers shall be subject to such regulations, orders, and directions as the Board may prescribe. Finally, section 21(k) of the Bank Act authorizes the Board to "prescribe such regulations as may be necessary to carry out the provisions of [section 21], including regulations defining terms used in [section 21]."

The Financing Corporation is authorized, over time and in series, to issue debt securities having an aggregate principal amount not to exceed $10.825 billion. The Financing Corporation will use the net proceeds from the issuance of the bonds to purchase nonredeemable capital certificates and redeemable nonvoting capital stock to be issued by the FSLIC, pursuant to section 402(b) of the National Housing Act ("NHA"), 12 U.S.C. 1724 *et. seq.*, as amended by section 304 of the Recapitalization Act.

B. Assessments and FSLIC Insurance Premiums

Holders of Financing Corporation securities will be entitled to receive payment of interest on the bonds on a semiannual basis. In order to ensure that the Financing Corporation will be able to satisfy its obligation to pay interest to the bondholders, section 21(f) of the Bank Act provides the Financing Corporation with an income source, namely assessments on institutions the accounts of which are insured by the FSLIC ("insured institutions"). Specifically, section 21(f) authorizes the Financing Corporation to levy and collect three types of assessments: (1) Regular assessments not to exceed an amount equal to 1/12th of 1 percent of the aggregate amount of all accounts of insured members of the assessed institution; (2) supplemental assessments, which under certain grounds may be assessed in an amount not to exceed 1/8th of 1 percent of the aggregate amount of all accounts of insured members of the assessed institution; and (3) termination assessments, which the Financing Corporation is directed to collect from any institution that ceases to be an insured institution.

In light of the assessment power granted to the Financing Corporation and the FSLIC's power to collect insurance premiums, insured institutions may be subject to the following six categories of charges: (1) Financing Corporation regular assessments pursuant to section 21(f)(1) of the Bank Act; (2) Financing Corporation supplemental assessments pursuant to section 21(f)(2) of the Bank Act; (3) Financing Corporation termination assessments pursuant to section 21(f)(4) of the Bank Act; (4) regular FSLIC insurance premiums pursuant to section 404(b) of the NHA; (5) additional ("special") FSLIC insurance premiums pursuant to section 404(c) of the NHA;

and (6) final FSLIC insurance premiums (sometimes referred to as "FSLIC exit fees") pursuant to section 407(d) of the NHA.

The Recapitalization Act not only grants to the Financing Corporation the power to levy assessments, but it also amends the power of the FSLIC to collect insurance premiums, as discussed further below.

1. Regular and Supplemental Assessments

In order to enable the Financing Corporation to pay expenses related to its bonds, paragraphs (1) and (2) of section 21(f) of the Bank Act authorized it to collect regular and supplemental assessments. The Financing Corporation is required to obtain the approval of the Board in order to make the regular assessment. In order to make the supplemental assessment two conditions must be satisfied. These are as follows: (1) The Directorate, by unanimous vote, must determine that additional funds are needed to pay the interest on the obligations of the Financing Corporation because no other funds are available; and (2) the Board must approve the determination to assess the supplemental assessment.

Additionally, paragraph (3) of section 21(f) of the Bank Act provides that the aggregate of the regular and supplemental assessments of the Financing Corporation may not exceed an amount equal to (1) the sum of (a) issuance costs incurred with respect to obligations issued during the year; (b) interest paid on (and any redemption premium paid with respect to) obligations of the Financing Corporation during such year; and (c) custodian fees incurred during such year, *minus* (2) the aggregate amount of any payments made, during such year, by the Financing Corporation with respect to such issuance costs, interest and custodian fees pursuant to section 21(g)(4).

In order to eliminate confusion and ensure consistency, the rule adopted today provides that the manner in which the Financing Corporation will calculate and collect regular assessments is to be the same as that currently employed by the FSLIC for its calculation and collection of regular insurance premiums, as set forth at 12 CFR 563.15. Accordingly, the Financing Corporation will collect regular assessments on an annual basis with a semiannual adjustment. Moreover, as discussed further below, each insured institution will receive unified bills representing the amounts owed to both the Financing Corporation and the FSLIC.

2. Reconciliation of Amounts Owed to the Financing Corporation and to the FSLIC

Section 305 of the Recapitalization Act limits the amount the FSLIC may collect in premiums and the amount it may assess as spplemental premiums so as not to impose an additional financial burden on insured institutions.[1] The practical effect of section 305 is to provide that the regular assessment paid to the Financing Corporation and the regular insurance premium paid to the FSLIC, in any one annual assessment period, is not to exceed 1/12th of 1 percent of the aggregate amount of the insured accounts of an insured institution. Likewise, the sum of the supplemental assessment of the Financing Corporation and the supplemental premium of the FSLIC, in any one annual assessment period, is not to exceed 1/8th of 1 percent of the aggregate amount of the insured accounts of an insured institution.

The Board today is amending § 563.15 to add a new paragraph addressing the limitations on the FSLIC's authority to assess premiums on insured institutions.[2]

3. Joint Collection Agent

The Board believes it is desirable to establish a mechanism to coordinate the manner in which the Financing Corporation levies and collects assessments and the manner in which the FSLIC levies and collects deposit insurance premiums. In the Board's view, such a mechanism should be designed to ensure that the sum of amounts billed by the Financing Corporation and the FSLIC do not exceed the statutory limitation. Accordingly, the Board also has amended § 563.15 to provide such a mechanism. In short, § 563.15, as amended, provides that a joint collection agent will bill each insured institution on behalf of both the Financing Corporation (for its regular assessments) and the FSLIC (for its regular insurance premiums). The Board believes that this coordinated billing and collection procedure will satisfy the objectives described in the previous paragraphs.

C. Exit Fees

The rule adopted today also implements the provisions of section 21(f)(4) of the Bank Act authorizing the Financing Corporation to levy termination assessements on institutions that have ceased to maintain their states as insured institutions ("exiting institutions"). The regulation incorporates the statutory requirements pertaining to the calculation of such termination assessments based on the amount assessed on the existing institution with respect to (1) FSLIC insurance premiums (regular and special); and (2) Financing Corporation assessments (regular and supplemental).

The rule also provides, pursuant to section 21(f) of the Bank Act, that any such termination assessment imposed on an institution may be reduced at the discretion of the Financing Corporation, with the approval of the Board, after a determination that the institution poses a substantial risk to the Corporation and that such reduction is necessary to assist in the sale or other disposition of the institution.

The regulation also includes the statutorily prescribed time periods for payment of termination assessments. Section 21(f) of the Bank Act provides for a one-time payment of the full amount of the assessment within 30 days after an institution ceases to be an insured institution or for payment of semiannual installments beginning 30 days after an institution ceases to be an insured institution and lasting over a period of two years. The regulation makes the same provision for a one-time payment of the termination assessment but permits an institution to make payment either within 30 days of the date it ceases to be an insured institution or within ten business days of its receipt of the notice of termination assessment, whichever is later. The regulation also provides for payment in semiannual installments over a two-year period, but adds the requirement that an institution electing semiannual payments must give written notice of its election to the Financing Corporation within 5 business days of its receipt of the notice of termination assessment.

The rule adopted today also includes provisions regarding exit fee equalization provided pursuant to paragraph (4)(E) of section 21(f) of the Bank Act. That provision concerns final

[1] Section 305 of the Recapitalization Act amends section 404 of the NHA by adding a new subsection (j), which provides as follows: "Notwithstanding any other provision of this section, the sum of—(1) the amount of any premium required to be paid by any insured institution under subsection (b)(1); and (2) the amount of any premium authorized to be assessed by the Corporation under subsection (b) with respect to such institution, for any period shall be reduced by the amount of any assessment paid for such period by such insured institution to the Financing Corporation pursuant to section 21(f) of the Federal Home Loan Bank Act."

[2] Section 563.15 governs payment of regular FSLIC insurance premiums. The Board has not promulgated an analogous regulation governing additional ("special) premiums. Instead, the Board, in its capacity as operating head of the FSLIC, has assessed such additional premiums by resolution. *See, e.g.*, Board Res. No. 85-142 (Feb. 22, 1985).

insurance premiums assessed by the FSLIC pursuant to section 407(d) of the NHA.

D. Book-Entry Procedure for Financing Corporation Securities

Section 302 of Title III of the Recapitalization Act amended section 21(h)(2) of the Bank Act to authorize Federal Reserve Banks to act as depositaries, fiscal agents, or custodians of the Financing Corporation.

By this action, the Board authorizes Federal Reserve Banks to apply to any debentures, bonds, or other obligations issued by the Financing Corporation the book-entry procedure contained in 12 CFR Part 506a (1987) previously established by the Board with respect to consolidated obligations of the Federal Home Loan Banks. The procedure affirms that Financing Corporation obligations may be issued in definitive (*i.e.*, engraved or printed) form, rather than book-entry form, to the extent expressly permitted by the terms of the securities. It permits Financing Corporation obligations issued in definitive form to be converted to book-entry form subject to the provisions of Part 506a.

The Board believes that issuances of Financing Corporation securities in book-entry form will benefit investors, the Financing Corporation, the FSLIC, and the financing community by (1) reducing the risk of loss due to theft, mishandling, and counterfeiting; (2) decreasing the cost of issuing, storing, and delivering physical certificates; and (3) minimizing the paperwork created by the growing volume of public debt transactions.

To ease the application of these rules, the provisions of Part 506a, as they may be amended from time to time, are incorporated into new regulation section 592.17 and are made applicable to Financing Corporation debt securities insofar as they are appropriate. Definitions and terms used in Part 506a should be read as though modified to accomplish this purpose.

E. Office of Finance, Federal Home Loan Bank System

Finally, section 21(b)(6) of the Bank Act prohibits the Financing Corporation from hiring its own employees. Instead, the Directorate may, with the approval of the Board, authorize the officers, employees, or agents of the Federal Home Loan Banks to act for and on behalf of the Financing Corporation. The Office of Finance has developed expertise in managing offerings of Federal Home Loan Bank debt securities. The Board, therefore, believes that that office is well suited to provide assistance to the Financing Corporation. Accordingly, the Board is amending § 522.81 of Subchapter B to expand the list of functions authorized for the Office of Finance so as to include the performance of such services for the Financing Corporation as may be requested from time to time by the Directorate and approved by the Board.

F. Notice and Comment Considerations

The Board finds that, in connection with its adoption of these rules, observance of the notice and comment procedures, prescribed by 5 U.S.C. 553(b) (1982) and 12 CFR 508.11 and 508.12 (1987), is unnecessary for the reasons set forth below.

Section 553(b) provides in pertinent part as follows:

> Except when notice of hearing is required by statute, this subsection does not apply—
>
> (A) to interpretive rules, general statements of policy, or rules of agency organization, procedure, or practice; or
>
> (B) when the agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rules issued) that notice and public procedure thereon are impracticable, unnecessary or contrary to the public interest.

5 U.S.C. 553(b) (1982).

1. Amendment of the Office of Finance Rule

The amendment to § 522.81 of Subchapter B of the Board's rules constitutes adoption of a rule of agency organization, procedure, or practice. Accordingly, the exception set forth in paragraph (A) of section 553(b) of Title 5 of the United States Code applies to the adoption of this amendment.

2. Adoption of the book-entry procedure rule

The book-entry procedure rule, adopted at section 592.17 of new Subchapter H of the Board's rules, is a rule of agency organization, procedure, or practice. Accordingly, the exception set forth in paragraph (A) of section 553(b) of Title 5 of the United States Code applies to the adoption of this rule.

3. Adoption of the Financing Corporation assessment rules and amendment of the FSLIC insurance premium rules

The Board for good cause finds that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest with respect to its adoption of the Financing Corporation assessment rule (12 CFR 592.12) and its amendment of the FSLIC insurance premium rules (12 CFR 563.15 and 563.16). The reasons in support of this finding are as follows. First, the Board believes that it is contrary to the public interest to have the adoption of the rules delayed in order to provide for such notice and public procedure. The Board finds that it is in the public interest for the Financing Corporation to commence its issuance of debt securities at the earliest possible opportunity and that the Financing Corporation will be unable to commence such activity until the assessment rules are adopted. In connection with this finding the Board notes that the funds raised by the Financing Corporation will be contributed to the capital of the FSLIC, which currently is insolvent, in accordance with generally accepted accounting principles. The Financing Corporation's contributions to the FSLIC's capital (1) will permit the maintenance of public confidence in the nation's depository institutions; and (2) will enable the FSLIC to resume its resolution of insolvent insured institutions in accordance with Title IV of the NHA.

Secondly, the Board is of the view that notice and public procedure thereon are unnecessary, because the rules set forth in §§ 592.12, 563.15, and 563.16, as amended today, generally only codify in the Board's regulations the statutory rules already applicable under sections 302 and 305 of the Recapitalization Act. Therefore, the new rules impose no new legal burden on insured institutions.

Thirdly, with respect to the amendment to § 563.15 providing for the Financing Corporation and the FSLIC to have assessments and insurance premiums collected by a joint collection agent, the Board is of the view that such amendment constitutes adoption of a rule of agency organization, procedure, or practice within the meaning of paragraph (A) of 5 U.S.C. 553(b).

The Board recognizes that notice and public procedure thereon are useful for providing it with information and viewpoints that it might not otherwise obtain. In addition, the Board notes that other issues, not addressed in today's rule, arise in connection with the Financing Corporation's assessment authority and the FSLIC's authority to collect insurance premiums. Such related issues include the following: (1) The temporary phase-down of the FSLIC's authority to assess special insurance premiums (or "special assessments") prescribed by section 306(c) of the Recapitalization Act; and (2) changes to the NHA provision regarding the FSLIC's secondary reserve, pursuant to section 307 of the Recapitalization Act. Accordingly, notwithstanding the issuance in final form of the assessment and insurance premium rules, the Board

hereby invites public comment on those rules and the related issues.

G. Effective Date Considerations

This rule is effective September 3, 1987. The Board, for good cause, finds that the full thirty-day delay of effective date following publication of the regulation, pursuant to 5 U.S.C. 553(d) and 12 CFR 508.14, is unnecessary. The Board's reasons for this finding are as follows:

It is imperative that the Financing Corporation be able to commence its issuance of debt securities as expeditiously as possible for the reasons set forth in the section entitled "Notice and Comment Considerations." Additionally, the rules simply codify in the Board's regulations the statutory provisions of the Recapitalization Act that already are the law of the land. Finally, the Board is of the view that, with respect to the aspects of the rule concerning agency organization, procedure, or practice, no public interest is jeopardized by shortening the period of delayed effectiveness. Accordingly, the Board finds that there is good cause for shortening the delayed-effectiveness period from the prescribed 30-day period to the slightly shorter period provided hereby.

Final Regulatory Flexibility Analysis

Pursuant to section 3 of the Regulatory Flexibility Act, 5 U.S.C. 604, the Board is providing the following regulatory flexibility analysis:

1. *Need for and objectives of the rule.* These elements have been incorporated into the Board's discussion set forth in the **SUPPLEMENTARY INFORMATION** section of this rule.

2. *Issues raised by comments and agency assessment and response.* As explained in the **SUPPLEMENTARY INFORMATION** section, the Board is issuing the rules in final form without prior opportunity for comment, although the Board is soliciting post-promulgation public comment. Accordingly, at this time, there are no issues raised by comments that require Board assessment and response.

3. *Significant alternatives minimizing small-entity impact and agency response.* The book-entry procedure rule will have no impact on small institutions. The assessments rules will not have a disproportionate effect on small institutions. The rules do not change the rules regarding the gross amount that an institution may pay, but rather change only the manner in which the gross amount is allocated.

List of Subjects in 12 CFR Parts 522, 563, and 592

Bank deposit insurance, Financing Corporation, Investments, Reporting and recordkeeping requirements, Savings and loan associations, Securities.

Accordingly, the Board hereby amends Part 522, Subchapter B, Part 563, Subchapter D, and amends Chapter V by adding a new Subchapter H and Part 592, Chapter V, Title 12, Code of Federal Regulations, as set forth below.

Subchapter B—Federal Home Loan Bank System

PART 522—ORGANIZATION OF THE BANKS

1. The authority citation for Part 522 is revised to read as follows:

Authority: Sec. 5 B, 47 Stat. 727, as added by sec. 4, 80 Stat. 824, as amended (12 U.S.C. 1425b); secs. 6–7, 47 Stat. 727, 730, as amended (12 U.S.C. 1426–1427); sec. 17, 47 Stat. 736, as amended (12 U.S.C. 1437); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); secs. 402–403, 407, 48 Stat. 1256–1257, 1260, as amended (12 U.S.C. 1725–1726, 1730); sec. 207, 62 Stat. 692, as added by sec. 1a, 76 Stat. 1123, as amended (18 U.S.C. 207); sec. 602, 92 Stat. 2115, as amended (42 U.S.C. 8101 *et seq.*); Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR, 1943–48 Comp., p. 1071; Reorg. Plan No. 6 of 1961, reprinted in 12 U.S.C.A. 1437 App. (West Supp. 1986).

2. Amend § 522.81 by removing the word "and" before the beginning of paragraph (a)(4); by removing the "period" at the end of paragraph (a)(4) and adding the word "; and"; and by adding the following new paragraph (a)(5) to read as follows:

§ 522.81 Functions of Office of Finance.

(a) * * *

(5) perform such functions for the Financing Corporation on behalf of the Federal Home Loan Banks as may be requested of such Office by the Directorate of the Financing Corporation (as defined in § 592.1(e) of this chapter) after receiving the approval of the Board.

* * * * *

Subchapter D—Federal Savings and Loan Insurance Corporation

PART 563—OPERATIONS

3. The authority citation for Part 563 continues to read as follows:

Authority: Sec. 1, 47 Stat. 725, as amended (12 U.S.C. 1421 *et seq.*); sec. 5A, 47 Stat. 727, as added by sec. 1, 64 Stat. 256, as amended (12 U.S.C. 1425a); sec. 5B, 47 Stat. 727, as added by sec. 4, 80 Stat. 824, as amended (12 U.S.C. 1425b); sec. 17, 47 Stat. 736, as amended (12 U.S.C. 1437); sec. 2, 48 Stat. 128, as amended (12 U.S.C. 1462); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); secs. 401–407, 48 Stat. 1255–1260, as amended (12 U.S.C. 1724–1730); sec. 408, 82 Stat. 5, as amended (12 U.S.C. 1730a); Reorg. Plan No. 3 of 1947, 12 CFR 4981, 3 CFR, 1943–1948 Comp., p. 1071.

4. Amend § 563.15 by revising the heading of the section; by adding new paragraphs (a)(3) and (a)(4); by revising the introductory text of paragraph (b)(1); by redesignating paragraphs (c) and (d) as new paragraphs (d) and (e); and by adding a new paragraph (c) to read as follows:

§ 563.15 Premiums.

(a) *Definitions.* * * *

(3) "Financing Corporation" means the Financing Corporation chartered by the Board pursuant to section 21(a) of the Federal Home Loan Bank Act.

(4) "Joint Collection Agent" means any person, corporation, governmental unit, or any other entity other than the Corporation or the Financing Corporation that has been authorized by the Corporation and the Financing Corporation to act as an agent on behalf of both the Corporation and the Financing Corporation for collecting premiums pursuant to section 404(b) of National Housing Act and/or assessments pursuant to section 21(f) of the Federal Home Loan Bank Act.

(b) *General provisions.* (1) Pursuant to section 404(b) of the National Housing Act and subject to the provisions of paragraphs (c) and (d) of this section, each institution whose application for insurance is approved by the Corporation shall pay to the Corporation through the Joint Collection Agent as follows: * * *

(c) *Limitations.* The amount of any premiums assessed by the Corporation on an insured institution pursuant to paragraph (b) of this section shall be reduced by the amount of any regular assessment paid for such period by such insured institution to the Financing Corporation pursuant to section 21(f) of the Federal Home Loan Bank Act, as implemented at Part 592 of this Chapter.

* * * * *

5. Amend § 563.16 by revising the first sentence of the section to read as follows:

§ 563.16 Premiums in mergers, consolidations, or purchases of bulk assets.

In the event of the purchase of bulk assets by an insured institution (which, for the purposes of this section, shall not include a Federal association the deposits of which are insured by the Federal Deposit Insurance Corporation) or of the absorption by an insured institution of another institution through merger or consolidation and the

issuance of accounts of an insurable type in connection therewith, such insured institution will be billed for an additional premium based upon the aggregate of the increase of its accounts of an insurable type issued in connection with such transaction, *subject to* the limitations set forth in § 563.15(c) of this subchapter. * * *

6. Amend Chapter V by adding a new Subchapter H; and by adding a new Part 592 to read as follows:

Subchapter H—Financing Corporation

PART 592—OPERATIONS

Sec.
592.1 Definitions.
592.2–592.10 (Reserved).
592.11 General authority.
592.12 Assessments on insured institutions.
593.13–592.16 (Reserved).
592.17 Book-entry procedure for Financing Corporation securities.

Authority: Sec. 10, 47 Stat. 725, as amended (12 U.S.C. 1421 et seq.)

§ 592.1 Definitions.

(a) *General.* Unless another definition is provided in this Subchapter, definitions in Parts 521, 541, and 561 of this Chapter apply to terms used in this Subchapter.

(b) "Act" means the Federal Home Loan Bank Act, as amended (12 U.S.C. 1421 *et seq.*).

(c) "Corporation" means the Federal Savings and Loan Insurance Corporation.

(d) "Directorate" means the three member board established pursuant to section 21(b) of the Act to manage the Financing Corporation.

(e) "Financing Corporation" means the Financing Corporation chartered by the Board pursuant to section 21(a) of the Act.

(f) "Financing Corporation securities" means debentures, bonds, or similar obligations of the Financing Corporation issued pursuant to sections 21(c) and (e) of the Act.

(g) "Regular assessment" means the assessment the Financing Corporation may assess on insured institutions pursuant to paragraph (1) of section 21(f) of the Act.

(h) "Supplemental assessment" means the assessment the Financing Corporation may assess on insured institutions pursuant to paragraph (2) of section 21(f) of the Act.

(i) "Termination assessment" means the assessment the Financing Corporation may assess on insured institutions pursuant to paragraph (4) of section 21(f) of the Act.

(j) "Exiting institution" means an insured institution (or any successor in interest thereto resulting from a merger, acquisition or otherwise) that has ceased to maintain its status as an insured institution.

§§ 592.2–592.10 [Reserved]

§ 592.11 General authority.

The Financing Corporation may exercise all authority granted it by the Act and by its charter and bylaws, whether or not implemented specifically by Board regulations, subject to the limitations and interpretations contained in this part and such orders and directions as the Board may prescribe.

§ 592.12 Assessments on insured institutions.

(a) *General.* The Financing Corporation may levy on, and collect (directly or through a collecting agent) from, each insured institution assessments in accordance with section 21(f) of the Act and this section.

(b) *Regular assessments.* (1) Pursuant to section 21(f) of the Act, and subject to the limitations of paragraph (d) of this section, the Financing Corporation may, with the approval of the Board, assess on each insured institution regular assessments, *Provided* That the aggregate amount assessed under this paragraph (b) on any insured institution for any year may not exceed an amount equal to 1/12th of 1 percent of the aggregate amount of all insured accounts of such institution, as calculated in the manner set forth in § 563.15 of Subchapter D.

(2) In the event of the purchase of bulk assets or the absorption by an insured institution of another institution through merger or consolidation and the issuance of insured accounts in connection therewith, the Financing Corporation may, with the approval of the Board, adjust the regular assessment of the insured institution in a manner consistent with § 563.16 of Subchapter D.

(c) *Supplemental assessments.* Pursuant to section 21(f)(2) of the Act and subject to the limitations of paragraph (d) of this section, if the Financing Corporation, by unanimous vote of the Directorate, finds that additional funds are needed to pay the interest on the obligations of the Financing Corporation because no other funds are available, it may, with the approval of the Board and in addition to any assessment made pursuant to paragraph (b), assess on each insured institution an assessment, except that the aggregate amount assessed under this paragraph (c) on any insured institution for any year may not exceed an amount equal to 1/8th of 1 percent of the aggregate amount of all accounts of insured members of such insured institution.

(d) *Total amount of assessments.* The aggregate amount of assessments made under paragraphs (b) and (c) of this section for any year may not exceed:

(1) The aggregate amount of—

(i) Issuance costs (as such term is defined in section 21(g)(5)(A) of the Act) incurred with respect to obligations issued during such year;

(ii) Interest paid on (and any redemption premium paid with respect to) obligations of the Financing Corporation during such year; and

(iii) Custodian fees (as such term is defined in section 21(g)(5)(B) of the Act) incurred during such year; less

(2) The aggregate amount of any payments under section 21(g)(4) of the Act during such year.

(e) *Termination assessments.* (1) The Financing Corporation, with the approval of the Board, shall make a termination assessment on any existing institution in accordance with paragraph (4) of section 21(f) of the Act.

(2) The amount of the assessment on any institution under this paragraph (e) shall be the amount equal to the sum of—

(i) The amount that is equal to two times the last annual insurance premium payable by such institution, including the amount of any regular assessment imposed under this section in lieu of such premium; and

(ii) The amount that is the product of—

(A) The aggregate amount of all accounts of insured members of such institution (as of the date the institution ceases to be an insured institution); and

(B) An amount equal to two times the rate (expressed as an annual rate) at which the supplemental assessment authorized in section 404(c) of the National Housing Act was assessed against insured institutions by the Corporation in 1986.

(3) The Financing Corporation, with the approval of the Board, shall determine whether to reduce the amount of the termination assessment in accordance with paragraph (4)(C) of section 21(f) of the Act.

(4) If an assessment is imposed on an institution under paragraph (e) of this section, the institution shall be obligated to pay such assessment within the 30-day period beginning on the date on which such institution ceases to be an insured institution or within ten business days following its receipt of

notice of a termination assessment, whichever is later.

(5) Notwithstanding the requirement of paragraph (e)(4) of this section, during the period beginning no later than the end of the period referred to in paragraph (e)(4) of this section and ending no later than the end of the two-year period beginning on the date such assessment is imposed, an institution may elect to pay the amount of any assessment imposed under paragraph (e) in semiannual installments together with interest accruing on the unpaid balance of such amount at a variable rate equal to the sum of—

(i) The bond equivalent yield on 6-month United States Treasury bills; and

(ii) 100 basis points.

Any institution making such an election shall provide the Financing Corporation with written notice of its election within 5 business days of its receipt of a termination assessment notice.

(f) *Exemption from termination assessments.* Notwithstanding the provisions of paragraph (e) of this section, termination assessments imposed pursuant to paragraph (e) of this section shall not be imposed on institutions exempted from such assessments pursuant to section 21(f)(4)(F) of the Act.

(g) *Repayment to exempted institutions.* Upon presentation of a written application and documentation to the Corporation within one year from September 3, 1987, the Corporation shall repay to institutions described in paragraph (f) of this section an amount equal to the amount by which any exit fee previously imposed on such institution exceeds the amount such institution would be required to pay under paragraph (e) of this section.

§§ 592.13-592.16 [Reserved]

§ 592.17 Book-entry procedure for Financing Corporation securities.

(a) A Federal Reserve Bank is hereby authorized to apply book-entry procedure to Financing Corporation securities.

(b) The book-entry procedure for Financing Corporation securities shall be governed by the book-entry procedure established for Federal Home Loan Bank securities, codified at Part 506a of Subchapter A of this chapter, and wherever the term "Federal Home Loan Bank" shall appear in said part, the term shall also be construed to mean the "Financing Corporation," if appropriate, to accomplish the purposes of this section.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 87-20344 Filed 9-2-87; 8:45 am]

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Part 201

[Docket No. R-87-1347; FR-2347]

Mortgage and Loan Insurance Programs; Title I Property Improvement and Manufactured Home Loans

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

ACTION: Final rule.

SUMMARY: This final rule amends provisions that became effective on January 15, 1986 governing the property improvement and manufactured home loan insurance programs under Title I of the National Housing Act. The provisions relate to the refinancing of Title I loans and extensions for late filing of xcsurance claims. This rule also removes restrictions imposed upon both lenders and borrowers, and codifies some policies that have already been given effect by means of letters sent to all Title I lending institutions.

EFFECTIVE DATE: October 13, 1987.

FOR FURTHER INFORMATION CONTACT: Robert J. Coyle, Director, Title I Insurance Division, Room 9160, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410. Telephone (202) 755-6880. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: The Department published a final rule in the **Federal Register** of October 25, 1985 (50 FR 43516) that restated and reorganized the then-current property improvement and manufactured home loan regulations in 24 CFR Part 201. Those regulations implemented section 2 of Title I of the National Housing Act. On January 14, 1986 the Department published in the **Federal Register** a Notice announcing that the effective date of the final rule would be January 15, 1986. Since the effective date of the final rule, the Department has found that some provisions in the Title I regulations require modification because of economic conditions or to ease administrative burdens on lenders and HUD. These modifications have already been implemented by means of letters sent to all Title I lending institutions. This rule codifies the policies effectuated through those letters.

Refinancing of Title I Loans

Since the effective date of the final rule, a number of Title I lenders have advised the Department that the prohibitions in 24 CFR 201.10(f) and 201.18 against refinancing delinquent loans are not practical, and have requested that the Department amend the Title I regulations to allow delinquent loans to be refinanced. The Department has considered the matter extensively, and has concluded that the lenders' request has merit.

Refinancing of Title I loans is authorized by section 2(b)(6)(A) of the National Housing Act. Enactment of this provision in the early 1940's was predicated largely upon the theory that allowing borrowers to refinance delinquent loans—so as to be able to make lower monthly payments over a greater period of time—would result in fewer defaults and insurance claims. At the time, this provision was enacted, loan amounts were much smaller and loan terms were significantly shorter than they are today.

In promulgating the final rule of October 25, 1985, the Department was concerned about extending delinquent loans with large outstanding balances for long periods of time, and therefore developed the concept of using modification agreements and repayment plans to bring delinquent loans current without extending the loan term. As lenders have pointed out, a modification agreement or repayment plan will result at some point in a borrower's having to make payments in excess of the scheduled monthly payments to bring the loan current (because a modification agreement cannot be used to extend the loan term) and some borrowers cannot afford to make these higher payments. The Department therefore has determined that its prohibition against refinancing Title I loans that are delinquent or in default should be removed from the regulations.

The Department still believes that modification agreements and repayment plans are good alternatives, and in many cases would be preferable to refinancing. Accordingly, the regulations continue to provide for the use of modification agreements and repayment plans. (A modification agreement is especially useful when reducing the interest rate and, correspondingly, the

monthly payments on a loan, as there is no risk of subordination of the security.)

This final rule codifies a change that was made effective by means of a letter to all Title I lenders dated February 27, 1987, and effective as of that date. See TI-386. The rule amends seven sections in the Title I regulations: § 201.10 Loan amounts; § 201.11 Loan maturities; § 201.18 Modification agreement or repayment plan; § 201.30 Reporting of loans for insurance; § 201.32 Insurance coverage reserve account; § 201.50 Lender efforts to cure the default; and § 201.54 Insurance claim procedure. In addition, a new § 201.19, Refinanced loans, is added. Changes in the regulations relating to the refinancing of Title I loans are as follows:

1. Section 201.10 is amended by removing the introductory sentence of paragraph (f), which prohibits the refinancing of loans that are delinquent or in default. Paragraph (2) of § 201.10(f) is revised to change the maximum amount of a refinanced manufactured home loan from the outstanding balance of the loan to the cost to the borrower of prepaying the existing loan. This change allows accrued but unpaid interest on a manufactured home loan to be capitalized and makes paragraph (2) consistent with the other paragraphs in § 201.10(f).

2. Section 201.18 currently provides for the use of a modification agreement or repayment plan in lieu of refinancing a delinquent or defaulted loan. This rule removes the sentence prohibiting the refinancing of a delinquent or defaulted loan until the borrower brings the loan current, and divides the section into paragraphs (a) Modification agreement, and (b) Repayment plan. Paragraph (a) is further revised to clarify that the use of a modification agreement is not limited to a loan that is delinquent or in default, but may also be used in connection with a current Title I loan in lieu of refinancing to effectuate a reduction in the interest rate and the monthly payment for the remainder of the loan term.

3. A new section, § 201.19 Refinanced loans, is added. Paragraph (a) of this section specifies the conditions under which (1) an existing insured property improvement loan or manufactured home loan, (2) an existing insured property improvement loan with an advance of funds for additional improvements, and (3) an existing uninsured manufactured home loan may be refinanced. Paragraph (b) contains requirements relating to the note and security for a refinanced loan. These requirements include cancellation of the old note and execution of a new note and, if the loan is secured, obtaining a new security instrument and releasing the original lien, unless State law allows for renewal and extension of the original lien. Paragraph (b) also requires that copies of all documents pertaining to the original loan be retained in the loan file for the refinanced loan.

4. Section 201.32 is revised by adding a new paragraph (d)(3), which provides that an existing insured loan may not be refinanced by a lender different from the originating or purchasing lender unless the loan has been sold, assigned, or transferred to the new lender and the Secretary has transferred insurance coverage for such loan. (This provision enunciates long-standing departmental policy).

5. In § 201.50, paragraph (a) is revised to include loan refinancing as a possible method for curing a default, and to clarify that a modification agreement or repayment plan for bringing a loan current at a later date does not cure the default, although it does preclude the lender's foreclosing or taking possession of the security. Paragraph (b) similarly is revised (1) to indicate that a modification agreement or repayment plan for bringing the loan current at a later date does not cure the default, and (2) to make other clarifying changes. Paragraph (c) is revised to clarify that the lender may rescind the acceleration of maturity and reinstate the loan only if the borrower brings the loan current, executes a modification agreement, or agrees to an acceptable repayment plan. Precluding refinancing as a means of rescinding acceleration comports fully with § 201.19(a), which allows refinancing only in connection with a Title I loan whose maturity has not been accelerated.

6. Because of the other changes made by this rule, the references in § 201.11(c) to refinancing "under § 201.10(f)" and in § 201.30(a) to refinancing "under § 201.10(f) and § 201.11(c)" are changed to refer to refinancing "under this part".

Change in Procedure for Approval of Late Claim Submissions

Section 201.54(c) provides that the Secretary may extend the maximum claim period specified in 24 CFR 201.54(b) upon presentation of the facts in a particular case, if the request for an extension is made within the applicable claim period. During the past year, lenders have submitted, and HUD has processed, an estimated 20,000 requests for extension of the claim filing period. Most of these requests are routinely approved by HUD if they are received within the allowable time limit. Claims that are denied because of late filing are generally appealed, and the Secretary's Substantial Compliance Committee must consider whether to waive the time limit based on the facts submitted.

The Department has determined that a reduction in paperwork, benefitting both lenders and HUD, can be accomplished by changing the procedure for extensions of time in which to submit claims—from a pre-claim request procedure to one providing for a written explanation for the delay submitted along with the claim. This new procedure should simplify claim filing for lenders, while maintaining the Department's objective of timely submission of claims; it does not affect the payment of interest on the unpaid amount of the loan obligation, which is calculated from the date of default to the date of claim submission plus 15 calendar days, but not longer than the maximum periods specified in 24 CFR 201.55. Lenders were advised of this change by letter dated March 20, 1987, effective as of the date of the letter. See TI-389. This rule codifies the change by removing the phrase "within the allowable maximum claim period" from § 201.54(c).

Findings and Certifications

Under the authority of 5 U.S.C. 553(b), the Department has dispensed with proposed rulemaking with regard to this rule. The Department finds that notice and public procedure are contrary to the public interest, in that proposed rulemaking would delay unnecessarily the benefits to lenders and borrowers as a result of the amendments made by this final rule.

Regulatory Impact

This rule does not constitute a "major rule" as that term is defined in section 1(b) of Executive Order 12291 on Federal Regulations. 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 on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Regulatory Flexibility Act

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

majority of financial institutions participating in the Title I program are large depository institutions. In any event, the changes implemented by this rule are ameliorative, and thus will not have a significant economic impact on small lenders.

Environmental Impact

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR Part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding of No Significant Impact is available for public inspection during regular business hours in the Office of the Rules Docket Clerk, Room 10276, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410.

Paperwork Reduction Act

The information collection requirements contained in this rule were submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520) and have been assigned OMB Control Number 2502–0328.

Regulatory Agenda

This rule was not listed in the Department's Semiannual Agenda of Regulations published on April 27, 1987 (52 FR 14362) under Executive Order 12291 and the Regulatory Flexibility Act.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance program numbers are:

14.110 Manufactured Home Insurance—Financing Purchase of Manufactured Homes as Principal Residences of Borrowers;

14.142 Property Improvement Loan Insurance for Improving Existing Structures and Building of New Nonresidential Structures; and

14.162 Mortgage Insurance—Combination and Manufactured Home Lot Loans.

List of Subjects in 24 CFR Part 201

Health facilities, Historic preservation, Home improvement, Mobile homes, Manufactured homes and lots, Reporting and recordkeeping requirements.

Accordingly, the Department of Housing and Urban Development amends Part 201 of Title 24 of the Code of Federal Regulations as follows:

PART 201—TITLE I PROPERTY IMPROVEMENT AND MANUFACTURED HOME LOANS

1. The authority citation for Part 201 continues to read as follows:

Authority: Sec. 2, National Housing Act, 12 U.S.C. 1703; sec 7(d), Department of HUD Act, 42 U.S.C. 3535(d).

2. In § 201.10, paragraph (f) is amended by removing the introductory sentence and by revising paragraph (f)(2) to read as follows:

§ 201.10 Loan amounts.

* * * * *

(f) *Loan refinancing* * * *

(2) The total principal obligation of a loan made to refinance a borrower's existing insured manufactured home loan shall not exceed the lesser of the cost to the borrower of prepaying the existing loan or the maximum loan amount permitted under this section for the particular type of loan.

* * * * *

3. In § 201.11, paragraph (c) is revised to read as follows:

§ 201.11 Loan maturities.

* * * * *

(c) *Loan refinancing.* A loan to be refinanced under this part may be refinanced for an extended period.

* * * * *

4. Section 201.18 is revised to read as follows:

§ 201.18 Modification agreement of repayment plan.

(a) *Modification agreement.* A written but unrecorded modification agreement acceptable to the lender and executed by the borrower may be used in lieu of refinancing of a delinquent or defaulted loan to reduce or increase the monthly payment, but not to increase the term or the interest rate, so as to assure that the delinquent or defaulted loan is brought current before or by the end of the loan term. A modification agreement may also be used in lieu of refinancing in connection with a loan that is current to effect a reduction in the interest rate, and in the monthly payment, for the remainder of the loan term. When a modification agreement is used, no insurance reporting is required under § 201.30.

(b) *Repayment plan.* The lender may elect to negotiate an informal repayment plan with the borrower to enable a temporary delinquency to be cured within a short period of time. The lender may document the terms of the repayment plan by sending a letter to the borrower reciting the terms of their agreement. When a repayment plan is used, no insurance reporting is required under § 201.30.

5. In Part 201, add a new § 201.19, to read as follows:

§ 201.19 Refinanced loans.

(a) *Conditions on refinancing.* (1) An existing insured property improvement loan or manufactured home loan may be refinanced without an advance of funds only under the following conditions:

(i) If the loan is in default and its maturity has been accelerated, it may not be refinanced unless the acceleration has been rescinded and the loan has been reinstated in accordance with § 201.50(c);

(ii) The refinancing of a loan for the original borrower shall be subject to all of the requirements of this part, except §§ 201.20(b) and (c), 201.21(b) through (e), 201.22, 201.23, and 201.26;

(iii) If there are co-makers or co-signers on the original note, the lender shall require the same co-makers or co-signers on the refinanced note, unless the lender obtains the Secretary's approval to release a co-maker or co-signer from liability under the note in accordance with § 201.24(e); and

(iv) The refinancing of a loan that has been assumed by a new borrower shall be subject to all of the requirements of this part, except §§ 201.20(b) and (c), 201.21(b) through (e), 201.23, and 201.26; however, a lender may not refinance a loan that has been assumed by a new borrower unless the Secretary's approval to release the original borrower from liability under the note has been obtained in accordance with § 201.24(e).

(2) An existing insured property improvement loan may be refinanced with an advance of funds for additional improvements only under the following conditions:

(i) The existing insured loan must not be in default; and

(ii) The refinancing shall be subject to all of the requirements of this part applicable to the particular type of loan and to the additional improvements being financed.

(3) An existing uninsured manufactured home loan may be refinanced only for the original borrower and only under the following conditions:

(i) The existing uninsured loan must not be in default;

(ii) Refinancing of an existing uninsured manufactured home purchase loan or combination loan shall be subject to all of the requirements of this part applicable to the particular type of loan, except §§ 201.23 and

201.26(b)(2)(iv), (3) (i) and (ii), (b)(4), (b)(6) through (b)(8), and (b)(10); and

(iii) Refinancing of an existing uninsured manufactured home lot loan in connection with the purchase of a manufactured home shall be subject to all of the requirements of this part.

(b) *Note and security requirements.* (1) Refinancing of a loan requires the execution of a new note and cancellation of the old note.

(2) Refinancing of a loan that was secured when originated, regardless of the principal balance of the note at the time of refinancing, is required to be secured.

(3) Refinancing of a loan that was not secured when originated is not required to be secured if no additional funds are advanced.

(4) When a refinanced loan is secured, the lender shall obtain and record a new security instrument in accordance with § 201.24 and shall release the original lien, unless State law permits a renewal and extension of the original lien.

(5) Copies of all documents pertaining to the original loan must be retained in the loan file for the refinanced loan.

6. In § 201.30, paragraph (a) is revised to read as follows:

§ 201.30 Reporting of loans for insurance.

(a) *Date of reports.* The lender shall transmit a loan report on the prescribed form to the Secretary within 31 days from the date of the loan's origination or purchase for the loan to be registered for insurance under this part. Any loan refinanced under this part shall similarly be reported on the prescribed form within 31 days from the date of refinancing. When a loan insured under this part is transferred to another lender without recourse, guaranty, guarantee, or repurchase agreement, a report on the prescribed form shall be transmitted to the Secretary within 31 days from the date of the transfer. No report will be required when a loan insured under this part is transferred with recourse or under a guaranty, guarantee, or repurchase agreement. If, after it is reported for insurance, a manufactured home purchase loan or combination loan is determined to be uninsurable under § 201.26(b)(6)(iii)(B), the lender shall report this fact to the Secretary within 31 days after determining the loan's uninsurability.

* * * * *

7. Section 201.32 is amended by adding a new paragraph (d)(3) to read as follows:

§ 201.32 Insurance coverage reserve account.

* * * * *

(d) * * *

(3) An existing insured property improvement loan or manufactured home loan may not be refinanced by a lender different from the originating or purchasing lender of record unless the loan has been sold, assigned, or transferred to the new lender under paragraph (c) of this section and the Secretary has transferred insurance coverage for the loan under the applicable requirements of this paragraph.

* * * * *

8. In § 201.50, paragraphs (a), (b) introductory text and (b)(2), (3), and (4), and (c) are revised to read as follows:

§ 201.50 Lender efforts to cure the default.

(a) *Personal contact with the borrower before acceleration and foreclosure or repossession.* The lender shall undertake foreclosure or repossession of the property securing a Title I loan that is in default only after the lender has timely serviced the loan with diligence in accordance with the requirements of this part, and has taken all reasonable and prudent measures to induce the borrower to bring the loan account current. Before taking action to accelerate the maturity of the loan in the event of default, the lender or its agent shall arrange for a face-to-face meeting with the borrower, or make a reasonable effort to do so, in order to assist the borrower—

(1) To cure the default by bringing the loan current immediately or by refinancing the loan, or

(2) To agree to a modification agreement or repayment plan for bringing the loan current by a later date. If the lender is unable to arrange for a face-to-face meeting, the lender may discuss the default with the borrower by telephone and attempt to secure the borrower's agreement to curing the default, executing a modification agreement, or agreeing to an acceptable repayment plan. If the borrower cannot be located or indicates a refusal to meet or discuss the default, or refuses to consent to its cure or to a modification agreement or a repayment plan, the lender may proceed to take action under paragraphs (b) and (c) of this section. The lender shall document its actions, including placing in the file a copy of any modification agreement or any letter to the borrower reflecting an acceptable repayment plan.

(b) *Notice of default and acceleration.* Unless the borrower cures the default or agrees to a modification agreement or repayment plan, the lender shall provide the borrower with written notice that the loan is in default and that the loan maturity is to be accelerated. In addition to complying with applicable State or local notice requirements, the notice shall be sent by certified mail and shall contain:

* * * * *

(2) A statement of the nature of the default and of the amount due to the lender as unpaid principal and earned interest on the note as of the date 30 days from the date of the notice;

(3) A demand upon the borrower either to cure the default (by bringing the loan current or by refinancing the loan) or to agree to a modification agreement or a repayment plan, by not later than the date 30 days from the date of the notice;

(4) A statement that if the borrower fails either to cure the default or to agree to a modification agreement or a repayment plan by the date 30 days from the date of the notice, then, as of the date 30 days from the date of the notice, the maturity of the loan is accelerated and full payment of all amounts due under the loan is required;

* * * * *

(c) *Reinstatement of the loan.* The lender may rescind the acceleration of maturity after full payment is due and reinstate the loan only if the borrower brings the loan current, executes a modification agreement, or agrees to an acceptable repayment plan.

* * * * *

9. In § 201.54, paragraph (c) is revised to read as follows:

§ 201.54 Insurance claim procedure.

* * * * *

(c) *Extension of the claim filing period.* Upon presentation of the facts of a particular case, the Secretary may extend the claim filing period. In computing the claim, no interest will be allowed for the period of the extension.

* * * * *

Dated: July 22, 1987.

James E. Schoenberger,

Acting General Deputy Assistant Secretary for Housing—Deputy Federal Housing Commissioner.

[FR Doc. 87-20278 Filed 9-2-87; 8:45 am]

BILLING CODE 4210-27-M

DEPARTMENT OF JUSTICE

Parole Commission

28 CFR Part 2

Paroling, Recommitting and Supervising Federal Prisoners; Deletion of Provision Relating to Crime Sprees

AGENCY: Parole Commission, Justice.

ACTION: Final rule.

SUMMARY: The Parole Commission is making a revision to the general notes accompanying its paroling policy guidelines contained in 28 CFR 2.20 by deleting a provision relating to crime sprees. The change is intended to eliminate uneven and inconsistent interpretation of the provision.

EFFECTIVE DATE: October 5, 1987.

FOR FURTHER INFORMATION CONTACT: Alan J. Chaset, Deputy Director of Research and Program Development, U.S. Parole Commission, 5550 Friendship Blvd., Chevy Chase, Maryland 20815, Telephone (301) 492-5980.

SUPPLEMENTARY INFORMATION:

A. The Proposed Rule and Its Purpose

General Note 7 of Subchapter A, Chapter Thirteen of the paroling policy guidelines contained in 28 CFR 2.20 provides guidance for the grading of state offenses that are sufficiently related to the instant federal offense "in time or nature to be considered as part of the same episode, course, or spree of criminal conduct." The note continues that such conduct "shall be considered as an aggravating factor by being graded on the severity scale as if part of the current federal offense behavior." Further, according to the note, any "time spent in custody on the state offense(s) shall be credited" for the purposes of the parole release guidelines.

It has been the experience of the Parole Commission that this provision's wording has led to uneven application and that, rather than attempting to revise the language, it would be preferable to delete the provision in full. It is the determination of the Commission that other rules, notes and provisions in the guidelines are sufficient to provide guidance for determining the appropriate severity level for related state offenses committed as part of a crime spree.

Pursuant to that experience and determination, on June 12, 1987, the U.S. Parole Commission published in the **Federal Register** (52 FR 22499) a proposal to revise the General Notes in 28 CFR 2.20 by deleting General Note 7.

B. Public Comment

The Parole Commission received no public comment on the proposed rule change.

C. Changes for the Proposed Rule

There are no changes from this rule as proposed.

The rule change will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

List of Subjects in 28 CFR Part 2

Administrative practice and procedure, Prisoners, Probation and parole.

28 CFR Part 2 is amended as follows:

PART 2—[AMENDED]

The authority citation for 28 CFR Part 2 continues to read:

Authority: 18 U.S.C. 4203(a)(1) and 4204(a)(6).

2. The General Notes in Subchapter A, Chapter Thirteen of the paroling policy guidelines of 28 CFR 2.20 are revised by removing General Note 7.

Dated: August 21, 1987.

Benjamin F. Baer,

Chairman, U.S. Parole Commission.

[FR Doc. 87-20282 Filed 9-2-87; 8:45 am]

BILLING CODE 4410-01-M

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28 CFR Part 2

Paroling, Recommitting and Supervising Federal Prisoners; Disclosure of Information on Parolees

AGENCY: Parole Commission, Justice.

ACTION: Final rule.

SUMMARY: The U.S. Parole Commission is amending its procedures regarding the disclosure to law enforcement officials of information concerning parolees in order to conform the regulations in 28 CFR 2.37(b) to recent statutory changes in 18 U.S.C. 4203.

EFFECTIVE DATE: October 5, 1987.

FOR FURTHER INFORMATION CONTACT: Alan J. Chaset, Deputy Director of Research and Program Development, U.S. Parole Commission, 5550 Friendship Blvd., Chevy Chase, Maryland 20815, Telephone (301) 492-5980.

SUPPLEMENTARY INFORMATION: Pursuant to 28 CFR 2.37(b), certain information about parolees may be released by the Commission to law enforcement agencies when necessary for public protection or for the enforcement of the conditions of parole.

As part of the Criminal Law and Procedure Technical Amendments Act of 1986 (Pub. L. 99-646, Section 57(b), Nov. 10, 1986), new subsection (e) was added to 18 U.S.C. 4203 essentially codifying the provisions contained in 28 CFR 2.37(b). To conform the existing regulations to the recently amended federal code, the Parole Commission is revising 28 CFR 2.37(b). A reference to requests for information made pursuant to 18 U.S.C. 4203(e) is being added to the regulation. Further, the rule is being amended to designate the appropriate Chief Probation Officer as the individual to authorize such disclosure.

This rule change will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

List of Subjects in 28 CFR Part 2

Administrative practice and procedure, Prisoners, Probation and parole.

PART 2—[AMENDED]

1. The authority citation for 28 CFR Part 2 continues to read:

Authority: 18 U.S.C. 4203(a)(1) and 4204(a)(6).

2. 28 CFR 2.37(b) is revised to read as follows:

§ 2.37 Disclosure of information concerning parolees; statement of policy.

* * * * *

(b) Information concerning parolees may be released by a Chief U.S. Probation Officer to a law enforcement agency (1) as deemed appropriate for the protection of the public or the enforcement of the conditions of parole or (2) pursuant to a request under 18 U.S.C. 4203(e).

Dated: August 21, 1987.

Benjamin F. Baer,

Chairman, U.S. Parole Commission.

[FR Doc. 87-20284 Filed 9-2-87; 8:45 am]

BILLING CODE 4410-01-M

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28 CFR Part 2

Paroling, Recommitting and Supervising Federal Prisoners; Supervision of Parolees: Deletion of Obsolete Reference

AGENCY: Parole Commission, Justice.

ACTION: Final rule.

SUMMARY: The United States Parole Commission is making a revision to the Revocation Hearing Procedures found at 28 CFR 2.50(f) by deleting the reference therein to 28 CFR 2.25, formerly Regional Appeal.

EFFECTIVE DATE: October 5, 1987.

FOR FURTHER INFORMATION CONTACT: Alan J. Chaset, Deputy Director of Research and Program Development, U.S. Parole Commission, 5550 Friendship

Blvd., Chevy Chase, Maryland 20815, Telephone (301) 492-5980.

SUPPLEMENTARY INFORMATION: In section 1408(c) of the Victims of Crime Act of 1984, Title II, ch. 14, Pub. L. 98-473 (Oct. 12, 1984), Congress amended 18 U.S.C. 4215 to eliminate the intermediate appeal of a Commission decision to the Regional Commissioner. As amended, section 4215 provides one avenue of administrative review of an agency determination—an appeal to the National Appeals Board. Thereafter, the Commission deleted its rule at 28 CFR 2.25 to reflect this procedural change and to eliminate the appeal to the Regional Commissioner (49 FR 44097 (November 2, 1984)). A prisoner or parolee may now only appeal a Commission decision to the National Appeals Board under 28 CFR 2.26. For original jurisdiction cases under 28 CFR 2.17, appeals of agency determinations are still made under 28 CFR 2.27 to the full Commission.

The Commission, at the same time, amended several other of its regulations to conform to the deletion of 28 CFR 2.25. A reference to that obsolete section, however, was overlooked in 28 CFR 2.50 (Revocation Hearing Procedures). The Commission is amending its rule at § 2.50 to delete that reference.

This rule change will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

List of Subjects in 28 CFR Part 2

Administrative practice and procedure, Prisoners, Probation and parole.

28 CFR Part 2 is amended as follows:

PART 2—[AMENDED]

1. The authority citation for 28 CFR Part 2 continues to read:

Authority: 18 U.S.C. 4203(a)(1) and 4204(a)(6).

2. Section 2.50(f) is revised to read as follows:

§ 2.50 Revocation hearing procedures.

* * * * *

(f) A revocation decision may be appealed under the provisions of § 2.26 or § 2.27 as applicable.

August 21, 1987.

Benjamin F. Baer,

Chairman, United States Parole Commission.

[FR Doc. 87-20283 Filed 9-2-87; 8:45 am]

BILLING CODE 4410-01-M

Office of the Attorney General

28 CFR Part 51

[Order No. 1214-87]

Voting Rights Act of 1965; Procedural Amendments

AGENCY: Department of Justice.

ACTION: Final Rule.

SUMMARY: The Voting Section of the Department's Rights Civil Division now uses a post office box to receive U.S. mail. This amendment simply substitutes the new post office address for the old address in the several places where an address is provided in the procedures.

EFFECTIVE DATE: September 3, 1987.

FOR FURTHER INFORMATION CONTACT: David H. Hunter, Attorney, Voting Section, Civil Rights Division, U.S. Department of Justice, Washington, D.C., 202-724-5898.

SUPPLEMENTARY INFORMATION: The Voting Section of the Department's Civil Rights Division now has its own post office box. Submissions under Section 5 and other correspondence for the Voting Section sent via the U.S. Postal Service should be addressed as follows: Chief, Voting Section, Civil Rights Division, Department of Justice, P.O. Box 66128, Washington, DC 20035-6128.

(Submissions and other correspondence sent via carriers *other than* the U.S. Postal Service should not be addressed to the post office box but should be addressed as follows: Chief, Voting Section, Civil Rights Division, Department of Justice, 320 First Street, NW., Room 716, Washington, DC 20001).

This amendment is not a major rule within the meaning of Executive Order 12291 (46 FR 13193, 3 CFR 1981 Comp., p. 127) because it imposes no new requirements. Therefore, a regulatory impact analysis has not been prepared.

This amendment does not have an impact on small entities and, therefore, is not subject to the Regulatory Flexibility Act (5 U.S.C. 601-612).

List of Subjects in 28 CFR Part 51

Administrative practice and procedure, Archives and records, Authority delegations (government agencies), Civil rights, Elections, Political committees and parties, Voting rights.

Accordingly, 28 CFR Part 51 is amended as set forth below.

PART 51—[AMENDED]

1. The authority citation for Part 51 continues to read as follows:

Authority: 5 U.S.C. 301; 28 U.S.C. 509, 510; and 42 U.S.C. 1973c.

§ 51.19 [Amended]

2. Section 51.19 is amended by removing the words "Assistant Attorney General, Civil Rights Division, Department of Justice, Washington, DC 20530" and inserting in their place the word "Chief, Voting Section, Civil Rights Division, Department of Justice, P.O. Box 66128, Washington, DC 20035-6128".

3. Section 51.24 is revised to read as follows:

§ 51.24 Address for submissions.

(a) *Delivery by U.S. Postal Service.* Submissions sent to the Attorney General via the U.S. Postal Service shall be addressed to the Chief, Voting Section, Civil Rights Division, Department of Justice, P.O. Box 66128, Washington, DC 20035-6128.

(b) *Delivery by other means.* Submissions sent to the Attorney General by carriers *other than* the U.S. Postal Service should be addressed or may be delivered to the Chief, Voting Section, Civil Rights Division, Department of Justice, 320 First Street, NW., Room 716, Washington, DC 20001.

(c) *Special marking.* The envelope and first page of the submission shall be clearly marked: Submission under Section 5 of the Voting Rights Act.

§ 51.25 [Amended]

4. Section 51.25(a) is amended by removing the words "Civil Rights Division, Department of Justice, Washington, DC 20530" and inserting in their place the words "as specified in § 51.24 of this part".

§ 51.29 [Amended]

5. Section 51.29(b) is amended by removing the words "Washington, D.C. 20530" and inserting in their place the words "P.O. Box 66128, Washington, D.C. 20035-6128".

Dated: August 28, 1987.

Arnold I. Burns,

Acting Attorney General.

[FR Doc. 87-20353 Filed 9-2-87; 8:45 am]

BILLING CODE 4410-01-M

POSTAL SERVICE

39 CFR Part 10

Code of Ethical Conduct for Postal Service Employees, Correction

AGENCY: Postal Service.

ACTION: Final rule; correction.

SUMMARY: The Postal Service is correcting an error in the heading of new Part 10, which contains the Code of Ethical Conduct for Postal Service Governors. Notice of the adoption of this Code was published in the Federal Register on August 11, 1987 (52 FR 29697).

EFFECTIVE DATE: August 11, 1987.

FOR FURTHER INFORMATION CONTACT: Charles D. Hawley, (202) 268-2971.

SUPPLEMENTARY INFORMATION: In FR Doc. 87-18159, in the issue of Tuesday, August 11, 1987, the Postal Service published a final rule establishing a Code of Ethical Conduct for Postal Service Governors. The final rule noted that this Code is an appendix to the bylaws of the Board of Governors, that it comprises a new Part 10 of 39 CFR, and that the existing Part 10 is renumbered as Part 20. Unfortunately, the heading of new Part 10 inadvertently failed to show the status of the Code as an appendix to the bylaws. This error is corrected in this document.

For the foregoing reason, the Postal Service hereby corrects FR Doc. 87-18159, beginning on page 29697 in the issue of Tuesday, August 11, 1987, as follows:

PART 10—[AMENDED]

On page 29697, right hand column, in the heading of Part 10, add the word "[APPENDIX]" after the word "GOVERNORS".

Fred Eggleston,

Assistant General Counsel, Legislative Division.

[FR Doc. 87-20307 Filed 9-2-87; 8:45 am]

BILLING CODE 7710-12-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 5

Implementation of Freedom of Information Reform Act; Changes to Freedom of Information Act Fee Schedule

AGENCY: Federal Emergency Management Agency.

ACTION: Technical amendment.

SUMMARY: The Federal Emergency Management Agency (FEMA) promulgated amendments to its rules concerning the Freedom of Information Act (FOIA) to incorporate recent changes to the Act regarding the establishment of fees charged for the search, review, and duplication of records in response to FOIA requests (52 FR 13674-13680, April 24, 1987). The rules followed the guidelines established by the Office of Management and Budget.

The technical correction in § 5.46 specifies that for manual searches for records, FEMA will charge at the salary rate(s), (i.e., basic hourly pay rate plus 16 percent rather than basic pay plus 16.1 percent as reflected in the current regulations) of the employee(s) conducting the search. In view of the technical nature of the action being taken, no public comments are being requested, and the change shall be effective immediately upon publication in the Federal Register.

EFFECTIVE DATE: September 3, 1987.

FOR FURTHER INFORMATION CONTACT: Linda M. Keener, FOIA/Privacy Specialist, (202) 646-3840.

List of Subjects in 44 CFR Part 5

Freedom of Information Act, Production or disclosure of information.

Accordingly, for reasons set out in the preamble, 44 CFR Chapter I, Subchapter A, is amended as follows:

PART 5—[AMENDED]

1. The authority citation for Part 5 continues to read as follows:

Authority: 5 U.S.C. 552 as amended by sections 1801-1804 of the omnibus Anti-Drug Abuse Act of 1986 which contains the Freedom of Information Reform Act of 1986 (Pub. L. 99-570); Reorganization Plan No. 3 of 1978; and E.O. 12127.

2. Section 5.46(a) is revised to read as follows:

§ 5.46 Fee schedule.

(a) *Manual searches for records.* FEMA will charge at the salary rate(s), (i.e., basic hourly pay rate plus 16 percent) of the employee(s) conducting the search. FEMA may assess charges for time spent searching, even if the agency fails to locate the records or if records located are determined to be exempt from disclosure. FEMA may assess charges for time spent searching, even if FEMA fails to locate the records or if records located are determined to be exempt from disclosure.

* * * * *

Dated: August 27, 1987.

Spence W. Perry,

General Counsel.

[FR Doc. 87-20270 Filed 9-2-87; 8:45 am]

BILLING CODE 6718-01-M

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44 CFR Parts 59 and 60

[Docket No. FEMA-FIA]

National Flood Insurance Program; Elevation Requirements for Manufactured Homes in Existing Mobile Home Parks or Subdivisions; Suspension of Rule and Amendment of Rule With Request for Comments

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Modification of suspension of rule and technical corrections of errors.

SUMMARY: This notice modifies and makes technical corrections to a notice published in the Federal Register on June 30, 1987, (52 FR 24370). That notice suspended certain revisions to National Flood Insurance Program (NFIP) regulations which became effective on October 1, 1986, and restored prior provisions of the regulations. The suspended revisions required the elevation of manufactured homes placed or substantially improved in existing mobile home parks and subdivisions in special flood hazard areas. The modifications to the notice are to extend the suspension through September 30, 1988, in order to be consistent with the Supplemental Appropriations Act of 1987 (Pub. L. 100-71) signed into law on July 11, 1987, and to extend the comment period in the notice through October 30, 1987.

FOR FURTHER INFORMATION CONTACT: Michael F. Robinson, Federal Emergency Management Agency, Federal Insurance Administration, 500 C Street, SW., Washington, DC 20472; telephone number (202) 646-2717.

SUPPLEMENTARY INFORMATION: On June 30, 1987, the Federal Emergency Management Agency (FEMA) published a notice in the Federal Register (52 FR 24370) which suspended until March 31, 1988, a portion of a revision to National Flood Insurance Program (NFIP) criteria which became effective October 1, 1986. The portion of the revision that was suspended required the elevation to or above the base flood elevation of manufactured homes placed or substantially improved in existing mobile home parks and subdivisions (those established prior to the adoption of a community's floodplain management regulations). Subsequent to this publication, the Supplemental Appropriations Act of 1987 (Pub.L. 100-71) was signed into law on July 11, 1987. That Act suspended the same provision through September 30, 1988. In order to make the June 30, 1987, notice consistent with the Supplemental Appropriations

Act, FEMA is hereby modifying that notice to suspend the provision through September 30, 1988, rather than until March 31, 1988. Because of the additional time that this provides, FEMA is also extending through October 30, 1987, the comment period provided for in the June 30, 1987, Federal Register notice. A number of technical corrections are hereby made to the June 30, 1987, notice, most of which correct cross references elsewhere in NFIP criteria that were inadvertently not changed to reflect the suspension of § 60.3(c)(6) and the addition of a new § 60.3(c)(12).

Accordingly, in the "Suspension of Rule; Amendment of Rule with Request for Comments" (document 87-14527) beginning on page 24370 in the Federal Register of Tuesday, June 30, 1987, make the following modifications and corrections:

Modifications

1. On page 24370 in the first column under EFFECTIVE DATE, change "until March 31, 1988" to read "through September 30, 1988."

2. On page 24370 in the first column under DATE FOR COMMENTS, change "August 31, 1987" to read "October 30, 1987."

Corrections

1. On page 24371 in the third column under "Impacts of the Suspension of the Rule Revision on Communities," line 18, "§ 60.3(c)(12)" should read "§ 60.3(c)(6)."

2. Add amendatory instruction number 4 under Part 60 to read as follows:

4. Section 60.3 is amended as follows:

(a) By removing in paragraph (b)(4) the phrase "(c)(6)" and replacing it with "(c)(12)."

(b) By removing in paragraph (d)(1) the phrase "(11)" and replacing it with "(12)."

(c) By removing in paragraph (e)(1) the phrase "(11)" and replacing it with "(12)."

Dated: August 13, 1987.

Harold T. Duryee,

Administrator, Federal Insurance Administration.

[FR Doc. 87-20269 Filed 9-2-87; 8:45 am]

BILLING CODE 6718-05-M

DEPARTMENT OF DEFENSE

Office of the Secretary

48 CFR Part 208

Federal Acquisition Regulation Supplement; Federal Supply Schedules

AGENCY: Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: The DAR Council has approved revisions to section 208.404-70 with respect to Federal Supply Schedules.

EFFECTIVE DATE: August 1, 1987.

FOR FURTHER INFORMATION CONTACT: Mr. Charles W. Lloyd, Executive Secretary, Defense Acquisition Regulatory Council, ODASD(P)/DARS, OASD(P&L), c/o Room 3D139, The Pentagon, Washington, DC 20301-3062, Telephone (202) 697-7266. Please cite DAR Case 87-80 in all correspondence related to this issue.

SUPPLEMENTARY INFORMATION:

A. Background

Pursuant to an agreement between the Department of Defense (DoD) and the General Services Administration (GSA), DoD will no longer be a mandatory user on Federal Supply Schedules. This policy becomes effective for each Federal Supply Group (FSG) as that schedule expires. The sole exception will be Federal Supply Group 68, chemicals and gases, and services for maintenance, repair, rehabilitation, and reclamation of personal property. Section 208.404-70 has been revised to annotate each FSG with its expiration date and to delete those FSGs which were not agreed to by DoD for mandatory use.

B. Regulatory Flexibility Act Information

This final rule does not constitute a significant revision within the meaning of FAR 1.501 and Pub. L. 98-577, and publication for public comment is not required. Therefore, the Regulatory Flexibility Act does not apply.

C. Paperwork Reduction Act Information

The rule does not contain information collection requirements which require the approval of OMB under 44 U.S.C. 3501 et seq.

List of Subjects in 48 CFR Part 208

Government procurement.

Charles W. Lloyd,

Executive Secretary, Defense Acquisition, Regulatory Council.

Therefore, 48 CFR Part 208 is amended as follows:

PART 208—REQUIRED SOURCES OF SUPPLIES AND SERVICES

1. The authority citation for 48 CFR Part 208 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.

2. Section 208.404-70 is revised to read as follows:

208.404-70 Applicability of listed Federal Supply Schedules.

Supplies and services covered by the Federal Supply Schedules listed herein are mandatory in whole or in part upon some element of the Department of Defense until expired (see list for expiration date). Except for Group 68, gases and chemical, and services for which DoD provides annual requirement estimates (see 208.470-6), DoD will not be listed as a mandatory user on any future Federal Supply Schedules. Some o the Federal Supply Schedules listed include classes unrelated to the Federal Supply Group which identifies the Schedule. To aid in locating an item in the mandatory Schedules, the classes included in each Schedule have been listed. The Remarks column states exceptions to the mandatory provisions of the Schedule when applicable. (But see 208.470-6 for mandatory use of GSA Term Contracts for maintenance, repair, rehabilitation and reclamation of personal property.) The Schedules should be checked for complete details concerning the exceptions.

Mandatory nationally			Schedule title	Remarks
Expiration date	Schedule identification	FSC class		
10/01/87	19 I	1940, 1945, 2010/2805	Small Craft Marine and Floating Barriers	
11/01/87	25 I	2520, 2530, 2540	VEHICULAR EQUIPMENT COMPONENTS—tire chains and clutch facings	
05/01/88	26 II	2610	PNEUMATIC TIRES AND INNER TUBES—Highway, off-highway industrial, pursuit/emergency high speed passenger, and agriculture.	

Mandatory nationally				
Expiration date	Schedule identification	FSC class	Schedule title	Remarks
07/01/88	36 II	3610, 3615	SPECIAL INDUSTRY MACHINERY—lithographic printing plates (masters) and solutions; spirit duplication, thermal process; printing, duplicating, and bookbinding equipment; and pulverizing, pulping, and shredding machines.	Except Special Item No. 51-1, 51-1-1, 51-1-3, 51-2, 51-46, 51-106, 51-107, 51-108, 51-110, 51-111, 51-113, 51-114, 51-125, 51-125-1, 51-126.
10/01/90	36 IV	3610	SPECIAL INDUSTRY MACHINERY—copying equipment, supplies and services	Except Special Item No. 51-43, 51-44, 51-45, 51-52, 51-53, 51-54.
03/01/88	37 II A	3750	LAWN AND GARDEN EQUIPMENT—lawn mowers, mowers, shredders, edgers, trimmers, roto-tillers, broadcast spreaders, sprayers, vacuums, sweepers, tractors, and accessories.	
08/01/87	45 VII A	4520	PLUMBING AND HEATING EQUIPMENT—domestic water heaters, gas and electric	
07/01/88	45 VIII A	4540	PLUMBING AND SANITATION EQUIPMENT—household garbage disposers, ⅓ and ½ horsepower.	
04/01/88	51 I A	5130, 5133, 5180	HAND AND POWER TOOLS—pneumatic, hydraulic, power actuated, gasoline engine, and special purpose drill bits.	
06/01/88	51 IV	5110, 5120, 5136, 5140, 5210	HAND AND POWER TOOLS—nonpowered tools	
06/01/88	61 I	6140	BATTERIES—6- or 12-volt lead-acid automotive storage	
02/01/88	61 III	6135	BATTERIES—dry cell	Except Index Numbers 5, 13-22.
05/01/88	62 I	6230	LIGHTING FIXTURES AND LAMPS—household and quarters use	
10/01/87	62 III	6240, 6250, 6750	ELECTRIC LAMPS—fluorescent and incandescent, and fluorescent adapters	
10/01/87	62 & 67	6240, 6750	LAMPS—electrical and photographic	
10/01/87	66 I B	6650, 6675	INSTRUMENTS AND LABORATORY EQUIPMENT—electronic distance measuring equipment and magnifiers.	Except Air Force.
10/01/87	66 II A	6630	INSTRUMENTS AND LABORATORY EQUIPMENT—blood analysis systems, diluters, pipettes, electrophoresis equipment.	Except Air Force.
05/01/90	66 II B	6515, 6630, 6640, 8125	INSTRUMENTS AND LABORATORY SUPPLIES—glass, plastic, and metal laboratory ware; laboratory distillation and demineralizing systems; vena puncture products for blood specimen collection; and prescription bottles.	
02/01/89	66 II C	6630, 6640, 6650	INSTRUMENTS AND LABORATORY EQUIPMENT—microscopes, centrifuges, pH meters, microtomes, stirrers, shakers, stereoscopes, monoculars, and titrators/titration systems.	
01/01/88	66 II E	6670	INSTRUMENTS AND LABORATORY EQUIPMENT—laboratory balances, precision scales and accessories.	
08/01/88	66 II H	5915, 5985, 6625	INSTRUMENTS AND LABORATORY EQUIPMENT—amplifiers, microwave and low frequency instruments, and RF components.	Not mandatory for Dept. of the Air Force. Items in FSC 6625 not mandatory for DoD.
05/01/90	66 II M	6625, 6630, 6650	INSTRUMENTS AND LABORATORY EQUIPMENT—spectrophotometers, densitometers, liquid scintillation systems, multi-channel pulse height analyzers, spectrometers, photometers, and polarograph analysis equipment.	Not mandatory for Dept. of the Air Force. Items in FSC 6625 not mandatory for DoD.
06/01/88	66 II N	6630, 6635, 6640, 6650	INSTRUMENTS AND LABORATORY EQUIPMENT—analyzers, chromatographs, colony counters, blood analysis systems diluters, pipettes, electrophoresis equipment, and image analysis systems.	Not mandatory for Dept. of the Air Force.
04/01/88	66 II O	4110, 6530, 6636, 6640	INSTRUMENTS AND LABORATORY EQUIPMENT—laboratory apparatus, and laboratory and clinical refrigerators and freezers.	
02/01/88	66 II P	6640	INSTRUMENTS AND LABORATORY EQUIPMENT—laboratory and pharmacy furniture	
12/01/88	66 II Q	6625, 6630, 6640, 6655, 6660, 6680, 6685.	INSTRUMENTS AND LABORATORY EQUIPMENT—environmental analysis equipment, pollution, oceanographic and weather.	Not mandatory for Dept. of the Air Force. Items in FSC 6625 not mandatory for DoD.
02/01/90	66 II R	6625, 6665, 6680	INSTRUMENTS AND LABORATORY EQUIPMENT—environmental analysis, pollution control air bag and detecting equipment.	Not mandatory for Dept. of the Air Force. Items in FSC 6625 not mandatory for DoD.
08/01/88	66 II S	6630, 6640, 6670	INSTRUMENTS AND LABORATORY EQUIPMENT—glassware and scales	
02/01/88	67 II B	6635, 6750, 6720, 6740	PHOTOGRAPHIC SUPPLIES—film, chemicals, and photographic paper	
10/01/88	67 IV B	6720, 6730, 6740, 6750, 6760	MICROPHOTOGRAPHIC EQUIPMENT AND SUPPLIES—cameras, projectors, printers, developing and duplicating equipment, and chemicals, film, and paper.	Except SINs 21-4-1a, b & c, 21-4-2a, b & c, 21-4-3a, b & c, 21-50a, 50b, 21-26, 26a.
	68 III E & F	6830	CHEMICALS AND CHEMICAL PRODUCTS—refrigerant fluorocarbons and sulfur hexafluoride	
	68 III G	6830	CHEMICALS AND CHEMICAL PRODUCTS—helium	
	68 III H	6830	CHEMICALS AND CHEMICAL PRODUCTS—fire extinguishing fluorocarbons	
07/01/88	71 I B	7105	HOUSEHOLD AND QUARTERS FURNITURE—danish style	Except SINs 29 through 38.
02/01/88	71 I C	7105	HOUSEHOLD AND QUARTERS FURNITURE—traditional style	
01/01/88	71 I D	7105	HOUSEHOLD AND QUARTERS FURNITURE—dormitory and quarters	Except items 1-57 and items 92-100.
05/01/88	71 I E	7105	HOUSEHOLD AND QUARTERS FURNITURE—upholstered (performance tested) furniture	
11/01/88	71 II B	7110	OFFICE FURNITURE—executive traditional, unitized and contemporary, wood	
07/01/88	71 II C			
10/01/88	71 II E	7110	OFFICE FURNITURE—systems furniture	
09/01/87	71 III B	7195	MISCELLANEOUS FURNITURE—library, wood, or metal	
02/01/88	71 III C	7125	MISCELLANEOUS FURNITURE—storage cabinets for forms and flammable liquids	
10/01/87	71 III D	7110, 7125	MISCELLANEOUS FURNITURE—mail sorting and distribution equipment, modular cabinets for high and low density storage, and molded plastic/corrugated storage bins.	
02/01/88	71 III E	7110	MISCELLANEOUS FURNITURE—insulated and uninsulated security filing cabinets, safes, vault doors, and map and plan files.	
11/01/88	71 III F	6530, 7105, 7210, 7230	MISCELLANEOUS FURNITURE—hospital patient room	Except items 482-7 and 482-8.
02/01/88	71 III H	7105, 7110	MISCELLANEOUS FURNITURE—multi-purpose seating	
05/01/88	71 III J	7125	MISCELLANEOUS FURNITURE—steel vertical blueprint filing cabinets, roll drawing files, and high-density movable shelf filing cabinet systems.	
07/01/90	71 III K	7125	MISCELLANEOUS FURNITURE—special purpose	
10/01/87	71 III L	7110	MISCELLANEOUS FURNITURE—cafeteria and food service	

Mandatory nationally			Schedule title	Remarks
Expiration date	Schedule identification	FSC class		
05/01/88	71 III M	7195	MISCELLANEOUS FURNITURE—acoustical partitions, speech privacy partitions, and vertical surface panels.	Except items 500-2, 500-3, and 500-4.
04/01/88	71 III N	7045, 7110	MISCELLANEOUS FURNITURE—ADP furniture, storage and transportation items	
10/16/87	71 III O	7105, 7195	MISCELLANEOUS FURNITURE—folding chairs and tables	
01/01/88	71 V B	7110, 7125	OFFICE FURNITURE—key cabinets	
08/01/87	71 V D	7105, 7110	OFFICE AND FIELD FURNITURE—office furniture; map and plan filing cabinets and folding tables; modular steel field office furniture: filing cabinets, desk top, and end folding table.	
06/01/88	71 XIV A	7110, 7125, 7195	SHOP FURNITURE—desks, benches, and tables	
10/01/87	72 I	7220	HOUSEHOLD AND COMMERICAL FURNISHINGS—carpets, special purpose carpets, rugs, carpet tiles, and carpet cushions.	Not mandatory for use aboard vessels.
02/01/88	72 I E	7220	HOUSEHOLD AND COMMERCIAL FURNISHINGS—mats and matting; entrance-way, interlocking modular, resilient open construction and anti-static types.	Not mandatory for use abroad vessels.
09/01/87	73 IV B	7310	APPLIANCES—household and commercial electric ranges	
10/01/89	74 I A	7430	OFFICE MACHINES—electronic typewriters, visual display preparation devices, sound reduction equipment and electric typewriter supplies.	
12/01/87	74 I B	7430	OFFICE MACHINES—typewriters, electric, single element	
12/01/87	74 I C	7450	OFFICE MACHINES—dictating and transcribing equipment	
07/01/89	74 II & III	6645, 7420, 7490	OFFICE MACHINES—adding, calculating, cash registers, time measuring instruments, miscellaneous office machines.	
09/01/87	74 II A	7420	OFFICE MACHINES—calculators, desk top nonprogrammable	
04/01/88	74 IV	7460	VISIBLE RECORD EQUIPMENT—control boards, files and frames	Not mandatory on DoD for rental, repair and maintenance.
01/01/88	75 I C	7530, 9310	OFFICE SUPPLIES—special use paper: engineering and draftsman papers—graph, drawing, tracing, overlay plastic sheets, cardboard and paper embossing; index sheet sets for looseleaf binders; paperboard, drawing; and labels for automatic data processing.	
09/01/87	75 I D	7530	OFFICE SUPPLIES—plotting paper, supplies; and recording paper	
03/01/90	75 II A	3540, 7510, 7520, 7690, 7530	OFFICE SUPPLIES—pencils, leads, tape label marking, chart supplies and/or letters and figures, sorters, desk correspondence, file suspended folders, plastic book jackets, plastic organizers and sorters, out-of-typewriter correction material, labels, price marking equipment, data binders, binders, looseleaf, typewriter ribbons, word processing ribbons, correction tape, computer ribbons, computer print-out ruler, plastic copyholder, and print wheels.	
09/01/88	75 II B	3540, 7510, 7520	OFFICE SUPPLIES—looseleaf binders, label tape, pamphlet files, multi-strike typewriter ribbons, typewriter correction tape, pressure sensitive adhesive tape, correctable typewriter ribbons, plastic desk trays, lead holders, document protector, typist copyholders, gummed tape dispensers, file drawer frames, stapling machines, bristol cardboard, labeling machines.	
05/01/88	75 IV A & B	7520	OFFICE SUPPLIES—rubber stamps	
05/01/90	75 IV C	7520	OFFICE SUPPLIES—pre-inked rubber stamps	
12/01/87	75 V	7530	OFFICE SUPPLIES—envelopes: mailing, printed and plain	Mandatory except for plain envelopes for use in the District of Columbia.
04/01/88	75 VIII A	7530	OFFICE SUPPLIES—cards; tabulating, aperture, and copy	
03/01/88	75 X	7530	OFFICE SUPPLIES—xerographic paper	
10/01/87	75 XI	7530	OFFICE SUPPLIES—xerographic paper and thermal copy paper	
11/01/87	75 XII	7530	OFFICE SUPPLIES—electrographic paper	
02/01/89	76 I	7610, 7640	PUBLICATIONS—dictionaries, encyclopedias, other reference books and pamphlets, maps, atlases, charts, and globes.	
10/01/87	76 II	7610, 7630, 7670	PUBLICATIONS—law, tax, and reporting periodicals, microfilm library systems	Except SINs 37-5, 6, and 7.
10/01/89	77 III	7105, 7730	AUDIO AND VIDEO EQUIPMENT—televisions, radios, phonographs and video cassette recorders.	
01/01/90	78 I A	7810	ATHLETIC AND RECREATIONAL EQUIPMENT—outdoor equipment	
09/01/89	78 I C	7830	ATHLETIC AND RECREATIONAL EQUIPMENT—outdoor recreational equipment	
12/01/87	79 I A	7910	CLEANING EQUIPMENT AND SUPPLIES—vacuum cleaners, carpet shampooers, floor polishing and scrubbing machines.	
03/01/90	79 I B	7910	CLEANING EQUIPMENT AND SUPPLIES—vacuum cleaners, carpet shampooers, floor polishing and scrubbing machines.	
04/01/89	79 II A	7930	CLEANING EQUIPMENT AND SUPPLIES—liquid and powdered dishwashing compounds with contractor supplied, installed and maintained accessory dispensing systems.	
05/01/88	79 III A	7930	CLEANING EQUIPMENT AND SUPPLIES—liquid and powdered laundry detergents with contractor supplied, installed and maintained accessory dispensing systems.	
12/01/87	81 I A	8135	PACKAGING AND PACKING SUPPLIES—cushioning material	
07/01/88	81 II A	8135	PACKAGING AND PACKING SUPPLIES—steel and nonmetallic strapping	
03/01/89	99 VI A	9910	TROPHIES AND AWARDS—trophies, awards, plaques, pins, and ribbons	
05/01/89	99 V A	9905	RECRUITING AID PROMOTIONAL MATERIAL	For requirements of recruiting commands only.

In addition to these National Federal Supply Schedules, there are Regional Schedules (chiefly covering various services) which are mandatory in the region covered. Activities should check with local GSA Region offices for listings of regional schedules applicable in their area.

[FR Doc. 87-20309 Filed 9-2-87; 8:45 am]

BILLING CODE 3810-01-M

48 CFR Parts 213 and 253

Federal Acquisition Regulation Supplement; Defense Acquisition Circular (DAC) 86-4

AGENCY: Department of Defense (DOD).

ACTION: Final rule.

SUMMARY: Defense Acquisition Circular (DAC) 86-4 amends Part 213 of the DOD FAR Supplement (DFARS) with respect to purchase orders, and provides instructions for completion of DD Form 1155.

EFFECTIVE DATE: August 1, 1987.

FOR FURTHER INFORMATION CONTACT: Mr. Charles W. Lloyd, Executive Secretary, Defense Acquisition Regulatory Council, ODASD(P)/DARS; OASD(P&L), c/o Room 3D139, The Pentagon, Washington, DC 20301-3062, telephone (202) 697-7266.

SUPPLEMENTARY INFORMATION:

A. Public Comments

Public comments are not necessary because the revisions do not have a significant cost or administrative impact

on contractors or offerors and do not have a significant effect beyond the internal operating procedures of the Department of Defense.

B. Regulatory Flexibility Act

This rule does not have a significant impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601, et seq.).

C. Paperwork Reduction Act

The Office of Management and Budget approved use of the DD Form 1155 under clearance number 0704-0187.

List of Subjects in 48 CFR Parts 213 and 253

Government procurement.

Charles W. Lloyd,

Executive Secretary, Defense Acquisition, Regulatory Council.

Defense Acquisition Circular

[Number 86-4]

August 1, 1987.

Unless otherwise specified, all DOD FAR Supplement and other directive material contained in this Defense Acquisition Circular is effective August 1, 1987.

Defense Acquisition Circular (DAC) 86-4 amends the DOD Federal Acquisition Supplement (DFARS) and prescribes procedures to be followed. The following is a summary of the amendments and procedures:

Item I—DD Form 1155, Order for Supplies or Services

DAC 86-4 revises the DD Form 1155 and associated coverage. Because the provisions on the DD Forms 1155r and 1155r-1 are obsolete, these forms and the clause requirements at DFARS 213.505-2(S-71), (S-72), and (S-73) are rescinded. New clause requirements are expressed at 213.507 and are intended to allow activities wider latitude in the selection of clauses appropriate for purchase order transactions. Minimal revisions have been made to the face of the DD Form 1155. Block 16 of the form has been replaced with a contractor acceptance block. The DD Form 1155 has also been retitled to reflect abandonment of its use as an RFQ. Other editorial changes have been made throughout DFARS 213 to implement the above actions and to consolidate related subject matter. The revised DD Forms 1155 and 1155c-1, JUL 87, are provided with this DAC. (Note: DD Forms are not published in the **Federal Register** or the Code of Federal Regulations.)

Adoption of Amendments

Therefore the DOD FAR Supplement is amended as set forth below.

PART 213—SMALL PURCHASE AND OTHER SIMPLIFIED PURCHASE PROCEDURES

1. The authority for 48 CFR Parts 213 and 253 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.

2. Section 213.203-1 is added to read as follows:

213.203-1 General.

(i) BPA's shall be prepared and issued on DD Form 1155, Order for Supplies or Services, except for BPA's issued by the Defense Personnel Support Center, which may be issued on its form "Order for Subsistence".

3. Section 213.203-2 is revised to read as follows:

213.203-2 Clauses.

(a) The clause requirements prescribed at 213.507 for purchase orders shall also apply to BPA's.

213.204 [Amended]

4. Section 213.204 is amended by removing in the first sentence of paragraph (b) the words "$10,000, except that BPA calls up to" and adding a period after the figure $25,000"; and by removing the remainder of the first sentence of paragraph (b).

213.402 [Amended]

5. Section 213.402 is amended by removing the penultimate sentence of paragraph (b)(2) which reads "An alternate cashier . . . as the principal."

213.404 [Amended]

6. Section 213.404 is amended by removing from paragraph (b)(1) the words "of $75,000 or less"; by changing the period to a comma at the end of paragraph (b)(1) and adding the words "provided the changes are determined to be reasonable and acceptance is in the best interest of the Government."

7. Section 213.503 is amended by removing from the first sentence of paragraph (b)(2) the word "otherwise"; and by revising the first sentence of paragraph (b)(3) to read as follows:

213.503 Obtaining contractor acceptance and modifying purchase orders.

* * * * *

(b) * * *

(3) To otherwise modify the purchase order, and if not previously included in the purchase order, the clauses set forth at 213.507(a)(2) shall be incorporated in the SF 30 and the contractor's acceptance obtained by signature on the SF 30.

* * * * *

8. Section 213.505-2 is revised to read as follows:

213.505-2 Agency order forms in lieu of optional forms 347 and 348.

(S-70) Optional Forms 347 and 348 are not authorized for use in the Department of Defense.

(1) The DD Form 1155, Order for Supplies or Services, is authorized for use in small and other simplified, unclassified purchases made pursuant to FAR Part 13 and this supplement. (For classified purchases see 213.507(a)(4).) The DD Form 1155, when used in concert with the applicable clause requirements at 213.507(a) (1) through (4), provides in one document:

(i) A purchase order, a blanket purchase agreement, a delivery order under a contract or a delivery order on Government agencies outside the Department of Defense;

(ii) A receiving and inspection report;

(iii) A property voucher;

(iv) A public voucher:

(A) Not exceeding $25,000 when the form is used as a purchase order;

(B) Without monetary limitation when the form is used as a delivery order; and

(C) Without monetary limitation as the basis for payment of an invoice against blanket purchase agreements, or basic ordering agreements when a firm price has been established;

(v) A document for acceptance by the supplier.

(2) Optional Form 336, Continuation Sheet, provides additional space, or a blank sheet of paper may be used. (SF 36 may be used until stocks are exhausted.)

(3) DD Form 1155c-1, Commissary Continuation Sheet (for use on an optional basis), provides columns suited for commissary procurements.

(4) Standard Form 30, Amendment of Solicitation/Modification of Contract, shall be used for all modifications to DD Form 1155 (see 213.503).

(5) Blanket purchase agreements issued by the Defense Personnel Support Center may be prepared on its form "Order for Subsistence".

(6) The foregoing forms may be used as snap-out manifold forms, as cut sheets, as reproducible masters, or automatically printed (including computer generated). Continuation sheets may be printed on the reverse of DD Form 1155.

9. Section 213.505-70 is amended by substituting in the title the words "Optional Form 336" in lieu of the words "Standard Form 36"; by adding paragraphs (c) and (d) and redesignating the existing paragraph (c) as paragraph (e); by removing from the second

sentence of the redesignated paragraph (e) the words " 'C' for contractor" and the comma; by removing under the listing "Title and Instructions for Entries", immediately following the redesignated paragraph (e), the first column (heading "RFQ") of the three right-hand columns; by substituting, in the same listing, under Block #9, the word "Contractor" in lieu of the words "Contractor/Quoter"; by adding in (i) of Block #9, a period after the word "contractor" and removing the words "or quoter."; by substituting in the penultimate sentence of the instructions under Block #9 the words "Optional Form 336" in lieu of the words "Standard Form 36"; by substituting in both places under Block #11 the word "contractor" for the words "contractor/quoter"; and by removing under Block #16 of the same listing paragraph (ii) and redesignating the existing paragraph (iii) as paragraph (ii), to read as follows:

213.505-70 Instructions for entries on DD Form 1155 and Optional Form 336.

* * * * *

(c) When the purchase order includes FMS requirements, clearly indicate "FMS Requirement" on its face and specify within the order each FMS case identifier code by line/subline item number, e.g., FMS Case Identifier GY-D-DCA.

(d) For orders requiring payment in Canadian currency, the contract price shall be quoted in terms of Canadian dollars and shall be identified by the initials CN; e.g., $1,647.23CN. The contract shall clearly indicate on its face the US/Canadian conversion rate in effect at the time of award and the US dollar equivalent of the Canadian dollar contract amount.

* * * * *

10. Section 213.507 is added to read as follows:

213.507 Clauses.

(a) Purchase orders shall incorporate the clause requirements addressed in (a)(1) through (4) of this section per FAR 52.102. Where the provisions of (a)(1) and (2) of this section do not meet the requirements of a specific order, (a)(3) provides authorization for such other clauses as appropriate.

(1) The following clauses are normally appropriate for unilateral purchase orders. These clauses shall be included in each order as applicable.

(i) FAR 52.252-2, "Clauses Incorporated by Reference" (required only if other clauses are incorporated by reference)

(ii) FAR 52.203-1, "Officials Not to Benefit"

(iii) FAR 52.203-3, "Gratuities"

(iv) FAR 52.203-5, "Covenant Against Contingent Fees"

(v) FAR 52.203-7, "Anti-Kickback Procedures"

(vi) FAR 52.212-9, "Variation in Quantity"

(vii) FAR 52.222-3, "Convict Labor" (unless the order, will be subject to the Walsh-Healey Public Contracts Act, see FAR 22.6)

(viii) FAR 52.222-26, "Equal Opportunity" (unless exempted by FAR 22.807 exceptions)

(ix) FAR 52.225-3, "Buy American Act—Supplies"

(x) FAR 52.232-1, "Payments"

(xi) DFARS 252.232-7000, "Invoices"

(xii) FAR 52.233-1,"Disputes"

(xiii) FAR 52.246-1, "Contractor Inspection Requirements" (except when an alternate level of inspection or quality assurance is necessary pursuant to FAR 46.202-3)

(xiv) FAR 52.246-16, "Responsibility for Supplies"

(2) When a purchase order requires the contractor's written acceptance, the following clauses shall be included in addition to those determined to be applicable in accordance with (a)(1) of this section:

(i) FAR 52.243-1, "Changes—Fixed-Price", with appropriate alternate as necessary

(ii) DFARS 252.243-7001, "Pricing of Adjustments"

(iii) An appropriate "Termination for Convenience of the Government" clause from FAR 52.249-1, FAR 52.249-3, FAR 52.249-4, or FAR 52.249-5

(iv) An appropriate "Termination for Default" clause from FAR 52.249-8, FAR 52.249-9, FAR 52.249-10, or FAR 52.249-11

(3) Any other clauses required or permitted shall be incorporated consistent with the guidance prescribing their use.

(4) The DD Form 1155 may be used when the acquisition is classified if:

(i) The purchase is made within the United States, its possessions and Puerto Rico.

(ii) The Security Requirements clauses in FAR 52.204-2 is inserted in the schedule.

(iii) DD Form 254, Contract Security Classification Specification, is incorporated in the purchase order. (See FAR 4.403(c) and FAR 53.204-1.)

(iv) The contractor's written acceptance of the purchase order is obtained at the time of purchase order issuance.

10. The list of forms following section 253.270 is amended by removing "253.303-70-DD-1155r DD Form 1155r: General Provisions" and "253.303-70-DD-1155r1 DD Form 1155r1: Reverse of Order for Supplies or Services/Request for Quotations—Foreign".

[FR Doc. 87-20310 Filed 9-2-87; 8:45 am]

BILLING CODE 3810-01-M

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48 CFR Part 217

Defense Federal Acquisition Regulation Supplement (DFARS); Undefinitized Contract Actions (UCAs); Correction

AGENCY: Department of Defense (DOD).

ACTION: Interim rule; correction.

SUMMARY: This document corrects an interim rule on Undefinitized Contract Actions (UCAs) which was published in the **Federal Register** on Thursday, April 16, 1987 (52 FR 12387) and corrected on May 28, 1987 (52 FR 19872) and June 25, 1987 (52 FR 23835). The action is necessary to exclude the need for a maximum not-to-exceed price for initial spares. The interim rule of April 16, 1987 required a maximum not-to-exceed price for UCAs; however, that pricing concept is inappropriate for initial spares. The purpose of this document is to remove the requirement to identify maximum not-to-exceed price for initial spares from Part 217.

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

Charles W. Lloyd,

Executive Secretary, Defense Acquisition Regulatory Council.

PART 217—SPECIAL CONTRACTING METHODS

Accordingly, the Department of Defense is correcting 48 CFR Part 217 as follows:

217.7503 [Corrected]

Section 217.7503 is amended by adding in paragraph (b)(5) between the word "subparagraphs" and the reference "(b)(3)" the reference "(b)(2)" and a comma.

[FR Doc. 87-20311 Filed 9-2-87; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 1-18, Notice 33]

Federal Motor Vehicle Safety Standards; Controls and Displays

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Final rule; response to petitions for reconsideration.

SUMMARY: In a final rule published in the **Federal Register** on February 3, 1987, NHTSA amended a number of the requirements of Standard No. 101, *Controls and Displays*. The agency received a number of petitions for reconsideration. Some of the issues raised by the petitioners were responded to in a notice published in the **Federal Register** on March 9, 1987. This notice responds to the rest of the issues and makes several changes in the standard for purposes of clarification or correction.

DATES: The amendments made by this rule are effective September 3, 1987. Petitions for reconsideration must be received by October 5, 1987.

ADDRESS: Petitions for reconsideration should be submitted to: Administrator, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Mr. Kevin Cavey, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590 (202-366-5271).

SUPPLEMENTARY INFORMATION: In a final rule published in the **Federal Register** (52 FR 3244) on February 3, 1987, NHTSA amended a number of the requirements of Standard No. 101, *Controls and Displays*. While the primary purpose of the amendments was to permit greater flexibility in the illumination and identification of controls and displays, the agency recognized that some of the amendments could result in the need for manufacturers to modify existing designs. The agency adopted an effective date of September 1, 1989, for these amendments in order to provide adequate leadtime for such modifications. Other amendments relieved restrictions and were not believed to result in the need for design modifications. The agency concluded that an effective date of 30 days after publication in the **Federal Register**, i.e., March 5, 1987, was in the public interest for these amendments.

NHTSA received petitions for reconsideration from the Automobile Importers of America, Inc. (AIA), Volkswagen (VW), Volvo, Ford, Chrysler, the Motor Vehicle Manufacturers Association (MVMA), Nissan, Austin Rover, Mazda and Toyota. Many of the petitioners indicated that some of the amendments effective on March 5, 1987 would result in the need for design modifications and requested that the effective date for these amendments be extended to September 1, 1989.

After reviewing the petitions, NHTSA concluded that some of the amendments would require design changes and, accordingly, decided to permit compliance with either the earlier version of the standard or the amended standard until September 1, 1987. In a final rule published in the **Federal Register** (45 FR 7151) on March 9, 1987, the agency reissued the earlier version of Standard No. 101, redesignated as Standard No. 100, to apply to vehicles manufactured before September 1, 1989. The application section of the standard made it clear that manufacturers have the option of meeting the requirements of Standard No. 101 for any control or display as an alternative to Standard No. 100's requirements. Conforming amendments were made to the application section of Standard No. 101.

NHTSA noted in its March 1987 notice that while the petitioners were particularly concerned about the March 5, 1987 effective date, they also raised other issues, which would be addressed in a separate notice. This notice addresses those issues.

Several petitioners raised issues concerning the requirements of section S5.3.5. That section states:

> Any source of illumination within the driver's forward field of view which is not used for the controls and displays regulated by this standard, and which is capable of being illuminated while the vehicle is in motion, must have either a variable intensity, a single intensity that is barely discernible to a driver who has adapted to dark ambient roadway conditions, or a means of being turned off. This requirement shall not apply to buses that are normally operated with the passenger compartment illuminated.

AIA stated that clarification is needed in section S5.3.5 to ensure that the term "variable intensity" means manually or automatically adjustable intensity to provide at least two levels of brightness, and not continuously variable intensity. Similarly, Toyota stated that it assumes that "variable intensity" means manually or automatically adjustable intensity to provide at least two levels of brightness, neither of which need be barely discernible to a driver who has adapted to dark ambient roadway conditions, and not continuously variable. In order to provide greater clarity, the agency is amending section S5.3.5 along the lines requested by AIA. With respect to Toyota's understanding that neither of the two levels of brightness need be "barely discernible to a driver who has adapted to dark ambient roadway conditions, the agency notes that the purpose of section S5.3.5 is to limit glare. Thus, while NHTSA is not setting specific requirements for the two levels of brightness, it expects that manufacturers will consider problems of glare as they select levels of brightness.

AIA and Toyota also requested clarification concerning section S5.3.5's use of the term "driver's forward field of view." AIA asked whether the term is intended to apply to controls beneath the dash, on the floor console or on the driver's door. Toyota requested that NHTSA provide a definition of "driver's forward field of view," stating that items that should be subject to this section cannot be determined because the term is unclear. The agency interprets that term to refer to anything forward of the driver and within his or her view, including peripheral view. In order to clarify the meaning of this requirement, NHTSA is replacing the phrase which includes "driver's forward field of view" with the following phrase: sources of illumination within a vehicle's passenger compartment which are forward of a transverse vertical plane 4.35 inches (110.6 mm.) rearward of the manikin "H" point with the driver's seat in its rearmost driving position. The 4.35 inches dimension represents the distance between the Z-Z datum line and the rearmost point of the 99th percentile eye ellipse (reference SAE JG41 Oct. 1985). This may include illumination sources beneath the dash, on the floor console, and on the driver's door.

Chrysler expressed concern about section S5.3.5's requirements as they apply to telltales not otherwise regulated by Standard No. 101. That petitioner noted that while section S5.3.4 permits the light intensity of telltales listed in the standard to be either variable or non-variable, so long as they can be made visible under all driving conditions, section S5.3.5 requires telltales not listed in the standard to have a variable intensity, a single intensity barely discernible to the driver under nighttime conditions, or a means of being turned off. Chrysler objected that these requirements preclude use of non-variable telltales which are bright

enough to be seen under all driving conditions. That company noted that it and other manufacturers provide a number of telltales not listed in Standard No. 101 that provide important and useful information, such as door-liftgate ajar, exterior lamp outage, low windshield washer fluid, transmission oil temperature, and engine condition. NHTSA agrees with the petitioner that manufacturers should be permitted to provide these types of telltales with non-variable intensity. As suggested by Chrysler, the agency is excepting telltales from the requirements of section S5.3.5.

Austin Rover argued that section S5.3.5 should be amended to clarify the requirements for what it termed supplemental information displays. Noting that the February 1987 final rule deleted the definition of "informational readout display" from Standard No. 101, that petitioner stated that some supplemental information displayed in an informational readout display could now be misinterpreted to be covered by section S5.3.3's requirements for "controls, gauges and the identification of those items." Austin Rover stated that "(a)s this element is more stringent than the previous requirements for informational readout displays, it is in clear contradiction to the intent of the amendment as stated in the preamble, that being, to provide greater flexibility in the illumination and identification of controls and displays." The petitioner did not describe what it meant by "supplemental information" or provide any examples.

NHTSA notes that the illumination requirements of section S5.3.3 apply only to the controls and gauges listed in Standard No. 101 (see section S5), while section S5.3.5 covers illuminations for controls and displays not otherwise regulated by the standard. Thus, if the "supplemental information" referred to by the petitioner is a gauge listed in the standard, it is covered by section S5.3.3. On the other hand, if the "supplemental information" is a gauge not listed by the standard, it is covered by section S5.3.5. NHTSA believes that Austin Rover's arguments fail to indicate any need for further clarification. With respect to the petitioner's argument that section S5.3.3's requirements are more stringent than the earlier requirements for informational readout displays, the agency notes that it recognized in both the February 1987 and the March 1987 final rule that some of the amendments would require design changes.

Ford noted that while the definition of informational readout display was removed from the standard, the term still appears in the second sentence of section S5.1. The retention of the term was inadvertent, and it is therefore being deleted.

Ford, VW, Toyota and MVMA noted that amendments to Table 1(a), permitting greater flexibility in identifying certain controls, should have been made to Table 1. While manufacturers currently have the option of complying with the requirements specified in either Table 1 or Table 1(a), they must comply with the requirements of Table 1, effective September 1, 1987. This notice accordingly amends Table 1.

Toyota stated that it assumes that manufacturers may comply with either Standard No. 100 or No. 101 on a control by control (or display or identification) basis and suggested that, in order to minimize confusion in this area, Tables 1 and 1(a) should be revised in both standards. However, NHTSA believes that amendments to Standard No. 100 could cause confusion. Standard No. 101 is the agency's primary standard for controls and displays, and the amendments are being made to that standard. Standard No. 100 is simply the earlier version of the standard, which was reissued for purposes of optional compliance until September 1, 1989. Amending both standards would cloud the distinction between the two standards. NHTSA notes that the application section of Standard No. 101 states that at the option of the manufacturer, motor vehicles manufactured before September 1, 1989, may comply with the requirements of Standard No. 100, instead of the requirements of Standard No. 101, for *any* control, display, or illumination. The agency also notes that there is no need to rescind the amendment to Table 1(a) in Standard No. 101.

Ford pointed out a typographical error in the February 1987 notice. On p. 3246, in the last paragraph of the first column, the notice stated that "(t)he amended provision, now designated as S5.3.3, applies only to those sources of illumination which are capable of being illuminated while the vehicle is in motion. . . ." This sentence should have referred to S5.3.5.

NHTSA has determined that an immediate effective date is in the public interest. The amendments made by this notice impose no new requirements but instead either increase manufacturer flexibility or are for purposes of clarification or correction. As discussed above, manufacturers must comply with the requirements of Table 1 rather than Table 1(a), effective September 1, 1987. Since the amendments permitting greater flexibility in identifying certain controls were made to Table 1(a) rather than to Table 1, manufacturers availing themselves of this flexibility may as of that date be unable to certify that some of their vehicles comply with Standard No. 101, absent these amendments.

The agency has analyzed these amendments and determined that they are neither "major" within the meaning of Executive Order 12291 nor "significant" within the meaning of the Department of Transportation regulatory policies and procedures. The agency has determined that the economic effects of the amendments are so minimal that a full regulatory evaluation is not required. Since the amendments impose no new requirements but instead either increase manufacturer flexibility or are for purposes of clarification or correction, any cost impacts would be in the nature of slight, nonquantifiable cost savings.

In accordance with the Regulatory Flexibility Act, NHTSA has evaluated the effects of this action on small entities. Based upon this evaluation, I certify that the amendments will not have a significant economic impact on a substantial number of small entities. For the reasons discussed above, the only impacts of the amendments would be in the nature of slight, nonquantifiable cost savings. Thus, neither manufacturers of motor vehicles, nor small businesses, small organizations, and small governmental units which purchase motor vehicles, will be significantly affected by the amendments. Accordingly, no regulatory flexibility analysis has been prepared.

Finally, the agency has considered the environmental implications of this rule in accordance with the National Environmental Policy Act of 1969 and determined that it will not significantly affect the human environment.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles, Rubber and rubber products, Tires.

In consideration of the foregoing, 49 CFR Part 571 is amended as follows:

PART 571—[AMENDED]

1. The authority citation for Part 571 continues to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1403, 1407; delegation of authority at 49 CFR 1.50.

§ 571.101 [Amended]

2. The introductory text of S5.1 is revised to read as follows:

S5.1 *Location.* Under the conditions of S6, each of the following controls that is furnished shall be operable by the driver

and each of the following displays that is furnished shall be visible to the driver. Under the conditions of S6, telltales are considered visible when activated.

* * * * *

3. S5.3.5 is revised to read as follows:

S5.3.5 Any source of illumination within the passenger compartment which is forward of a transverse vertical plane 4.35 inch (110.6 mm) rearward of the manikin "H" point with the driver's seat in its rearmost driving position, which is not used for the controls and displays regulated by this standard, which is not a telltale, and which is capable of being illuminated while the vehicle is in motion, shall have either (1) light intensity which is manually or automatically adjustable to provide at least two levels of brightness, (2) a single intensity that is barely discernible to a driver who has adapted to dark ambient roadway conditions, or (3) a means of being turned off. This requirement does not apply to buses that are normally operated with the passenger compartment illuminated.

4. Table 1 is amended by adding the word "Lights" to column 2 as identifying words or abbreviation for Master Lighting Switch control, by adding the word "Horn" to column 2 as identifying words or abbreviation for Horn control, by adding the word "Hazard" to column 2 as identifying words or abbreviation for Hazard Warning Signal control, by adding the words "Wiper or Wipe" to column 2 as identifying words or abbreviation for Windshield Wiping System control, by adding the words "Washer or Wash" to column 2 as identifying words or abbreviation for Windshield Washing System control, by adding the words "Wash-Wipe or Washer-Wiper" to column 2 as identifying words or abbreviation for Windshield Washing and Wiping Combined control, by adding the word "Fan" to column 2 as identifying words or abbreviation for Heating and/or Air Conditioning Fan control, by adding the words "Defrost, Defog or Def" to column 2 as identifying words or abbreviation for Windshield Defrosting and Defogging System control, by adding the words "Rear Defrost, Rear Defog, Rear Def, or R-Def" to column 2 as identifying words or abbreviation for Rear Window Defrosting and Defogging System control, and by adding the words "Marker Lamps or MK Lps" to column 2 as identifying words or abbreviation for Identification, Side Marker and or Clearance Lamps control.

Issued on August 31, 1987.

Diane K. Steed,

Administrator.

[FR Doc. 87-20268 Filed 8-31-87; 12:16 pm]

BILLING CODE 4910-59-M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1181

[Ex Parte No. MC-184]

Regulation of Household Goods Freight Forwarders Under the Surface Freight Forwarder Deregulation Act of 1986; Correction

AGENCY: Interstate Commerce Commission.

ACTION: Final rule; correction.

SUMMARY: At 51 FR 44297, December 9, 1986, the Commission published regulations making numerous ministerial revisions to its regulations governing freight fowarders. That notice contained an omission, which this notice corrects.

FOR FURTHER INFORMATION CONTACT: Ann Guthridge, (202) 275-6796.

SUPPLEMENTARY INFORMATION:

At 51 FR 44297, December 9, 1986, amendatory instruction 27 under Amendment No. 1 is corrected to read as follows:

27. Section 1181.21(g), (i) and (l).

Noreta R. McGee,

Secretary

[FR Doc. 87-20202 Filed 9-2-87; 8:45 am]

BILLING CODE 7035-01-M

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49 CFR Part 1207

[No. 38904]

Elimination of Accounting and Reporting Requirements for Motor Carriers of Property; Correction

AGENCY: Interstate Commerce Commission.

ACTION: Final rules; correction.

SUMMARY: At 52 FR 10382, April 1, 1987, the Commission adopted rules regarding accounting and reporting of motor carriers of property. That notice contained an error which this notice corrects.

FOR FURTHER INFORMATION CONTACT: Ann Guthridge, (202) 275-6796.

SUPPLEMENTARY INFORMATION:

PART 1207—CLASS I AND CLASS II COMMON AND CONTRACT MOTOR CARRIERS OF PROPERTY

In amendment No. 1 under Part 1207 at 52 FR 10382, April 1, 1987, the list of authority citations being removed is corrected by revising Class I and Class II Motor Carrier Balance Sheet Explanation "1449" to read "1451."

Noreta R. McGee,

Secretary.

[FR Doc. 87-20201 Filed 9-2-87; 8:45 am]

BILLING CODE 7035-01-M

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49 CFR Part 1244

[Ex Parte No. 385 (Sub-No. 2)]

Procedures on Release of Data From the ICC Waybill Sample; Correction

AGENCY: Interstate Commerce Commission.

ACTION: Final rules; correction.

SUMMARY: At 52 FR 12415, April 16, 1987, the Commission published rules concerning the type of data and information that may be obtained from the "ICC Waybill Sample." That notice contained an error which this notice corrects.

FOR FURTHER INFORMATION CONTACT: Ann Guthridge, (202) 275-6796.

SUPPLEMENTARY INFORMATION:

PART 1244—[CORRECTED]

In amendment No. 1 to Part 1244 published at 52 FR 12416, April 16, 1987, the newly revised authority citation is corrected by revising the reference to "5 U.S.C. 522" to read "5 U.S.C. 552."

Noreta R. McGee,

Secretary.

[FR Doc. 87-20205 Filed 9-2-87; 8:45 am]

BILLING CODE 7035-01-M

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49 CFR Part 1249

Revision to the Accounting and Reporting Requirements for Motor Carriers of Passengers; Correction

AGENCY: Interstate Commerce Commission.

ACTION: Final rule; correction.

SUMMARY: At 52 FR 20399, June 1, 1987, the Commission adopted new accounting and reporting regulations for motor carriers of passengers. That notice contained an error, which this notice corrects.

FOR FURTHER INFORMATION CONTACT: Ann Guthridge, (202) 275-6796.

SUPPLEMENTARY INFORMATION:

PART 1249—[CORRECTED]

Amendatory instruction No. 1 to Part 1249 published at 52 FR 20400, June 1, 1987 is corrected to read as follows:

1. In 49 CFR Part 1249, the authority citation is revised to read as follows:

Noreta R. McGee,

Secretary.

[FR Doc. 87-20204 Filed 9-2-87; 8:45 am]

BILLING CODE 7035-01-M

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49 CFR Part 1313

[Ex Parte No. 387 (Sub-No. 960)]

Department of Defense Railroad Transportation Contracts; Exemption From Certain Requirements; Correction

AGENCY: Interstate Commerce Commission.

ACTION: Final rule and exemption; correction.

SUMMARY: At 52 FR 25228, July 6, 1987, the Commission published rules exempting all rail transportation contracts (other than agricultural commodity contracts) made by the Department of Defense from the requirements of 49 U.S.C. 10713. That notice contained an error which this notice corrects.

FOR FURTHER INFORMATION CONTACT: Ann Guthridge (202) 275-6796.

SUPPLEMENTARY INFORMATION:

PART 1313—CORRECTED

In Amendment No. 1 to Part 1313 published at 52 FR 25228, July 6, 1987, the newly revised authority citation is corrected by revising 49 U.S.C. "10813" to read "10713."

Noreta R. McGee,

Secretary.

[FR Doc. 87-20203 Filed 9-2-87; 8:45 am]

BILLING CODE 7035-01-M

Proposed Rules

Federal Register
Vol. 52, No. 171
Thursday, September 3, 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 73

[Docket PRM-73-6]

Partial Denial of Petition for Rulemaking; Wisconsin Electric Power Co. et al.

AGENCY: Nuclear Regulatory Commission.

ACTION: Partial denial of petition for rulemaking.

SUMMARY: The Nuclear Regulatory Commission (NRC) is responding to a petition submitted by Wisconsin Electric Power Company, et al., to amend 10 CFR Part 73, Appendix B. The petition includes three proposals: Eliminate the requirement that armed security personnel carry an extra pair of corrective lenses, reduce the mandated frequency of medical examinations for personnel under age 39, and eliminate requirements that armed security personnel undergo a medical examination within the 30-day period preceding the physical fitness test that is given at least yearly. After considering the issues raised, the Commission finds that it is prudent to retain the requirements for the carrying of an extra pair of corrective lenses and annual medical examinations. These two parts of the petition are being denied because it has not been shown that the relaxation of present requirements would result in the same level of protection provided by the current regulations. The Commission intends to grant, through issuance of a rule, the third part of the petition requesting deletion of a specified link between the timing of the medical examination and the physical fitness test.

ADDRESSES: Copies of the petition for rulemaking, the public comments thereon, and the NRC's letter of denial are available for examination and copying for a fee at the Commission's Public Document Room at 1717 H Street, NW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Dr. Sandra D. Frattali, Radiation Protection and Health Effects Branch, Division of Regulatory Applications, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 443-7746.

SUPPLEMENTARY INFORMATION:

The Petition

The Nuclear Regulatory Commission is responding to a petition for rulemaking dated December 2, 1981, filed by Shaw, Pittman, Potts and Trowbridge on behalf of the Wisconsin Electric Power Company, the Public Service Electric and Gas Company, the Commonwealth Edison Company, the Yankee Atomic Electric Company, the Northern States Power Company, and the Sacramento Municipal Utility District. The petition requested changes in the qualifications for armed security personnel set out in 10 CFR Part 73, Appendix B, and entitled "General Criteria for Secondary Personnel." Specifically, the petitioners requested changes to criteria I.B.1.b(1)(a), I.C. and I.E.

The changes the petitioners requested would eliminate the requirement that, at nuclear power plants or other facilities licensed to handle special nuclear material, armed security personnel who need corrective lenses carry an extra pair and the requirement that security personnel undergo a medical examination within 30 days preceding an annual physical fitness test.

Basis for Request

The petitioners, in an accompanying memorandum in support of the petition, state that "the requirement for security personnel to carry an extra pair of corrective lenses is an unnecessary nuisance to those personnel. It also makes them subject to harassing inspections to check for their second set of eyeglasses or contact lenses." The petitioners also state that other Federal and State agencies, including:

> the military services, the FBI, the Immigration Service, ATF, the Customs Service, the GSA, nor the District of Columbia Police Department or the Maryland State Police [do not] require security personnel to carry an extra pair of corrective lenses if their uncorrected eyesight falls below a certain level. This NRC requirement thus appears overly stringent. Moreover, the requirement is often difficult to satisfy because carrying an extra pair of glasses often leads to breakage or loss. Consequently, compliance can become an ineffective yet costly exercise.

Regarding the requirement that security personnel undergo an annual medical examination within 30 days of an annual physical fitness test, the petitioners "suggest that the two types of tests need not be tied to the same schedule, and that the frequency of medical examinations should vary with age. * * * The petitioners [do] recognize the importance of regular physical fitness testing and medical examinations for security personnel" and state that, under the revised language proposed in the petition, "existing requirements for additional medical examinations following serious illness, injury, disease or operation would not be affected." The petitioners reviewed the physical fitness and medical examination requirements of the various branches of the military service, the FBI, and similar enforcement-related organizations with

> responsibilities of equal or greater sensitivity than those of security officers at nuclear power plants * * * [and conclude] that the present NRC requirements are excessively strict. In view of the requirements in the military and at other federal and state agencies, the petitioners recommend elimination of the Commission's present requirement tying medical examinations to physical fitness testing schedules and modification of the Commission's overly rigid medical examination schedule for young employees while maintaining all other requirements in the existing qualification program.

The petitioners include proposed amendments to the test of portions of Appendix B to Part 73.

Public Comments on the Petition

The petition was published for comment in the **Federal Register** on February 16, 1982 (47 FR 6659). The NRC received 13 comment letters. The sources were as follows:

Congress—1
General public—1
Nuclear industry—11

Ten of the comment letters supported the petition, yet none of them contained any technical information beyond that in the petition. One commenter argued that broken eyeglasses are meaningful only if the entire guard force is engaging in a response and pointed out that there has never been a call-up of the total

guard force onsite. Another commenter expanded on the medical examination issue by describing the practices of certain other State and Federal agencies.

Response to Petition

On the first proposal regarding the requirement for the extra pair of glasses, neither staff reevaluation nor public comments have identified substantive ways in which the proposed changes would either benefit the public or result in the same level of protection provided by current regulations. While the need to carry an extra pair of corrective lenses is not commonly required by persons charged with public safety and protection, a requirement for a minimum acceptable uncorrected vision is common.

A few examples of those public agencies whose regulations require extra corrective lenses for their operational personnel are as follows. The Department of Energy requires that armed personnel who need corrective lenses carry an extra pair. Federal Motor Carrier Safety regulations provide that persons, who drive motor vehicles on behalf of motor carriers and who use contact lenses, carry a spare pair on their person. The Coast Guard requires that a pilot (i.e. marine pilot), who needs corrective lenses, have a spare pair available on the vessel. Since the pilot is normally on the vessel bridge, a considerably smaller area than a nuclear facility, this situation approximates actually carrying them.

On the other hand, most agencies charged with the protection of the public set minimum uncorrected as well as corrected vision standards for their armed personnel.[1] The NRC does not. It sets only corrected vision standards. In a published report,[2] the importance of good visual acuity for police officers is documented. Officers deprived of optical correction are shown to have suffered impaired performance in some tasks such as the use of firearms and pursuit of criminals. With regard to pursuit, the experience of the Columbus, Ohio, Police Department is reported. In the period from December 1977 to June 1979, eleven instances of damaged eyewear were reported, including one involving a fall and six involving pursuit and apprehension of prisoners. One instance resulted in a suspect not being apprehended. With regard to the use of firearms, the study makes the statement that "point shooting was extremely poor at night with visual acuties over 20/30." [3] The experience of the New York City Police Department shows that 20 percent of officer gunfights occur at distances greater than 20 feet. The importance of having an assured level of visual acuity is stressed by the authors.[4]

In March, 1987, another study of the Columbus, Ohio, Police Department was published and provided further evidence that police officers must periodically function with impaired vision. Also included in this published study were results of a survey of police officers who routinely wear corrective lenses on duty. Of the officers responding to the survey, 52% reported that their glasses had become "dislodged" while performing their duties.[5]

Although agencies such as the Secret Service do not require that armed personnel with vision problems carry an extra pair of corrective lenses, the personnel themselves commonly do so. Moreover, the Secret Service and similar agencies have stringent non-corrected vision standards for weapons-carrying personnel. The Secret Service, for example, requires new recruits to have at least 20/40 uncorrected vision.

A minimum vision standard was suggested in one of the public comments to 10 CFR Part 73 when it was published as a proposed rule. The commenter suggested a vision standard as a substitute for the requirement to carry an extra pair of corrective lenses. However, this proposed alternative, which suggested an uncorrected vision of 20/67 in the better eye, was rejected as making the vision requirements too restrictive for NRC licensee guard force employment.

Since NRC has no non-corrected vision standards for armed personnel and has not determined that a need exists to place such restrictions on licensee guard personnel, the requirement to carry an extra pair of corrective lenses is necessary to maintain the current level of protection. Furthermore, the need for good vision standards for armed personnel is well recognized in the above-cited studies. Therefore, in the absence of any minimum uncorrected vision requirement, and in view of the Commission's determination not to reduce the present level of protection, the NRC's current requirement for carrying an extra pair of glasses by armed personnel will be retained.

With respect to the second proposal, NRC finds that an annual medical examination is necessary to ensure that the guard force personnel are physically able to perform their duties and that there are no contraindications to participation in the annual physical fitness testing. Annual or "preparticipation" medical examinations are common practice for young people who engage in sports or strenuous physical activity. The Department of Energy, Secret Service, and U.S. Marshal Service all require annual medical examinations regardless of age, as does the Department of Labor for its mine rescue team testing. The petitioner has not presented persuasive evidence that a three-year examination period will provide the same degree of assurance achieved by the current annual requirement.

With respect to the third proposal, the Commission recognizes that the timing between medical examinations and a physical fitness test is primarily a scheduling matter in which the licensee requires discretion for efficient management. The present regulation requires the physical examination to be scheduled within 30 days of the physical test. The Commission agrees with the petitioners that there is no necessary relationship between this schedule interval and the level of protection. The latter is satisfied in demonstrating physical ability by an annual examination and an annual test. Accordingly, the Commission recognizes that the timing between medical examinations and physical fitness testing is primarily a scheduling matter in which the licensee requires discretion for efficient management. The current rule denies this discretion. The Commission intends to implement this change by amending the appropriate sections of Appendix B to 10 CFR Part 73. However, as a matter of prudence to protect the well-being of the guard force personnel, the Commission believes that the interval between the medical examination and the physical fitness tests should be minimized.

Reasons for the Partial Denial

Consideration of the petition and the public comments did not result in a conclusion that granting the petition in its entirety would result in maintaining the present level of assurance that the national security and public health and safety would be protected. Since the Commission does not intend to change its present policy, it is prudent to require that replacements for corrective lenses

[1] Richard N. Holden, "Vision Standards for Law Enforcement: A Descriptive Study," *Journal of Police Science and Administration*, 12 (1984), p. 125.

[2] James E. Sheedy, "Police Vision Standards," *Journal of Police Science and Administration*, 8 (1980), p. 18.

[3] Ibid.

[4] Ibid.; Sheedy, "Police Vision Standards," p. 18.

[5] Gregory W. Good and Arol R. Augsburger, "Uncorrected Visual Acuity Standards for Police Applicants," *Journal of Police Science and Administration*, 15 (1987), p. 18.

be immediately available to armed security personnel in an emergency situation and to require the continuance of annual medical examinations for all armed security personnel. The NRC, therefore, denies the two parts of the petition proposing those changes in the requirements.

Dated at Bethesda, Maryland, this 20th day of August 1987.

For the Nuclear Regulatory Commission.

Victor Stello, Jr.,

Executive Director for Operations.

[FR Doc. 87-20325 Filed 9-2-87; 8:45 am]

BILLING CODE 7590-01-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Federal Highway Administration

23 CFR Parts 1204 and 1205

[NHTSA Docket No. 81-12; Notice 4]

Uniform Standards for State Highway Safety Programs and Highway Safety Programs; Determination of Effectiveness

AGENCY: National Highway Traffic Safety Administration (NHTSA) and Federal Highway Administration (FHWA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking (NPRM) and notice of public hearings.

SUMMARY: On April 2, 1987, Congress enacted the Surface Transportation and Uniform Relocation Assistance Act of 1987. Section 206(d) of the Act, amending 23 U.S.C. 402(j), requires the Secretary to begin a rulemaking process to determine those programs most effective in reducing accidents, injuries, and deaths and to amend 23 CFR Part 1205 accordingly. Pursuant to the Act, those programs judged to be most effective in the Department's final rule will be eligible for Federal funding under the State and Community Highway Safety Grant Program (23 U.S.C. 402).

This notice is being issued to solicit public comments to assist the National Highway Traffic Safety Administration (NHTSA) and the Federal Highway Administration (FHWA) to determine which highway safety programs are most effective. The notice announces public hearings, and invites submission or written comments to the public docket on this subject. It also proposes to replace the terms "standard" and "standards" with the words "guideline" and "guidelines" in Part 1204 of the agencies' joint regulation, 23 CFR Part 1204, pursuant to section 206(a) of the Act. The agencies expect to issue a final rule by April 1, 1988.

DATES: The public hearings will be held on September 29, and October 8 and 14, 1987. All written comments must be received by October 19, 1987. If the rule is promulgated by April 1, 1988, it will be effective October 1, 1988. If the rule is promulgated on a later date, it will be effective October 1, 1989.

ADDRESS: The September 29, 1987 hearing will be held in Room 2230 of the Nassif Building, U.S. Department of Transportation, 400 7th St., SW., Washington, DC; the October 8, 1987 hearing will be held in Room 1A03 of the Fritz Lanham Building, 819 Taylor Street, Fort Worth, Texas; the October 14, 1987 hearing will be held in Conference Rooms A & B of the Lehigh Building, 555 Zang Street, Lakewood, Colorado. Each hearing will be scheduled from 9 a.m. to 12 noon and from 1:30 p.m. to 5 p.m., or until the final witness has been heard, whichever is earlier.

Written comments should refer to the docket number and the number of this notice and be submitted (preferably in ten copies) to: Docket Section, Room 5109, U.S. Department of Transportation, Nassif Building, 400 Seventh Street SW., Washington, DC 20590. (Docket hours are from 8 a.m. to 4 p.m.)

FOR FURTHER INFORMATION CONTACT: In NHTSA: Mr. J. Michael Sheehan, Jr., Traffic Safety Programs, Room 5125, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590, telephone (202) 366-1755.

In FHWA: Mr. Howard Hanna, Office of Highway Safety, Room 3413, Federal Highway Administration, 400 Seventh Street SW., Washington, DC 20590, telephone (202) 366-2131; or Mr. Thomas Holian, Office of Chief Counsel, Federal Highway Administration, telephone (202) 366-1350.

SUPPLEMENTARY INFORMATION: On April 2, 1987, the Surface Transportation and Uniform Relocation Assistance Act of 1987, Pub. L. 100-17, was enacted by Congress. Section 206(d) of the Act, amending 23 U.S.C. 402(j), requires the Secretary to begin a rulemaking process to determine those programs most effective in reducing accidents, injuries, and deaths and to amend 23 CFR Part 1205 accordingly. Pursuant to the Act, those programs judged to be most effective in the Department's final rule will be eligible for Federal funding under the State and Community Highway Safety Grant Program (23 U.S.C. 402). The Act also gives the Secretary authority to revise the rule from time to time thereafter. Any revision must be accomplished through a rulemaking process to determine those programs most effective in reducing accidents, injuries and deaths.

Section 206(d) provides that the Secretary begin a rulemaking process not later than September 1, 1987, and promulgate a final rule not later than April 1, 1988. If the final rule is promulgated by April 1, 1988, the Act provides that the rule shall take effect October 1, 1988. If the rule is promulgated on a later date, it shall take effect October 1, 1989. NHTSA and FHWA expect to meet the April 1, 1988 deadline.

Section 206(a) of the Act, amending 23 U.S.C. 402, replaces the terms "standard" and "standards" wherever they appear with the words "guideline" and "guidelines". This change will also be addressed in this rulemaking action.

Background

The State and Community Highway Safety Grant Program (the 402 program) was established under the Highway Safety Act of 1966, 23 U.S.C. 402. The Act required the establishment of Uniform Standards for State Highway Safety Programs to assist the States and local communities to organize their highway safety programs.

Until 1976, the 402 program was principally directed towards achieving State and local compliance with the 18 Highway Safety Program Standards, which were considered mandatory requirements with financial sanctions available for noncompliance. Under the Highway Safety Act of 1976, Congress provided for a more flexible implementation of the program so that the Secretary would not have to require State compliance with every uniform standard or with each element of every uniform standard. As a result, the standards have become more like guidelines for use by the States. Management of the program has shifted from enforcing standards to one of problem identification, countermeasure development and evaluation, using the standards as a framework for the State programs. This approach was formalized in section 206(a) of the 1987 Act. See, the discussion below entitled, "Change from Standards to Guidelines."

The 402 program has been administered at the federal level by the Federal Highway Administration (FHWA) and the National Highway Traffic Safety Administration (NHTSA). NHTSA is responsible for developing and implementing highway safety programs relating to the vehicle and driver. FHWA has similar

responsibilities in program areas involving the highway.

In 1981, Congress passed the Omnibus Budget Reconciliation Act of 1981, Pub. L. 97-35, revising the section 402 program. The Act directed the agencies to conduct a rulemaking process to determine those State and local highway safety programs most effective in reducing accidents, injuries, and fatalities.

On April 1, 1982, in accordance with section 1107(d) of the Omnibus Budget Reconciliation Act of 1981, NHTSA and FHWA issued a final rule (47 FR 15116) identifying the six program areas which the agencies then considered to be the most effective NHTSA and FHWA highway safety programs. Those program areas were determined to be national priority program areas, and include:

NHTSA Program Areas:
- Occupant Protection
- Alcohol Countermeasures
- Police Traffic Services
- Emergency Medical Services
- Traffic Records

FHWA Program Areas:
- Safety Construction and Operational Improvements

The April 1982 final rule provided that these national priority program areas continue to be eligible for Federal funding under the 402 program, and established a mechanism by which additional programs identified by a State may be eligible for Federal funding.

The rule provided for an expedited procedure for the funding of national priority program areas. See, 23 CFR 1205.4. For the funding of other program areas, the rule permits States to select one or both of two procedures: Formal decisionmaking or problem identification. See, 23 CFR 1205.5(a) and (b). The agencies are not proposing, in this NPRM, any changes to these funding procedures.

On January 5, 1987, the Department submitted to Congress a legislative proposal to revise 23 U.S.C. 402. The Department's proposal provided for a periodic review of the effectiveness of the various programs eligible for funding under section 402 in reducing accidents, injuries and fatalities. The Department believed the periodic review procedure to be the best method for ensuring the continued relevance of the section 402 program to changing circumstances and traffic safety needs, and for ensuring that federal funds continue to be used in as cost effective a manner as possible. The proposal scheduled the first review to begin on September 1, 1987.

The legislative proposal also provided that the terms "standard" and "standards" wherever they appear be replaced with the words "guideline" and "guidelines". The purpose of this amendment was to conform the language of section 402 to the current implementation of the programs, pursuant to the 1982 determinations of program effectiveness under section 402(j). As a result of the section 402(j) determinations, the highway safety program standards have been maintained as non-binding guidelines for use by the States in their section 402 programs.

The Department's proposal was enacted by Congress as subsections 206(a) and (d) of the Surface Transportation and Uniform Relocation Assistance Act of 1987.

Evaluation of Most Effective Program Areas

As directed by Congress in section 206(d) of the Surface Transportation and Uniform Relocation Assistance Act of 1987, the agencies are considering, in this notice of proposed rulemaking, whether the six National Priority program areas identified in 1982 continue to be the most effective in reducing accidents, injuries and fatalities, and whether any emerging program areas should be added to the list of most effective programs.

There are factors that complicate any effort to identify effective programs. A relationship between a crash prevention program and a reduction in crashes or injury levels is often difficult to document. The actual impact and effect of individual elements of a coordinated program may be hard to identify and distinguish from those of other programs.

Another complicating factor in establishing priority areas is that not all States and localities experience similar crash patterns. Crash reduction efforts in highly urbanized areas may not produce similar results when applied to low population rural areas. Because of the differences in problem areas and the difficulty in evaluating program effectiveness, there is a need for flexibility in determining priority programs.

Despite these difficulties, NHTSA and FHWA have reviewed the available data within the Department to determine whether the program areas identified in the April 1982 final rule continue to be most effective in reducing accidents, injuries and fatalities. Based on their review, the agencies have tentatively determined that the six program areas identified in the April 1982 final rule continue to be of national concern, that effective countermeasures have been developed in these areas which address these concerns, and that State programs in these areas appear to be the most effective in reducing accidents, injuries and fatalities.

A summary regarding each of these program areas is listed below. The agencies note that the order in which each summary appears should not be interpreted as reflecting agency views regarding its relative importance.

NHTSA-Administered Program Areas

(1) Occupant Protection

In recent years, approximately 27,000 people have been killed annually in the front seats of passenger vehicles (passenger cars, light trucks and vans) and hundreds of thousands more suffer moderate to critical injuries on U.S. highways. Research and evaluative studies indicate that occupant protection systems, such as safety belts, child safety seats and automatic crash protection systems, if universally and properly used, could prevent as much as half of all these deaths and moderate to critical injuries to occupants of passenger cars, light trucks, and vans. Increasing and maintaining proper use of occupant protection systems is vital to achieving major fatality and injury reductions.

Safety belt use for drivers has more than tripled, from 11% in 1982 to 39% in the last half of 1986, as identified through annual surveys in 19 cities around the country. The surveys reveal that child safety seat use has also tripled, rising to 76% in the second half of 1986 from 23% in 1982. A large part of the success in achieving these increases is attributed to enactment of State safety belt laws and child safety seat laws. Among front seat passenger vehicle occupants, NHTSA estimates that approximately 2,200 fatalities and 25,000 moderate to critical injuries were prevented in 1986. Of these, NHTSA estimates that approximately 1,200 fatalities and 13,000 injuries were prevented in States which have mandatory safety belt use laws. NHTSA has projected that a 100% safety belt use rate could save up to 12,000 lives and prevent 150,000 moderate to critical injuries each year.

Obviously, the benefits of safety belts depend on the usage rates. The agencies believe that raising usage rates and obtaining public understanding and acceptance for automatic protection systems are among the greatest priorities in State and community programs. Practical and effective programs, techniques and strategies to

achieve these goals need to be identified. It is important that the States continue their efforts to increase safety belt usage, provide public education, enforce safety belt and child safety seat use laws, and increase acceptance of automatic crash protection systems.

(2) Alcohol Countermeasures

Drunk driving continues to be one of our nation's most serious public health problems. Although progress has been made to combat this problem, approximately 19,000 lives are lost annually in alcohol-related crashes representing over 40% of all highway fatalities.

Since 1982, nearly every State (including the District of Columbia) has made significant progress in improving its drunk driving laws and in controlling the drunk driver. States have been extremely aggressive in their passage of legislation to address this problem, by raising the minimum drinking age to 21 (in all but one State, up from 19), establishing a BAC level of .10 as illegal per se (in 43 States, up from 25), and providing for the administrative suspension of driver licenses (in 22 States, up from 6). More importantly, most States have reported reductions in the proportion of alcohol-related fatalities in each sucessive year from 1982 through 1985. Since 1985, however, progress appears to have leveled off.

The agencies believe there is a need to renew State and local emphasis on the drunk driving problem. Research and national experience have shown that various enforcement strategies and licensing actions, when coupled with public information strategies, are effective in reducing alcohol-related fatalities. However, enforcement and sanctions must be sustained and new strategies must continually be introduced in order to maintain media and public attention to the issue. There is a need to pursue effective DWI prevention programs which emphasize, in both public and private places, responsible alcohol use and serving policies, and the value of designated drivers. There is a growing recognition that drug as well as alcohol impairment contributes to crashes, injuries and fatalities on our highways, and new methods of detecting drug-impaired drivers are being developed and used. We must also find more effective ways of dealing with individuals who contribute to a disproportionate number of fatal crashes, such as youthful drinkers who drive, repeat offenders and other high risk drivers. The agencies believe that State programs which systematically implement effective enforcement, licensing and media strategies, and develop and implement innovative DWI prevention programs are effective in reducing accidents, injuries and fatalities.

(3) Police Traffic Services

Police traffic services is an area of major concern. Between 89 and 90 percent of all types of motor vehicle crashes, including commercial motor vehicle collisions, involve some type of traffic law violation on the part of the driver. Data from NHTSA's National Accident Sampling System (NASS) and Fatal Accident Reporting System (FARS) reveal that excessive speed, alcohol use and other serious moving violations are major causative factors in most serious traffic crashes. In the past few years, an increase in traffic volume and vehicle miles traveled has contributed to a greater potential for vehicle crashes. In addition, it is the perception of police officials that there is a growing level of disrespect for traffic laws, particularly speed limit laws, and disobedience of traffic control devices.

Research has demonstrated that traffic services programs which involve increased enforcement, when coupled with appropriate sanctions and reinforced with public information and education strategies to create a general deterrence, are the most effective countermeasures to employ to reduce the incidence of the types of violations which most often contribute to vehicle crashes.

The agencies believe it is important to maintain and improve police traffic services. Most police departments have experienced limited growth at a time when demands for additional police services have risen. In many State and local agencies, personnel previously assigned to traffic duties have been shifted to other responsibilities to meet pressing needs in response to increased criminal activity, such as drug enforcement. Technical assistance and funding support is needed to encourage the adoption of improved support systems, and the implementation of innovative enforcement of safety belt use laws, speeding violations, drunk driving and other serious traffic violations. These systems will enable police traffic services programs to more effectively and productively cope with their limited resources.

(4) Emergency Medical Services

Emergency Medical Services (EMS) is an area of national importance. While motor vehicle-related injuries result in about one-third of the annual traumatic deaths and constitute about 10% of all injuries, they represent 60 to 70% of the need for comprehensive prehospital and hospital trauma services. State indices assessing the risk of death from motor vehicle injury indicate significantly lower risk as prehospital services improve in quality. One State (Maryland), having a comprehensive prehospital care system of coordinated access and dispatch, highly sophisticated transport systems, and a highly trained cadre of EMS care providers, reports a dead-on-arrival rate for injury patient which is less than half of the national average (5.6%, compared to 14.5%).

The agencies believe that comprehensive systems of trauma care and improved prehospital services are effective in reducing accidents, injuries and fatalities. Even greater improvements in injury outcome can be appreciated when high quality prehospital services are integrated with designated trauma centers into true systems of trauma care. In its 1986 report on EMS, the General Accounting Office noted that many States have assumed the leadership role in EMS, and have also taken on much of the financial responsibility. However, only 21 States currently have an active trauma center program, and in many States, the integration of prehospital and trauma center services has not been fully implemented. In addition, improvements have been and continue to be introduced in the EMS field, including the development of new planning indices such as the "EMS Sensitivity Index for Highway Safety Need," the growth of rapid transport systems and training for those programs, the exploration of new systems of radio dispatch and field-to-hospital communications, and the use of new technologies to maintain and improve the skills of trauma care providers.

(5) Traffic Records

An effective traffic records system alone within a State does not directly reduce crashes or injuries. However, it is an essential support service for all other highway safety programs. Traffic records serve as the source of data for making informed decisions about highway safety programs, and enable States to evaluate the effectiveness of these programs. They identify the drivers, roadways and vehicles involved in crashes, and document whether the crashes involve fatalities, injuries or property damage. In the area of driver licensing, for example, the availability of a complete and accurate driver history file, integrated with other traffic records files, allows the identification of problem drivers. Young drivers (ages 15

through 24) are seriously over-represented in vehicle crashes, as are drunk drivers. Elderly drivers also are over-represented in crash rates when the rates are measured by miles driven.

Despite improvements in certain areas of records operations, problems remain which prevent optimum performance of State and local traffic records systems. Areas which need improvement include uniformity of data elements and definitions, integration of system subfiles, and reduction of the error rate in obtaining and processing data. In addition, to have the most effective and efficient systems, State and local communities should use new data processing technology. The technology currently available allows both decentralization of data operations and linkage of all State files, and would permit State participation in the upgraded National Driver Register.

Congress authorized a ten percent section 402 set aside for traffic records in FY's 1985 and 1986. The set aside was used to advance records development, particularly in: (1) Identifying States which need improved systems, (2) assisting States to develop computer links between their driver licensing files and the National Driver Register, and (3) improving systems designed to support the State's driver license suspension and revocation program. The agencies believe it is important to complete the tasks which were started with these special funds. It is also important to develop and implement innovative driver licensing techniques for identifying problem drivers through State traffic records systems, and for implementing appropriate control measures, such as "administrative per se" procedures and the adoption and implementation of the Driver License Compact. The Driver License Compact encourages each State to adopt both a "one driver license" and a "one driver record" concept, to exchange information with other States and to assure uniform and predictable treatment of offenders.

The agencies note that FHWA administers a separate grant program in support of the Commercial Motor Vehicle Safety Act of 1986 (CMVSA). The CMVSA will establish a uniform national system of single and classified licenses for truck and bus drivers, and will require States to develop and implement standards for driver tests, license issuance and suspensions. The agencies have tentatively determined that section 402 funds apportioned to the States should not be used to fund actions taken pursuant to the CMVSA which are covered by the FHWA grant program. If interested parties disagree with the agencies' initial determination, please submit comments indicating why section 402 funds are necessary to support actions taken under the CMVSA. Comments should identify the specified actions that would be appropriate for funding under section 402.

FHWA-Administered Program Area

Safety Construction and Operational Improvements

Crash statistics demonstrate the safety benefits of improved highway design. For example, crash rates on modern highways are up to 50% less than on older highways. Historically, financial and other constraints have severely limited the number of major improvements and changes that can be made to existing road systems. As a result, a majority of vehicle miles continue to be travelled on roads that allow less margin for error and more severe consequences than currently designed highways.

Selective correction of known hazards on older roads can provide major safety benefits. Recent evaluations conducted in conjunction with the Department's 1987 annual report to Congress on the Highway Safety Improvement Programs, for example, identified measures which have resulted in a 41% reduction in fatal crash rates and a 19% reduction in injury crash rates. Overall, the report estimates that projects under this program have been responsible for saving over 50,000 lives and preventing over 925,000 injuries since program inception in 1974. The most cost-effective projects are low cost improvements, such as traffic signing, roadway lighting, guardrail and barrier improvements, minor structural changes and intersection improvements.

Although section 402 funds may not be used for highway construction, they may be used to support other elements of a coordinated highway safety program, such as problem identification and program development. The programs developed with section 402 funds can then be funded under other highway safety programs. Over 81% of the section 402 funds in this program area is currently used for improved record systems, studies and analyses, technical training, and safety program development. Another 13% is being used for eligible minor traffic engineering safety improvements. While most section 402 expenditures do not result in crash reduction directly, they provide the foundation on which safety construction improvement decisions are based. The agencies believe State and local highway safety agencies should continue these types of activities to ensure that funds spent on highway improvements include maximum concern for the safety of the driving public.

The agencies seek public comments from interested parties on these six program areas. Parties may submit comments on any or all of the program areas, including whether the focus of the program areas should be changed. For example, in recognition of the growing interest in the problem of drugged driving, should the agencies formally rename the Alcohol Countermeasures program area to be Alcohol and Drug Countermeasures? The agencies also seek comments on whether to expand the list of national priority programs. Discussed below, for example, are two additional program areas: Motorcycle Safety and Pedestrian and Bicycle Safety. The agencies believe they are emerging as program areas of national concern. Countermeasures exist in these areas which have proven to be effective, through which significant safety benefits could be achieved. Parties may submit comments on one or both of these programs, or on program areas not discussed in this NPRM. If the agency is persuaded by comments that other program areas not mentioned here should be included as national priority program areas, the agency will add them in the final rule.

(1) Motorcycle Safety

Motorcycle crashes cause more than 11% of all motor vehicle fatalities in this country, and the proportion of these crashes to motor vehicle fatalities is increasing. The death rate per mile of travel for motorcyclists is up to 20 times that of automobile occupants. About 4,500 persons are killed and 200,000 injured each year in motorcycle crashes. Injuries are often severe and occur in more than 80% of all crashes. This is about three times higher than for automobiles. Head injuries are the most life-threatening. About 70% of all motorcycle fatalities result from head injuries. The failure of riders to wear safety helmets exacerbates the problem. Non-helmeted riders are at least two times more likely to incur a head injury of any type and at least three times more likely to be killed by a head injury than are helmeted riders.

Motorcycle crashes result from auto driver violation of motorcyclists' right-of-way, motorcyclists' lack of knowledge and skill, the lack of noticeability of the motorcycle and rider to other motorists, and alcohol consumption (between 40 and 70% of the motorcyclists killed in crashes have

consumed alcohol). NHTSA and the Motorcylce Safety Foundation have developed a comprehensive motorcycle safety program for State and community implementation. The program is comprised of the following elements: Operator Licensing, Rider Education, Safety Helmet Use, Conspicuity Enhancement, Motorist Awareness of Motorcycles, Alcohol Safety, and Moped Safety.

Motorcyclists are so vulnerable to severe injury when a crash occurs, that prevention of a motorcycle crash is tantamount to preventing a serious or fatal injury. It has been well documented that helmet use cuts the incidence of fatal head injuries by two-thirds. Therefore, motorcycle safety programs, which can effectively address these issues through community-based education projects, can be inexpensive and cost-effective. This program area would be administered by NHTSA.

(2) Pedestrian/Bicycle Safety

In 1986, motor vehicle crashes claimed the lives of 7,845 non-occupants, (6,771 pedestrians, 941 bicyclists, and 133 others). Nationwide, this number represents approximately one in five traffic fatalities. In some large urban cities, pedestrians and bicyclists represent half the traffic fatalities. In a motor vehicle crash, the pedestrian/bicyclist is at far greater risk than the vehicle occupant, FARS data indicate alcohol is involved in 57% of pedestrian and 44% of bicycle fatalities. The elderly are significantly over-represented in pedestrian fatalities. Head injuries are responsible for 70% of bicycle fatalities, and bicycle helmets are rarely used and poorly promoted.

Early NHTSA research found that, based on similar crash characteristics, pedestrian and bicycle crashes could be grouped into distinct crash "types." Associated with each type are specific behavioral errors committed by the pedestrian, bicyclist, or driver. For each major crash type, NHTSA has developed countermeasures containing guidance that could reduce the occurrence of these unsafe behaviors. The crash type which causes most injuries and fatalities is "dart out". A field test of the countermeasures developed to reduce this problem resulted in a 20% reduction in crashes for pedestrians under age 14. NHTSA has since developed instructional materials designed to influence particular audiences: Walking In Traffic Safely; (pre-school); Safe Street Crossing (K–4); Traffic Safety Curriculum (K–12); and public service announcements (child and adult). FHWA has also developed highway-related countermeasures for each pedestrian crash type identified, and included them in a model pedestrian safety program. These countermeasures include fixed illumination, urban intersection improvements, barriers, and one-waystreets. The FHWA bicycle safety efforts have focused on guidelines for developing new facilities and criteria for designating bicycle routes. Comprehensive pedestrian and bicycle safety programs have been implemented by a number of cities and States, resulting in reduced pedestrian and bicycle fatalities.

As with motorcyclists, pedestrians and bicyclists are so vulnerable to severe injury when a crash occurs, that prevention of a crash is tantamount to preventing a serious or fatal injury. It has been documented that bicycle helmet use reduces the incidence of fatal head injuries. Pedestrian/bicycle safety programs can effectively address these issues through community-based education projects, facility planning and improvement, and enforcement. Therefore, they also can be inexpensive and cost-effective. This program area would be administered jointly by NHTSA and FHWA.

It would assist the agencies if commenters address the issues listed below. Please note that when the agencies refer to "the program area" in this list, they are requesting comments regarding the programs previously identified as national priority areas as well as emerging programs that may be added. Comments may address one or all of the areas discussed in this NPRM, or areas which are not mentioned. When applicable, comments addressing the perspective or concerns of a particular region, State or locality are welcome.

(1) Does the program area represent a major problem at the national, State and local level?

(2) Is it expected that the program area will represent a major problem at the national, State and local level in the future?

(3) Are countermeasures sufficiently developed in the program area to effectively address the problem?

(4) What are the costs and benefits of these countermeasures?

(5) Have section 402 funds measurably affected the problems articulated in the 1982 rulemaking action? Please explain.

(6) Is there a need for section 402 support in the program area being addressed in the comment? Please explain.

(7) On what basis do the States determine the effectiveness of their highway safety programs, and how should the Federal government determine program effectiveness?

Section 206(d) of the Surface Transportation and Uniform Relocation Assistance Act of 1987 requires, "any rule under this subsection shall be promulgated taking into account consideration of the States having a major role in establishing programs [most effective in reducing accidents, injuries and deaths]." Accordingly, the agencies particularly encourage States to provide comments to this notice. We also encourage others involved in establishing highway safety programs or affected by these programs, to comment.

Change Standards to Guidelines

Section 206(a) of the Act amends section 402 by replacing the terms "standard" and "standards" wherever they appear with the words "guideline" and "guidelines". To implement this change, the agencies propose to amend the body of 23 CFR Part 1204. (We will review the supplemental materials following this Part at a later date, as discussed below.) Wherever the term "standard" or "standards" appears in the regulation, we propose to replace it with the word "guideline" or "guidelines", respectively. Wherever the term "shall" appears in the regulation, we propose to replace it with the word "should". This amendment would conform the language of the agencies' regulation with the current implementation of the section 402 programs. As a result of the section 402(j) determinations conducted in 1982, the existing highway safety program standards have been maintained as non-binding guidelines for use by the States in their section 402 programs.

The agencies intend to review all the regulations that implement section 402, including Part 1204, and the supplemental materials that follow, to determine whether additional revisions need to be made. See, 23 CFR Chapter II. Any additional revisions will be accomplished in a separate rulemaking action. Comments to this notice, therefore, should be limited to the revisions currently being proposed.

Public Hearings

Public hearings will be held on September 29 and October 8 and 14, 1987. The September 29, 1987 hearing will be held in Room 2230 of the Nassif Building, U.S. Department of Transportation, 400 7th St., SW., Washington, DC; the October 8, 1987 hearing will be held in Room 1A03 of the Fritz Lanham Building, 819 Taylor Street, Fort Worth, Texas; the October 14, 1987 hearing will be held in Conference

Rooms A & B of the Lehigh Building, 555 Zang Street, Lakewood, Colorado. Each hearing will be scheduled from 9 a.m. to 12 noon and from 1:30 p.m. to 5 p.m., or until the final witness has been heard, whichever is earlier. The agency invites interested members of the public to participate in these hearings and to comment on all issues raised by this proposal.

Persons wishing to make an oral presentation at a public hearing should contact Mr. J. Michael Sheehan (whose address and telephone number are provided near the beginning of this notice) no later than seven days before the hearing. Oral statements should be limited to 5 minutes or less. Oral or written clarification on issues raised in the oral statements or in the docket submissions may be requested by agency representatives conducting these hearings. As time permits, the formal statements may be followed by an open discussion, and persons who have not requested time but would like to make a statement, may be afforded an opportunity to do so at the end of each day's schedule.

Persons making oral presentations are requested but not required to submit 25 written copies of the full text of their presentation to Mr. Sheehan, no later than two days before each hearing begins. Copies of all written statements will be placed in the docket for this notice. A verbatim transcript of each public hearing will be prepared and also placed in the public docket as soon as possible after the hearing. A schedule of the persons making oral presentations at each hearing will be available at the designated meeting area at the beginning of each public hearing.

Written Comments

Interested persons are invited to submit comments on this proposal. It is requested but not required that 10 copies be submitted.

Written comments to the public docket must be received by October 19, 1987. In order to expedite the submission of comments, simultaneous with the issuance of this notice, copies will be mailed to all Governors, Governors' Representatives for Highway Safety and State highway agencies.

Comments should not exceed 15 pages in length. Necessary attachments may be added to these submissions without regard to the 15 page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise manner.

All comments received before the close of business on the comment closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. However, the rulemaking action may proceed at any time after that date. The agencies will continue to file relevant material in the docket as it becomes available after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the docket should enclose, in the envelope with their comments, a self-addressed stamped postcard. Upon receiving the comments, the docket supervisor will return the postcard by mail.

Copies of all written comments and statements will be placed in Docket 81-12; Notice 4 of the Docket Section in Room 5109, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590.

Impact Analyses

A. Economic Impacts

The agencies have analyzed the effect of this action and determined that it is not "major" within the meaning of Executive Order 12291 or "significant" within the meaning of Department of Transportation regulatory policies and procedures. The rulemaking would not affect the level of funding available in the highway safety program, or otherwise have a significant economic impact, so that neither a Preliminary Regulatory Impact Analysis nor a Preliminary Regulatory Evaluation is required. Although not required to do so, the agencies prepared an Evaluation in 1982 to assist them in the rulemaking process. The Evaluation has been reviewed by the agencies and an Addendum has been prepared. These documents have been submitted to the Docket Section, Room 5109, and are available for inspection. Also in association with the 1982 rulemaking process, the agencies prepared and submitted to the public docket, Effectiveness and Efficiency Papers regarding the programs then being considered to be national priority program areas. These documents are also available in the public docket, Room 5109, Docket Number 81-12, General Reference Section.

B. Impacts on Small Entities

In compliance with the Regulatory Flexibility Act, the agenices have evaluated the effects of this action on small entities. Based on the evaluation, we certify that this action would not have a significant economic impact on a substantial number of small entities. States would be recipients of any funds awarded under the regulation and, accordingly, the preparation of an Initial Regulatory Flexibility Analysis is unnecessary.

C. Environmental Impacts

The agencies have also analyzed this action for the purpose of the National Environmental Policy Act. The agencies have determined that this action would not have any effect on the human environment.

D. Paperwork Reduction Act

The requirement relating to this proposal, that each State must submit a highway safety plan to receive section 402 grant funds, is considered to be an information collection requirement, as that term is defined by the Office of Management and Budget (OMB) in 5 CFR Part 1320.

Accordingly, this proposed action has been submitted to and approved by OMB, pursuant to the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). These requirements have been approved through May 31, 1989; OMB No. 2127-0003.

List of Subjects in 23 CFR Parts 1204 and 1205

Grant programs, Highway safety.

Issued on August 28, 1987.

Diane K. Steed,

National Highway Traffic Safety Administrator.

R.A. Barnhart,

Federal Highway Administrator.

[FR Doc. 87-20237 Filed 8-31-87; 11:16 am]

BILLING CODE 4910-59-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

Income Taxes; Limitation on Taxpayer's Basis or Inventory Cost in Property Imported From Related Persons

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations relating to the limitation on taxpayer's basis or inventory cost in property imported from a related person. This limitation was enacted by the Tax Reform Act of 1986. The regulations will provide guidance to taxpayers who import, from a related person, property that is subject to a

United States customs duty upon importation into the United States.

DATES: Written comments and requests for a public hearing must be delivered or mailed by November 2, 1987. These regulations are proposed to be effective with respect to transactions entered into after March 18, 1986.

ADDRESS: Send comments and request for a public hearing to: Commissioner of Internal Revenue, Attention: CC:LR:T (INTL-960-86), Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: W. Edward Williams of the Office of the Associate Chief Counsel (International) within the Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224, (Attn: CC:LR:T). Telephone 202-566-3486 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed amendments to the Income Tax Regulations (26 CFR Part 1). These regulations are proposed to be issued under the authority contained in section 7805 of the Internal Revenue Code of 1986 (68A Stat. 917, 26 U.S.C. 7805).

Congress was concerned that the potential exists for a United States taxpayer that imports property from a related person into the United States to state a low value for the property for purposes of determining the amount of any customs duties. However, the same taxpayer may have an incentive to state a high value for the property for purposes of determining, under the income tax law, its cost basis or inventory cost in the property. This latter incentive is greater when the property is imported by the U.S. taxpayer from a related person who is not subject to U.S. income tax.

Section 1248 of the Tax Reform Act of 1986 enacted Code section 1059A to prevent a U.S. taxpayer from claiming a higher value for income tax purposes for property imported from a related person than the value claimed by that U.S. taxpayer for purposes of customs duties.

Explanation of Provision

Section 1059A provides that a U.S. taxpayer that imports property into the U.S. in a transaction (directly or indirectly) from a person or persons related to the taxpayer, within the meaning of section 482 of the Code, may not claim, for purposes of computing the basis or inventory cost of the property, a greater cost than the amount of the cost taken into account for customs valuation purposes. However, because the rules for determining the value of imported property for customs purposes differ in some respects from the rules for determining cost basis or inventory cost for income tax purposes, certain adjustments to the customs value are required to determine the limitation to cost basis or inventory cost for income tax purposes. Congress was aware of the need for these adjustments, and the legislative history of section 1059A contemplates that the Internal Revenue Service will provide rules for making necessary adjustments to the customs value. These proposed regulations provide rules for adjusting the value utilized for customs value so that the customs value, as adjusted, will be the limitation under section 1059A for purposes of computing the basis or inventory cost of property imported by a U.S. taxpayer from a related person.

The term "customs value" is defined in section 1059A(b)(1) as "the value taken into account for purposes of determining the amount of any customs duties or any other duties which may be imposed on the importation of any property." The proposed regulations provide that a taxpayer is bound by the finally-determined customs value and that the customs value is finally-determined when liquidation of the entry (*i.e.*, the ascertainment of the customs duties accruing on the entry of property) becomes final (*i.e.* after 90 days following notice of liquidation to the importer, unless a protest is filed). If the importer protests the initial customs value determination before it is finally determined, the proposed regulations treat the value as finally-determined either when the decision of the U.S. Customs Service on the importer's protest is not contested or when a judgment of the Court of International Trade becomes final and all of the importer's appeal rights are exhausted. The proposed regulations also provide that a taxpayer is bound for income tax purposes by a finally-determined customs value, even though the customs duties are refunded as the result of a particular use made of the imported merchandise.

The proposed regulations permit the finally-determined customs value to be increased for tax purposes by amounts paid by the U.S. taxpayer for: international freight; insurance charges; the construction, erection, assembly, or maintenance of, or technical assistance provided with respect to, the property after its importation into the United States; the transportation of the property after its importation; and any other amounts not taken into account in determining the customs value and which amounts are properly included in the cost basis or inventory cost of the property.

Section 1059A was intended by Congress to prevent the abuse resulting from a taxpayer's reporting of a greater value of imported property for income tax purposes than for customs purposes. The section does not require reduction of the value of imported property utilized for income tax purposes below the value used for customs purposes. However, other statutory provisions, such as section 482, may be so applied. Accordingly, while there are reductions that properly reduce the cost basis or inventory cost for income tax purposes that are not taken into account when computing customs value (*e.g.*, rebates), the proposed regulations provide that these downward adjustments may only be applied to offset upward adjustments permitted by the proposed regulations for purposes of determining the limitation under section 1059A. Thus, downward adjustments permitted by the proposed regulations that are not taken into account for customs purposes may not reduce the limitation of section 1059A below the customs value, prior to any adjustments permitted by the proposed regulation.

Under the proposed regulations, the following types of property are not subject to the section 1059A limitation: an item or portion of an item not subject to any customs duty; items subject only to a user fee under 19 U.S.C. sec. 58(c); items or portions of items not subject to duty because of their American content; nondutiable items valued by customs solely for statistical purposes; and items not subject to a customs duty based on value.

The regulations are proposed to be effective with respect to property imported by a taxpayer if the entry documentation required to be filed to obtain the release of the property from the custody of the Customs Service was filed after March 18, 1986.

Comments and Requests for a Public Hearing

Before adopting these proposed regulations, consideration will be given to any written comments that are submitted (preferably eight copies) to the Commissioner of Internal Revenue. All comments will be available for public inspection and copying. A public hearing will be held upon written request to the Commissioner by any person who has submitted written comments. If a public hearing is held, notice of the time and place will be published in the **Federal Register**.

Regulatory Flexibility Act and Executive Order 12291

Although this document is a notice of proposed rulemaking which solicits public comment, it has been determined that the regulations proposed herein are interpretative and that the notice and public procedure requirements of 5 U.S.C. 553 do not apply. Accordingly, these proposed regulations do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. chapter 6).

It has also been determined that this proposed rule is not a major rule as defined in Executive Order 12291 and that a regulatory impact analysis therefore is not required.

Drafting Information

The principal author of these proposed regulations is W. Edward Williams of the Office of Associate Chief Counsel (International) within the Office of the Chief Counsel. However, personnel from other offices of the Internal Revenue Service and the Treasury Department participated in developing these regulations, both on matters of substance and style.

List of Subjects in 26 CFR 1.1001–1 Through 1.1102–3

Income taxes, Gain and loss, Basis, Nontaxable exchanges.

Proposed Amendments to the Regulations

The proposed amendments to 26 CFR Part 1 are as follows:

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

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

Par. 2. Section 1.1059A–1 is added immediately after § 1.1055–4, to read as follows:

§ 1.1059A–1 Limitation on taxpayer's basis or inventory cost in property imported from related persons.

(a) *General rule.* In the case of property imported into the United States in a transaction (directly or indirectly) by a controlled taxpayer from another member of a controlled group of taxpayers, except for the adjustments permitted by paragraph (c)(2) of this section, the amount of any costs taken into account in computing the basis or inventory cost of the property by the purchasing U.S. taxpayer and which costs are also taken into account in computing the valuation of the property for customs purposes may not, for purposes of the basis or inventory cost be greater than the amount of the costs used in computing the customs value. For purposes of this section, the terms "controlled taxpayer" and "group of controlled taxpayers" shall have the meaning set forth in § 1.482–1(a).

(b) *Definitions*—(1) *Import.* For purposes of this section, the term "import" means the filing of the entry documentation required by the U.S. Customs Service to secure the release of imported merchandise from custody of the U.S. Customs Service.

(2) *Indirectly.* For purposes of this section, "indirectly" refers to a transaction between a controlled taxpayer and another member of the controlled group whereby property is imported through a person acting as an agent of, or otherwise on behalf of, either or both related persons, or as a middleman or conduit for transfer of the property between a controlled taxpayer and another member of the controlled group. In the case of the importation of property indirectly, an adjustment shall be permitted under paragraph (c)(2) of this section for a commission or markup paid to the person acting as agent, middleman, or conduit, only to the extent that the commission or markup is otherwise properly included in cost basis or inventory cost; was actually incurred by the taxpayer and not remitted, directly or indirectly, to the taxpayer or related party; and there is a substantial business reason for the use of a middleman, agent, or conduit.

(c) *Customs value*—(1) *Definition.* For purposes of this section, the term "customs value" means the value required to be taken into account for purposes of determining the amount of any customs duties or any other duties which may be imposed on the importation of any property. Where an item or a portion of an item is not subject to any customs duty, such item or portion of such item shall not be subject to the provisions of section 1059A or this section. Thus, items subject only to a user fee under 19 U.S.C. 58(c), items or portions of items not subject to duty because of their American content (item 807.00, Tariff Schedules of the United States, 19 U.S.C. 1202), and non-dutiable items that are valued by customs for statistical purposes only are not subject to section 1059A or this section. This section imposes no limitation on a claimed basis or inventory cost in property which is less than the value used to compute the customs duty with respect to the same property. Also, this section imposes no limitation on the basis or inventory cost of property (or portion of property) not subject to a customs duty. Section 1059A and this section have no application to imported property not subject to any customs duty based on value, including property subject only to a per item duty or a duty based on volume, because there is no customs value, within the meaning of this paragraph, with respect to such property.

(2) *Adjustments to customs value.* To the extent not otherwise included in customs value, a taxpayer, for purposes of determining the limitation on claimed basis or inventory cost of property under this section, may increase the customs value of imported property by the amounts incurred by it and properly included in inventory cost for—

(i) Freight charges,

(ii) Insurance charges,

(iii) The construction, erection, assembly, or technical assistance provided with respect to, the property after its importation into the United States, and

(iv) Any other amounts which are not taken into account in determining the customs value, which are not properly includible in customs value, and which are appropriately included in the cost basis or inventory cost for income tax purposes. *See* § 1.471–11 and section 263A.

To the extent that an amount attributable to an adjustment permitted by this section is paid by a controlled taxpayer to another member of the group of controlled taxpayers, an adjustment is permitted under this section only to the extent that the amount incurred represents an arm's length charge within the meaning of § 1.482–1(d)(3).

(3) *Offsets to adjustments.* To the extent that a customs value is adjusted under paragraph (c)(2) of this section for purposes of calculating the limitation on claimed cost basis or inventory cost under this section, the amount of the adjustments must be offset (reduced) by amounts that properly reduce the cost basis of inventory and that are not taken into account in determining customs value, such as rebates and other reductions in the price actually incurred, effected between the purchaser and related seller after the date of importation of the property.

(4) When an item of imported property consists of both a dutiable portion and a nondutiable American content portion and the taxpayer claims a basis or inventory cost greater than the customs value reported for the item, the claimed tax basis or inventory cost in the dutiable portion of the item is limited under section 1059A and this section to the customs value of the dutiable portion under paragraph (c)(1) of this section. The claimed tax basis or inventory cost in the nondutiable portion of the item is determined by multiplying the customs value of the

nondutiable portion by the percentage by which the claimed basis or inventory cost exceeds the customs value of the item and adding this amount to the customs value of the nondutiable portion of the item. The claimed tax basis or inventory cost in the dutiable portion is determined by multiplying the customs value of the dutiable portion by the percentage by which the claimed basis or inventory cost exceeds the customs value of the item and adding this amount to the customs value of the dutiable portion of the item. However, the taxpayer may not claim a tax basis or inventory cost in the dutiable portion greater than the customs value of this portion of the item.

(5) When an item of imported property consists of both a dutiable and a nondutiable American content portion and the taxpayer establishes that the customs value may be increased by adjustments permitted under paragraph (c)(2) of this section for purposes of the section 1059A limitation, the taxpayer's basis or inventory cost of the dutiable portion of the item is determined by multiplying the customs value of the dutiable portion times the percentage that the adjustments represent of the total customs value of the item and adding this amount to the customs value of the dutiable portion of the item. The taxpayer's basis or inventory cost of the nondutiable portion of the item is determined in the same manner. The amount so determined for the dutiable portion of the item is the section 1059A limitation for this portion of the item.

(6) Neither this section nor section 1059A limits in any way the authority of the Commissioner to increase or decrease the claimed basis or inventory cost under section 482 or any other appropriate Code section. Neither does this section or section 1059A permit a taxpayer to adjust upward its cost basis or inventory cost for property appropriately determined under section 482 because such basis or inventory cost is less than the customs value with respect to such property.

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

Example (1). Corporation X, a United States taxpayer, and Y Corporation are members of a group of controlled corporations. X pays $2,000 to Y for merchandise imported into the United States and an additional $150 for ocean freight and insurance. The customs value of the shipment is determined to be the amount actually paid by X ($2,000) and does not include the charges for ocean freight and insurance. For purposes of computing the limitation on its inventory cost for the merchandise under section 1059A and this section, X is permitted, under paragraph (c)(2) of this section, to increase the customs value ($2,000) by amounts it paid for ocean freight and insurance charges ($150). Thus, the inventory cost claimed by X in the merchandise may not exceed $2,150.

Example (2). Assume the same facts as in Example (1) except that, subsequent to the date of importation of the merchandise, Y grants to X a rebate of $200 of the purchase price. At the time of sale, the rebate was contingent upon the volume of merchandise ultimately bought by X from Y. The value of the merchandise, for customs purposes, is not decreased by the rebate paid to X by Y. Therefore, the customs value, for customs purposes, of the merchandise remains the same ($2,000). For purposes of computing its inventory cost, X was permitted, under paragraph (c)(2) of this section, to increase the customs value for purposes of section 1059A of $2,000 by the amounts it paid for ocean freight and insurance charges ($150). However, under paragraph (c)(3) of this section, X is required to reduce the amount of the customs value by the lesser of the amount of the rebate or the amount of any positive adjustments to the original customs value. The inventory price claimed by X may not exceed $2,000 ($2,000 customs value, plus $150 transportation adjustment, less $150 offsetting rebate adjustment). While X's limitation under section 1059A is $2,000, X may not claim a basis or inventory cost in the merchandise in excess of $1,950. *See* I.R.C. § 1012; and § 1.471-2.

Example (3). Corporation X, a United States taxpayer, and Y Corporation are members of a group of controlled corporations. X pays $10,000 to Y for merchandise imported into the United States. The merchandise is composed, in part, of American content. The customs value of the merchandise, on which a customs duty is imposed, is determined to be $8,000 ($10,000, the amount declared by X, less $2,000, the value of the American content). For income tax purposes, X claims a cost basis in the merchandise of $11,000. None of the adjustments permitted by paragraph (c)(2) of this section is applicable. For customs purposes, the American content represented 20 percent of the total value of the merchandise. Since the cost basis claimed by X for income tax purposes represents a 10 percent increase over the customs valuation (before reduction for American content), the claimed tax basis in the dutiable content is considered to be $8,800 and in the American content is $2,200. Since a customs duty was imposed only on the dutiable content of the merchandise, the limitation in section 1059A and this section is applicable only to the claimed tax basis in this portion of the merchandise. Accordingly, under paragraph (a) of this section, X is limited to a cost basis of $10,200 in the merchandise. This amount represents a cost basis of $8,000 in the dutiable content and of $2,200 in the American content portion of the merchandise.

Example (4). Assume the same facts as in Example (3) except that X establishes that it is entitled to increase its customs value by $1,000 in adjustments permitted by paragraph (c)(2) of this section. Since the adjustments to customs value that X is entitled to under paragraph (c)(2) of this section are 10 percent of the customs value, for purposes of determining the limitation under section 1059A and this section, both the dutiable content and the American content shall be increased to an amount 10 percent greater than the respective values determined for customs purposes, or $8,800 for the dutiable content and $2,200 for the American content. Accordingly, under paragraph (a) of this section, X is limited to a cost basis of $11,000 in the merchandise.

Example (5). Corporation X, a United States taxpayer, and Y Corporation are members of a group of controlled corporations. X pays $10,000 to Y for merchandise imported into the United States. The customs value of the merchandise, on which a customs duty is imposed, is determined to be $10,000. Subsequent to the date of importation of the merchandise, Y grants to X a rebate of $1,000 of the purchase price. The value of the merchandise, for customs purposes, is not decreased by the rebate paid to X by Y. Notwithstanding the fact that X correctly reported and paid customs duty on a value of $10,000 and that its limitation on basis or inventory cost under this section is $10,000, X may not claim a basis or inventory cost in the merchandise in excess of $9,000. *See* I.R.C. § 1012; and § 1.471-2.

Example (6). Corporation X, a United States taxpayer, and Y Corporation are members of a group of controlled corporations. X pays $5,000 to Y for merchandise imported into the United States. The merchandise is not subject to a customs duty and is valued by customs solely for statistical purposes. Accordingly, pursuant to paragraph (c)(1), the merchandise is not subject to the provisions of section 1059A or this section.

(8) *Averaged customs values.* To the extent substantiated by the taxpayer, in the case of a good faith overvaluation of one article and a good faith undervaluation of a second article for customs purposes, the section 1059A limitation on the undervalued article may be increased by the amount of the duty overpaid on the overvalued article times a fraction the numerator of which is "1" and the denominator of which is the rate of duty on the undervalued article. This subsection applies exclusively to property imported in open transactions in which the actual transaction value cannot be determined until after duty is paid and the entry is liquidated; in these cases, the actual transaction value is objectively determined after liquidation of the entry according to a formula in existence at the time of importation (for example, a percentage of future sales receipts). This subsection does not apply where customs value is correctly determined for purposes of liquidating the entry and where the customs value is subsequently adjusted, for example by a rebate, under paragraph (c)(2) of this

section. The application of this subsection may be illustrated by the following example:

Corporation X, a United States taxpayer, and Y Corporation are members of a group of controlled corporations. X purchases Articles A and B from Y on consignment and imports the Articles into the United States. The purchase price paid by X will be determined as a percentage of the sale prices that X realizes. Rather than deferring liquidation for customs purposes, X makes good faith estimates of the transaction values of Articles A and B and the customs duties are paid by X and the entries are liquidated. Ultimately, it is determined that Article A was undervalued and Article B was overvalued by X. The section 1059A limitation for Article A is computed as follows:

	Article A	Article B
Finally-determined customs value	$9	$9
Transaction value	$10	$5
Duty rate (percent)	10	1
Customs duty paid	$.90	$.09
Duty overpaid or (underpaid)	($.10)	$.04

The section 1059A limitation on Article A may be increased by the amount of the duty overpaid on Article B, $.04, times 1/.10. Therefore, the section 1059A limitation on Article A is $9.00 plus $.40, or a total of $9.40.

(d) *Finality of customs value and of other determinations of the U.S. Customs Service.* For purposes of section 1059A and this section, a taxpayer is bound by the finally-determined customs value and by every final determination made by the U.S. Customs Service, including, but not limited to, dutiable value, the value attributable to American content, and classification of the product for purposes of imposing any duty. The customs value is considered to be finally determined, and all U.S. Customs Service determinations are considered final, when liquidation of the entry becomes final. For this purpose, the term "liquidation" means the ascertainment of the customs duties occurring on the entry of the property, and liquidation of the entry is considered to become final after 90 days following notice of liquidation to the importer, unless a protest is filed. If the importer files a protest, the customs value will be considered finally determined and all other U.S. Customs Service determinations will be considered final either when a decision by the Customs Service on the protest is not contested after expiration of the period allowed to contest the decision or when a judgment of the Court of International Trade becomes final. For purposes of this section, any adjustments to the customs value resulting from a petition under 19 U.S.C. 1516 (requests by interested parties unrelated to the importer for redetermination of the appraised value, classification, or the rate of duty imposed on imported merchandise) or reliquidation under 19 U.S.C. 1521 (reliquidation by the Customs Service upon a finding that fraud was involved in the original liquidation) will not be taken into account. However, reliquidation under 19 U.S.C. 1501 (voluntary reliquidation by the Customs Service within 90 days of the original liquidation to correct errors in appraisement, classification, or any element entering into a liquidation or reliquidation) will be taken into account in the same manner as, and take the place of, the original liquidation in determining customs value.

(e) *Drawbacks.* For purposes of this section, a drawback, that is, a refund or remission (in whole or in part) of a customs duty because of a particular use made (or to be made) of the property on which the duty was assessed or collected, shall not affect the determination of the customs value of the property.

(f) *Effective date.* Property imported by a taxpayer is subject to section 1059A and this section if the entry documentation required to be filed to obtain the release of the property from the custody of the United States Customs Service was filed after March 18, 1986. Section 1059A and this section will not apply to imported property where the entry documentation is filed prior to September 3, 1987, the importation was liquidated upon payment of a customs duty based on the importer's good faith estimate of the transaction value of the property because the imported property was imported in an open transaction whereby the importer's purchase price was determined, according to an objective formula in existence at the time of importation, by events occurring subsequent to the entry, and which estimated value proves to be lower than the actual transaction value.

Lawrence B. Gibbs,

Commissioner of Internal Revenue.

[FR Doc. 87-20164 Filed 9-2-87; 8:45 am]

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DEPARTMENT OF JUSTICE

Parole Commission

28 CFR Part 2

Paroling, Recommitting and Supervising Federal Prisoners; Paroling Policy Guidelines Revisions

AGENCY: Parole Commission, Justice.

ACTION: Proposed rules and request for comments.

SUMMARY: The Parole Commission proposes to make a number of revisions to the dollar amount thresholds in its paroling policy guidelines contained in 28 CFR 2.20. These changes are intended to make the guidelines more comprehensive and more fair.

DATE: Public comment must be received by October 5, 1987.

ADDRESS: Comments should be addressed to: Alan J. Chaset, Deputy Director of Research and Program Development, U.S. Parole Commission, 5550 Friendship Blvd., Chevy Chase, Maryland 20815, Telephone (301) 492-5980.

FOR FURTHER INFORMATION CONTACT: Alan J. Chaset, Deputy Director of Research and Program Development, Telephone (301) 492-5980.

SUPPLEMENTARY INFORMATION: The Commission proposes to adjust the dollar thresholds for the following property offenses: Offense Example 303 (Property Destruction Other Than Listed Above); Offense Example 331 (Theft, Forgery, Fraud, Trafficking in Stolen Property, Interstate Transportation of Stolen Property, Receiving Stolen Property, Embezzlement, and Related Offenses); Offense Example 341 (Passing or Possession of Counterfeit Currency or Other Medium of Exchange); Offense Example 363 (Insider Trading); Offense Example 501 (Tax Evasion [income tax and other taxes]); Offense Example 1161 (Reports or Monetary Instrument Transactions; and Offense Example 1172 (Knowing Disposal and/or Storage and Treatment of Hazardous Waste Without a Permit; Transportation of Hazardous Waste to an Unpermitted Facility [Re: U.S.C. 6928(d) (1-2)]. The Commission's proposal would have the effect of lowering the offense severity ratings (and the corresponding guideline ranges) for a number of property offenses by raising the dollar value threshold required for rating offenses in the various severity categories.

The Parole Commission is proposing

these changes for a number of reasons, the primary reason, however, being fairness. The guidelines for property offenses have remained basically unchanged since the first set of parole release guidelines was implemented in 1973. In the intervening 14 years, no adjustment for inflation has been made for property offenses over $2,000 and the proposed modification of severity category thresholds is, therefore, only proportional to the amount of inflation during this period of time. More specifically, the degree of economic harm caused by a $20,000 property crime in 1987 is substantially less than that caused by a $20,000 crime in 1973, and the diminution in the severity ratings now proposed merely cancels the incidental increase in severity ratings which had crept into the guidelines since 1973. In addition, the change is more comparable to the Sentencing Commission's guidelines.

Further, the Bureau of Prisons is presently more than 50% over rated capacity and these changes will assist in providing some relief for the overcrowding problems. It should be noted that the overwhelming majority of large scale property offenders have been found to be very good parole risks, and release of these offenders would not endanger the community. The changes will allow for release, in some cases, of these non-dangerous persons and thus, by assisting in the overcrowding problem, will make available more prison space for individuals who are dangerous to the community, specifically assaultive types, drug dealers, etc.

These proposed rule changes will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

Lists of Subjects in 28 CFR Part 2

Administrative practice and procedure, Prisoners, Probation and parole.

PART 2—[AMENDED]

1. The authority citation for 28 CFR Part 2 continues to read:

Authority: 18 U.S.C. 4203(a)(1) and 4204(a)(6).

§ 2.20 [Amended]

2. It is proposed to revise Offense Example 303 in Chapter Three, Subchapter A of the Offense Behavior Severity Index of 28 CFR 2.20 to read as follows:

303 *Property Destruction Other Than Listed Above*

(a) If the conduct results in bodily injury *, or if 'serious bodily injury is the result intended'*, grade as if 'assault during commission of another offense';

(b) If damage of more than $1,000,000 is caused, grade as Category Six;

(c) If damage of more than $200,000 but not more than $1,000,000 is caused, grade as Category Five;

(d) If damage of at least $40,000 but not more than $2,000,000 is caused, grade as Category Four;

(e) If damage of at least $2,000 but not less than $40,000 is caused, grade as Category Three;

(f) If damage of less than $2,000 is caused, grade as Category One;

(g) *Exception:* If a significant interruption of a government or public utility function is caused, grade as not less than Category Three.

3. It is proposed to amend Offense Example 331 in Chapter Three, Subchapter D of the Offense Behavior Severity Index of 28 CFR 2.20 by revising paragraphs (a)–(e) to read as follows:

331 *Theft, Forgery, Fraud, Trafficking in Stolen Property Interstate Transportation of Stolen Property, Reveiving Stolen Property, Embezzlement, and Related Offenses*

(a) If the value of the property * is more than $1,000,000, grade as Category Six;

(b) If the value of the property * is more than $2,000 but not more than $1,000,000, grade as Category Five;

(c) If the value of the property * is at least $40,000 but not more than $2,000, grade as Category Four;

(d) If the value of the property * is at least $2,000 but less than $40,000, grade as Category Three;

(e) If the value of the property * is at least $2,000 grade as Category One.

* * * * *

4. It is proposed to revise Offense Example 341 of Chapter Three, Subchapter E of the Offense Behavior Severity Index of 28 CFR 2.20 to read as follows:

341 *Passing or Possession of Counterfeit Currency or Other Medium of Exchange**

(a) If the face value of the currency or other medium of exchange is more than $1,000,000, grade as Category Six;

(b) If the face value is more than $200,000 but not more than $1,000,000, grade as Category Five;

(c) If the face value is at least $40,000 but not more than $200,000, grade as Category Four;

(d) If the face value is at least $2,000 but less than $40,000, grade as Category Three;

(e) If the face value is less than $2,000, grade as Category Two.

* Terms marked by an asterisk are defined in Chapter Thirteen.

* Terms marked by an asterisk are defined in Chapter Thirteen.

5. It is proposed to revise Offense Example 363 of Chapter Three, Subchapter F of the Offense Behavior Severity Index of 28 CFR 2.20 to read as follows:

363 *Insider Trading*

(a) If the estimated economic impact is more than $1,000,000, grade as Category Six;

(b) If the estimated economic impact is more than $200,000 but not more than $1,000,000, grade as Category Five;

(c) If the estimated economic impact is at least $40,000 but not more than $200,000, grade as Category Four;

(d) If the estimated economic impact is at least $2,000 but less than $40,000, grade as Category Three;

(e) If the estimated economic impact is less than $2,000, grade as Category Two.

(f) *Note*: The term 'economic impact' includes the damage sustained by the victim whose information was unlawfully used, plus any other illicit profit resulting from the offense.

6. It is proposed to amend Offense Example 501 of Chapter Five, Subchapter A of the Offense Behavior Severity Index of 28 CFR 2.20 by revising paragraphs (a)—(e) to read as follows:

501 *Tax Evasion [income tax or other taxes]*

(a) If the amount of tax evaded or evasion attempted is more than $1,000,000, grade as Category Six;

(b) If the amount of tax evaded or evasion attempted is more than $200,000 but not more than $1,000,000, grade as Category Five;

(c) If the amount of tax evaded or evasion attempted is at least $40,000 but not more than $200,000, grade as Category Four;

(d) If the amount of tax evaded or evasion attempted is at least $2,000 but less than $4,000, grade as Category Three;

(e) If the amount of tax evaded or evasion attempted is less than $2,000, grade as Category One.

* * * * *

7. It is proposed to revise Offense Example 1161 of Chapter Eleven, Subchapter G of the Offense Behavior Severity Index of 28 CFR 2.20 to read as follows:

1161 *Reports on Monetary Instrument Transactions*

(a) If the very large scale (e.g., the estimated gross amount of currency involved is more than $1,000,000), grade as Category Six;

(b) If large scale (e.g., the estimated gross amount of currency involved is more than $200,000 but not more than $1,000,000), grade as Category Five;

(c) If medium scale (e.g., the estimated gross amount of currency involved is at least $40,000 but not more than $200,000), grade as Category Four;

(d) If small scale (e.g., the estimated gross amount of currency involved is less than $40,000), grade as Category Three.

8. It is proposed to revise Offense Example 1172 of Chapter Eleven, Subchapter 4 of the Offense Behavior Severity Index of 28 CFR 2.20 to read as follows:

1172 *Knowing Disposal and/or Storage and Treatment of Hazardous Waste Without a Permit; Transportation of Hazardous Waste to an Unpermitted Facility [Re: 42 U.S.C. 6928(d) (1-2)]*

(a) If death results, grade as Category Six;

(b) If (1) serious bodily injury results; or (2) a substantial potential for death or serious bodily injury in the future results; or (3) a substantial disruption to the environment results (e.g., estimated cleanup cost exceeds $200,000, or a community is evacuated for more than 72 hours), grade as Category Five;

(c) If (1) bodily injury results, or (2) a significant disruption to the environment results (e.g., estimated cleanup costs of $40,000–$200,000, or a community is evacuated for 72 hours or less), grade as Category Four;

(d) Otherwise, grade as Category Three;

(e) *Exception:* Where the offender is a non-managerial employee (i.e., a truckdriver or loading dock worker) acting under the orders of another person, grade as two categories below the underlying offense, but not less than Category One.

Dated: August 20, 1987.

Benjamin F. Baer,

Chairman, U.S. Parole Commission.

[FR Doc. 87-20286 Filed 9-2-87; 8:45 am]

BILLING CODE 4410-01-M

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28 CFR Part 2

Paroling, Recommitting and Supervising Federal Prisoners: Paroling Policy Guidelines Revisions and Criteria for Rewarding Assistance to Law Enforcement Officials

AGENCY: Parole Commission, Justice.

ACTION: Proposed rules and request for comments.

SUMMARY: The Parole Commission proposes to make a number of revisions and additions to its paroling policy guidelines contained in 28 CFR 2.20. These changes and additions are intended to make the guidelines more comprehensive. Additionally, the Commission proposes to revise its criteria and guidelines, as contained in 28 CFR 2.63, for rewarding a prisoner's assistance to law enforcement authorities in the prosecution of other offenders. The proposed changes are intended to eliminate uneven and inconsistent interpretations and applications of the provision and for fairness.

DATE: Public comment must be received by October 5, 1987.

ADDRESS: Comments should be addressed to: Alan J. Chaset, Deputy Director of Research and Program Development, U.S. Parole Commission, 5550 Friendship Blvd., Chevy Chase, Maryland 20815, Telephone (301) 492-5980.

FOR FURTHER INFORMATION CONTACT: Alan J. Chaset, Deputy Director of Research and Program Development, Telephone (301) 492-5980.

SUPPLEMENTARY INFORMATION: First, Chapter Four of the Offense Behavior Severity Index of 28 CFR 2.20 contains the offense examples involving immigration, naturalization and passports. Recent changes in the immigration statutes and policies have occasioned a revisiting of the guidelines applicable to these offenses. Since it is now more difficult for illegal immigrants to find employment which in turn has lessened the threat of illegal immigration, the Commission proposes to revise Offense Example 401 to grade unlawful entry as Category One. Next, the Commission rates the transportation of unlawful aliens as Category Three unless it involves detention and demand for payment. To differentiate those situations from where an illegal alien transports unlawful aliens without receiving any payment or other remuneration, the Commission is revising Offense Example 402 to grade such behavior as Category One, similar to illegal entry.

Next, the proposed revision to 28 CFR 2.63 (Rewarding Assistance in the Prosecution of Other Offenders; Criteria and Guidelines) would simplify the Commission's process of rewarding cooperation by eliminating the requirement for the U.S. Attorney to personally endorse a recommendation from his office before the Commission would consider rewarding such cooperation. Further, pursuant to this proposal, when the Commission decides to reward the assistance of an inmate whose term has been continued to expiration, any reduction will be taken from the actual date of the expiration of sentence rather than from the presumptive date that would otherwise have been deemed warranted. These changes will serve to facilitate the use of this regulation, eliminating uneven and inconsistent application and will, it is felt, provide more fairness to the procedures.

These proposed rule changes will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

Lists of Subjects in 28 CFR Part 2

Administrative practice and procedure, Prisoners, Probation and parole.

PART 2—[AMENDED]

1. The authority citation for 28 CFR Part 2 continues to read:

Authority: 18 U.S.C. 4203(a)(1) and 4204(a)(6).

2. It is proposed to revise Offense Example 401 of Chapter Four of the Offense Behavior Severity Index of 28 CFR 2.20 to read as follows:

401 *Unlawfully Entering the United States as an Alien*

Category One

3. It is proposed to amend Offense Example 402 of Chapter Four of the Offense Behavior Severity Index of 28 CFR 2.20 by revising paragraph (b) and adding paragraph (c) to read as follows:

402 *Transportation of Unlawful Alien(s)*

(a) * * *

(b) Transportation of unlawful alien(s) without re-muneration other than free transportation or passage shall be rated the same as unlawful entry into the United States as an alien.

(c) Otherwise, grade as Category Three.

4. It is proposed to revise 28 CFR 2.63 (Rewarding Assistance in the Prosecution of Other Offenders; Criteria and Guidelines) to read as follows:

§ 2.63 Rewarding assistance in the prosecution of other offenders; criteria and guidelines.

(a) The Commission may consider as a factor in the parole release decision-making a prisoner's assistance to law enforcement authorities in the prosecution of other offenders.

(1) The assistance must have been an important factor in the investigation and/or prosecution of an offender other than the prisoner. Other significant assistance (e.g., providing information critical to prison security) may also be considered.

(2) The assistance must be reported to the Commission in sufficient detail to permit a full evaluation. However, no promises, express or implied, as to a

Parole Commission reward shall be given any weight in evaluating a recommendation for leniency.

(3) The release of the prisoner must not threaten the public safety.

(4) The assistance must not have been adequately rewarded by other official action.

(b) If the assistance meets the above criteria, the Commission may consider providing a reduction of up to one year from the presumptive parole date that the Commission would have deemed warranted had such assistance not occurred. If the prisoner would have been continued to the expiration of sentence, any reduction will be taken from the actual date of the expiration of the sentence. Reductions exceeding the one year limit specified above may be considered only in exceptional circumstances.

Dated: August 21, 1987.

Benjamin F. Baer,

Chairman, U.S. Parole Commission.

[FR Doc. 87-20285 Filed 9-2-87; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD13 87-09]

Drawbridge Operation Regulations; South Fork Willapa River, WA

AGENCY: Coast Guard, DOT.

ACTION: Proposed rule.

SUMMARY: At the request of the Burlington Northern Railroad Company, the Coast Guard is considering a change to the regulations governing the railroad drawbridge across the South Fork Willapa River, mile 0.3, at Raymond, Washington, to provide that the draw need not be opened for the passage of vessels. This proposal is being made because only one request has been made to open the draw since 1983. This action should relieve the bridge owner of the burden of maintaining the machinery and having a person available to open the draw and should still provide for the reasonable needs of navigation.

DATE: Comments must be received on or before October 19, 1987.

ADDRESSES: Comments should be mailed to Commander (oan), Thirteenth Coast Guard District, 915 Second Avenue, Seattle, Washington 98174-1067. The comments and other materials referenced in this notice will be available for inspection and copying at 915 Second Avenue, Room 3564. Normal office hours are between 7:45 a.m. and 4:15 p.m., Monday through Friday, except holidays. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: John E. Mikesell, Chief, Bridge Section, Aids to Navigation and Waterways Management Branch, (Telephone: (206) 442-5864).

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this propsed rulemaking by submitting written views, comments, data, or arguments. Persons submitting comments should include their names and addresses, identify the bridge, and give reasons for concurrence with, or any recommended changes in, the proposal. Persons desiring acknowledgement that their comments have been received should enclose a stamped, self-addressed postcard or envelope.

The Commander, Thirteenth Coast Guard District, will evaluate all communications received and determine a course of final action on this proposal. The proposed regulations may be changed in light of comments received.

Drafting Information

The drafters of this notice are: John E. Mikesell, project officer, and Lieutenant Commander Lawrence I. Kiern, project attorney.

Discussion of the Proposed Regulations

In 1983 the operating regulations for the Burlington Northern railroad bridge across the South Fork Willapa River, mile 0.3, at Raymond, Washington, were changed from the requirement to open on signal, to the requirement that 24 hour's advance notice be given for openings. Since this change has been in effect, the bridge has only been required to open once for the passage of a vessel. The draw rest for the bridge is in a deteriorated condition and must be replaced if the bridge is to remain operational. The bridge owner is reluctant to expend funds for replacement of the draw rest it there is not sufficient vessel traffic to require bridge openings. The proposed change would allow the bridge to be maintained in the closed position and not be required to open. However, should the waterway again be used for navigation, the bridge would be restored to operable condition upon six months notice by the District Commander. This change would result in savings in operating costs to the bridge owner and should not have a significant effect on navigation because no potentially affected waterway users have been identified.

Economic Assessment and Certification

These proposed regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and non-significant under the Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979).

The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. The waterway is no longer used by commercial navigation and receives only occasional use by small recreational vessels. There are no marine oriented commercial facilities, located on the waterway upstream from the bridge, which would be affected by the proposed change. Since the economic impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 117

Bridges

Proposed Regulation

In consideration of the foregoing, the Coast Guard proposes to amend Part 117 of Title 33, Code of Federal Regulations as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46.

2. Section 117.1063 is revised to read as follows:

§ 117.1063 Willapa River.

The draw of the US101 highway bridge across the North Fork Willapa River, mile 7.8, and the draw of the Burlington Northern railroad bridge across the South Fork Willapa River, mile 0.3, both at Raymond, need not be opened for the pasage of vessels. However, the draws ahall be returned to an operable condition within six months after notification by the District Commander to do so.

Dated: August 28, 1987.

T.J. Wojnar,

Rear Admiral, U.S. Coast Guard Commander, 13th Coast Guard District.

[FR Doc. 87-20337 Filed 9-2-87; 8:45 am]

BILLING CODE 4910-14-M

33 CFR Part 165

[CGD7 87-27]

Regulated Navigation Area; Brunswick, GA

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

The Coast Guard is considering a proposal to change 33 CFR Part 165 by establishing a Regulated Navigation Area in the Port of Brunswick, GA. All vessels over 500 Gross Tons departing the Port of Brunswick, GA, at any time other than during flood current, would be required to approach the Sidney Lanier Bridge (U.S. Route 17) in such a manner so as to be shaped up for bridge transit before passing a point of no return and being committed to the transit. These additional navigation precautions are proposed because of the history of collisions with the bridge.

DATES: Comments must be received on or before October 5, 1987.

ADDRESS: Comments should be mailed to Commanding Officer, Coast Guard Marine Safety Office, Savannah, P.O. Box 8191, Savannah, Georgia 31402-8191. The comments and other materials referenced in this notice will be available for inspection and copying at Coast Guard Marine Safety Office Savannah, Georgia. Normal office hours are between 8:00 A.M. and 4:00 P.M., Monday through Friday, except holidays. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: Chief Warrant Officer Danny R. Buck, Project Officer, (912) 944-4371 at Marine Safety Office Savannah, GA.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this rulemaking by submitting written views, data or arguments. Persons submitting comments should include their names and addresses, identify this notice (CGD7 87-27) and the specific section of the proposal to which their comments apply, and give reasons for each comment.

The regulation may be changed in light of comments received. All comments received before the expiration of the comment period will be considered before final action is taken on this proposal. No public hearing is planned, but one may be held if written requests for a hearing are received and it is determined that the opportunity to make oral presentations will aid the rulemaking process.

Drafting Information

The drafters of this notice are Chief Warrant Officer Danny R. Buck, U.S. Coast Guard, Project Officer and Lieutenant Commander S. T. Fuger, U.S. Coast Guard, Project Attorney, Seventh Coast Guard District Legal Office.

Discussion of Proposed Regulation

Original construction on the Sidney Lanier Bridge began in 1948 and was completed in 1956. It was designed to accommodate vessels with smaller overall dimensions and displacement tonnages than many of the vessels going through the drawspan today. The horizontal clearance of the span is 250 ft. The fender system does not afford protection to the bridge structure from allision by larger modern vessels.

The bridge is constructed perpendicular to the Turtle River Channel. Vessels departing to sea from the Turtle River require only minor course adjustments to maintain alignment with the center of the channel and span.

The East River Channel intersects the Turtle River at a 50-degree angle approximately 1200 ft. above the Sidney Lanier Bridge. Vessels departing for sea from the East River must make a 50 degree left turn as they enter the Turtle River. The start and rate of turn must be controlled so that the vessels finish their turn near the centerline of the Turtle River Channel because room for further corrective maneuvers before reaching the bridge is limited.

The strikings of the bridge by M/V African Neptune in 1972, and by the M/V Ziemia Bialostocka in 1987, each involved vessels departing for sea from the East River. In each case the vessel failed to achieve alignment with the center of the Turtle River Channel after making the left turn. In the case of the M/V African Neptune, the proximate cause was determined to be an improperly executed helm order. A determination of the proximate cause of the M/V Ziemia Bialostocka allision is pending.

In both cases, by the time it was realized that the vessels would not shape up for a safe transit, they were too close to the bridge to avoid allision by backing engines or turning.

The Coast Guard is concerned that further allisions with the bridge are possible given the navigation environment in the Port of Brunswick and desires to reduce the risk of such an event.

During the period of repairs to the lift span and fender system of the bridge, Captain of the Port Savannah issued Order Number 13-87 which required that, except on the flood tide, all vessels over 500 GRT departing the Port of Brunswick for sea approach the Sidney Lanier Bridge only from the Turtle River, so as to be shaped up for the bridge transit before reaching Buoy C "1". The effect of the order was to require that vessels departing the East River turn up the Turtle River and proceed approximately 1.5 NM to an area south of Andrews Island, and then turn and reverse course and proceed down the Turtle River Channel on a straight course through the bridge span. An exception was made for flood tide conditions, because the current results in greater vessel control and possibility for evasive action. The order simplified the approach to and transit through the bridge, and reduced the risk of striking by obviating the need for the 50 degree left turn in close proximity to the bridge.

Navigation pursuant to COTP Order 13-87 has proved to be satisfactory. No incidents have been reported, nor has undue delay to vessels resulted. In the first two months under the order, 67 vessels departing from East River were affected. The added transit up and down the Turtle River added approximately one hour to each vessel's sailing time. In addition, most vessels required an average of 1 hour additional tug service.

The Brunswick Pilots have suggested a method of approach to the Sidney Lanier Bridge in addition to that provided for in COTP Order 13-87. This method would apply to vessels departing from the East River, and would involve stopping such vessels at the junction of the East River and Turtle River Channels and then using tug assistance or installed bow thrusters to achieve proper channel alignment before proceeding.

This suggested method appears reasonable in that it obviates the risk sought to be avoided in COTP Order 13-87, and desirable in that it reduces delay to vessels to an estimated 15 minutes. It has been incorporated in the proposed rulemaking.

The channel through the Sidney Lanier Bridge is the sole means of access to the harbor for deep draft shipping in the Port of Brunswick. If the bridge were damaged in the closed position, the Port of Brunswick would be closed to commercial vessel traffic for an extended period pending repairs to the bridge. The economic costs associated with the operational procedures established by the regulations are believed to be substantially less than that from damage to the bridge or closure of the port should another bridge striking occur.

Proposals for alteration of the navigation environment in the Port of Brunswick, such as by dredging in the area between Andrews Island and the channel junctions, have been made as a result of the most recent incident and are being considered by appropriate agencies. Alterations being proposed are sought to reduce the risk of further bridge strikings. The Coast Guard believes that it is appropriate to go forward with this rulemaking and regulate navigation in vicinity of the bridge until changes to the navigation environment make regulation unnecessary.

Economic Assessment and Certification

These proposed regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and non-significant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary.

The effect of the regulation will be to require a vessel departing the Brunswick Harbor on other than flood current to maneuver into the Turtle River from the East River in an east bound direction and turn around before approaching the Sidney Lanier Bridge for maneuvering to sea, or to stop and turn at the channel junctions. This is projected to add approximately 15 minutes to one hour to a vessel's outbound harbor transit time. The amount of time required will depend upon which maneuver is selected.

Since the impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 165

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

Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend Part 165 of Title 33, Code Federal Regulations, as follows:

PART 165—[AMENDED]

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1225 and 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05-1(g), 6.04-1, 6.04-6, and 160.5.

2. Section 165.7 is revised to read as follows:

§ 165.7 Brunswick, Georgia, Turtle River, Vicinity of Sidney Lanier Bridge.

Except during the flood tide, every vessel over 500 GRT departing the Port of Brunswick for sea shall do so only from the Turtle River, so as to be shaped up for bridge transit:

(a) Before reaching Turtle River Buoy "1" (Light List Number 6050); or,

(b) Before reaching the intersection of Brunswick Harbor Range and Turtle River Lower Range, provided that the vessel:

(1) Be equipped with an operable bow thruster or have tug assistance; and

(2) Be stopped and maneuvered with no appreciable way on until aligned with the centerline axis of the Turtle River Channel.

Dated: August 19, 1987.

M.J. O'Brien,

Captain, U.S. Coast Guard Acting Commander, Seventh Coast Guard District.

[FR Doc. 87-20338 Filed 9-2-87; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Part 165

[CGD7 87-22]

Security Zone; St. Johns River, Jacksonville, FL

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is considering establishing a Security Zone on the north bank of the St. Johns River at the junction of Brill's Cut Range and Broward Point Turn; said zone to be activated by the Captain of the Port, Jacksonville, Florida, at the request of Commander, Fast Sealift Squadron ONE, should a threat arise. This security zone is necessary for the protection of vital United States assets aboard Fast Sealift ships layberthed at Sealift Terminals.

DATES: Comments must be received on or before October 19, 1987.

ADDRESSES: Comments should be mailed to USCG Marine Safety Office, 2831 Talleyrand Avenue, Jacksonville, Florida 32206. The comments and other materials referenced in this notice will be available for inspection and copying at the USCG Marine Safety Office at the above address. Normal office hours are between 7:30 a.m. and 4:00 p.m., Monday through Friday, except holidays. Comments may also be hand delivered to this address.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander H. Henderson, at telephone number (904) 791-2648.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this rulemaking by submitting written views data; or arguments. Persons submitting comments should include their names and addresses, identify this notice (CGD7 87-22) and the specific section of the proposal to which their comments apply, and give reasons for each comment. The regulation may be changed in light of comments received. All comments received before the expiration of the comment period will be considered before final action is taken on this proposal. No public hearing is planned, but one may be held if written requests for a hearing are received and it is determined that the opportunity to make oral presentations will aid the rulemaking process.

Drafting Information

The drafters of this notice are Lieutenant (junior grade) K. L. Rhodes, project officer, and Lieutenant Commander S. T. Fuger, Jr., project attorney, Seventh Coast Guard District Legal Office.

Discussion of Proposed Regulation

Recent international developments have highlighted the potential for terrorist activities involving vital United States assets. It is desirable for the protection of Fast Sealift ships moored at Sealift Terminal near Dunn's Creek on the St. Johns River, to have a means of implementing heightened security in response to a potential terrorist threat. A security zone which can be activated in the event of a threat will augment protection of these assets. This regulation is issued pursuant to 50 U.S.C. 191 as set out in the authority citation for all of Part 165.

Economic Assessment and Certification

This proposed regulation is considered to be non-major under Executive Order 12291 on Federal regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034, February 26, 1979). The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. Vessels transiting the St. Johns River at Brill's Cut Range and Broward Point Turn will be unaffected by the establishment of the zone, as it does not impede navigation in the channel. Since the security zone will be activated only if a security threat is perceived, only minor delays to other mariners can be foreseen.

Since the impact of this proposal is expected to be minimal, the Coast

Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 165

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

Proposed Regulation

In consideration of the foregoing, the Coast Guard proposes to amend Part 165 of Title 33, Code of Federal Regulations as follows:

PART 165—[AMENDED]

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1225 and 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05-1(q), 6.04-1, 6.04-6, and 160.5.

2. Section 165.710 is added to read as follows:

§165.710 St. Johns River, Jacksonville, Florida.

(a) The water, land, and land and water located within the following area is established as a security zone when activated by the Captain of the Port, Jacksonville, Florida: the north bank of the St. Johns River at the junction of Brill's Cut Range and Broward Point Turn, centered at Latitude 30-24'-25" N, Longitude 081-34'-55" W, including 800 feet of the north bank in each direction (1600 feet total) up and down river from this position (as defined by a corrugated steel bulkhead which extends in a southeasterly direction along the north bank commencing at the entrance to Dunn's Creek) and extending offshore to the northern edge of the ship channel, and extending onshore approximately 300 feet to a steel chain-link fence.

(b) When the security zone is activated, no unauthorized persons shall enter this zone and no unauthorized water craft shall approach ships that are berthed within this zone, nor shall any unauthorized vessel moor alongside the corrugated steel bulkhead anywhere within the security zone.

(c) The general regulations governing security zones contained in 33 CFR 165.33 apply.

(d) Captain of the Port, Jacksonville, Florida, will activate the security zone by means of locally promulgated notices.

Dated: August 31, 1987.

M. Woods,

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

[FR Doc. 87-20339 Filed 9-2-87; 8:45 am]

BILLING CODE 4910-14-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-7-FRL-3256-4]

Approval and Promulgation of Implementation Plans, for State of Iowa; Stack Heights

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rulemaking.

SUMMARY: In compliance with a mandate from the U.S. Court of Appeals for the D.C. Circuit, EPA promulgated revisions to its stack height regulations on July 8, 1985. As required by section 406(d)(2) of the Act, each state was to review its State Implementation Plan (SIP) for consistency with EPA's revised requirements and to submit revisions as necessary.

On May 20, 1986, the state of Iowa submitted its stack height SIP revision; additional material was submitted on September 15, 1986. The state submittal included revised regulations and a formal declaration that, except for one area, sources in the state are not subject to any emission limit revisions in accord with EPA's revised requirements. Today's action proposes to approve the state's stack height SIP. The state has committed to submit revised emission limits for the sources in the aforementioned area; thus, these revisions will be addressed in a future **Federal Register** action.

DATES: Public comments must be received on or before November 2, 1987.

ADDRESSES: Comments should be sent to Robert J. Chanslor, Environmental Protection Agency, 726 Minnesota Avenue, Kansas City, Kansas 66101.

The state submission is available for inspection during normal business hours at the above address and at the Iowa Department of Natural Resources, 900 East Grand, Des Moines, Iowa 50319.

FOR FURTHER INFORMATION CONTACT: Robert J. Chanslor at (913) 236-2893; FTS 757-2893.

SUPPLEMENTARY INFORMATION:

I. Background

On February 8, 1982 (47 FR 5864), EPA promulgated final regulations limiting stack height credits and other dispersion techniques as required by Section 123 of the Clean Air Act (the Act). These regulations were challenged in the U.S. Court of Appeals for the D.C. Circuit by the Sierra Club Legal Defense Fund, Inc.; the Nautal Resources Defense Council, Inc.; and the Commonwealth of Pennsylvania in *Sierra Club v. EPA*, 719 F.2d 436. On October 11, 1983, the court issued its decision ordering EPA to reconsider portions of the stack height regulations, reversing certain portions and upholding other portions.

On February 28, 1984, the electric power industry filed a petition for a writ of certiorari with the U.S. Supreme Court. On July 2, 1984, the Supreme Court denied the petition (104 S. Ct. 3571), and on July 18, 1984, the Court of Appeals' mandate formally issued, implementing the court's decision and requiring EPA to promulgate revisions to the stack height regulations within six months. The promulgation deadline was ultimately extended to June 27, 1985.

Revisions to the stack height regulations were proposed on November 9, 1984 (49 FR 44878), and finalized on July 8, 1985 (50 FR 27892). The revisions redefined a number of specific terms including "excessive concentrations", "dispersion techniques", "nearby", and other important concepts, and modified some of the bases for determining GEP stack height.

Pursuant to section 406(d)(2) of the Act, all states were required to: (1) Review and revise, as necessary, their SIPs to include provisions that limit stack height credit and dispersion techniques in accordance with the revised regulations, and (2) review all existing emission limitations to determine whether any of these limitations have been affected by stack height credits above GEP or any other dispersion techniques. For any limitations so affected, states were to prepare revised limitations consistent with their revised SIPs. All SIP revisions and revised emission limits were to be submitted to EPA within nine months of promulgation, as required by section 406.

Subsequently, EPA issued detailed guidance on conducting the necessary reviews. For the review of emission limitations, states were to prepare inventories of stacks greater then 65 meters in height and sources with emissions of sulfur dioxide (SO_2) in excess of 5,000 tons per year. These limits correspond to the de minimis GEP stack height and the de minimis SO_2 emission exemption from prohibited dispersion techniques. These sources were then reviewed for conformance with the revised regulations. State submissions were to contain an evaluation of each stack and source in the inventory.

II. Review of the State Submittal

A. Regulations

On May 20, 1986, the state submitted its stack height SIP. The submittal contained revised Chapters 22 and 23 regulations which addressed EPA's requirements as amended on July 8, 1985. The regulations were adopted by the Water, Air and Waste Commission on April 22, 1986, after proper notice and public hearing in accord with 40 CFR 51.102.

Paragraph 22.3(1)C. provides that, for new source construction permits, an emission limitation shall not be affected in any manner by stack height above GEP or by any other prohibited dispersion techniques. This provision meets the requirements of 40 CFR 51.164 (old § 51.18(1)).

Subrule 23.1(4) sets limits for the maximum stack height credit to be used for the purpose of setting emission limitations and is consistent with 40 CFR 51.118(a) (old § 51.12(j)). The definitions of "stack", "a stack in existence", "dispersion technique", "nearby", and "excessive concentration" as set forth in 40 CFR 51.1(ff) through (hh), (jj), and (kk) as amended on July 8, 1985, are adopted by reference. (These definitions are now at 40 CFR 51.100(ff) through (hh), (jj), and (kk)). The exemptions provided in 40 CFR 51.118(b) (old § 51.12(k)) are also adopted by reference. The state's definition of "good engineering practice" is consistent with 40 CFR 51.100(ii) (old § 51.1(ii)). Consistent with 40 CFR 51.118(a) (old § 51.12(j)) and 51.164 (old § 51.18(1)), the subrule meets the public participation requirements regarding emission limitations established in consideration of field studies or fluid modeling.

Subrule 23.3(2) was amended to delete provisions which addressed supplemental control systems. Such system would constitute a prohibited dispersion technique under 40 CFR 51.100(hh) (old § 51.1(hh)).

The regulations adopted by the state of Iowa do not include EPA's definition of emission limitation or emission standard found at 40 CFR 51.100(z) (old 51.1(z)). Iowa's regulations contain a definition for "emission standard" at Rule 20.2, Definitions. That definition is not consistent with the EPA definition at 51.100(z). On April 22, 1987, the state of Iowa provided EPA with a letter committing to a revision of its emission standard definition before the end of September 1987, which will be consistent with EPA's definition. EPA proposes to incorporate the state's committal letter as part of the SIP in the final rulemaking, unless the definition of emission standard is revised and submitted prior to final rulemaking.

B. Analysis of Affected Facilities

The state's May 20 submittal also included a formal statement, including documentation, that no source-specific emission limitations revisions were necessary; i.e., negative declarations. EPA's initial review, however, concluded that sources in the Muscatine area would require extensive reanalysis and possibly emission limit revisions. Also, additional documentation was needed for the remainder of the state's affected facilities whose negative declarations were consistent with EPA policy.

On September 15, 1986, the state submitted the necessary additional documentation and formally withdrew its negative declarations for three sources in the Muscatine area: (1) Iowa-Illinois Louisa Generating Station; (2) Muscatine Power and Water; and (3) Grain Processing Corporation. The September 15 submittal included a commitment to reanalyze the Muscatine area sources and to submit revised emission limitations as necessary by June 30, 1987. Those revisions will be addressed in a future **Federal Register** notice.

For the remainder of the sources in Iowa, EPA has determined that no revisions of existing emissions limits are required by the Clean Air Act, section 123, which provides that an emissions limit shall not be affected in any manner by a prohibited dispersion technique. Several of the emissions limits outside of Muscatine were established through dispersion modeling which included stack heights equal to or less than good engineering practice (GEP). The emission limits for most sources outside the Muscatine area were based on an "example region" approach. Pursuant to EPA's regulations (36 FR 15486 (August 14, 1971)), these emissions limits were not based on air quality demonstrations specific to the actual sources. The "example" region" approach as used by the state of Iowa did not give credit for stack height in excess of GEP as defined by section 123 of the Clean Air Act.

A detailed review of the state submittals is contained in the EPA-prepared technical support document and is available for public inspection at the EPA Regional Office listed in the **ADDRESS** Section of this notice.

EPA intends to add the documented source-specific negative declarations and the September 15 commitment to the Iowa SIP as additional material. This will provide a clear record of the state's actions and intentions in these matters.

Proposed Action

EPA proposes to approve the amended Iowa Chapters 22 and 23 regulations which address EPA's revised stack height requirements. Also, EPA proposes to approve the state's source-specific negative declarations which certify that, excluding the Muscatine area, affected facilities in the state do not require emission limit revisions in accord with EPA's revised stack height requirements.

EPA is soliciting comments on today's proposed rulemaking. The Administrator will consider comments received in deciding to approve the state's SIP submittal.

Under 5 U.S.C. 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.)

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

List of Subjects in 40 CFR Part 52

Air pollution control, Sulfur oxides.

Authority: 42 U.S.C. 7401–7642.

Date: November 14, 1986.

Morris Kay,

Regional Administrator.

Editorial Note: This document was received at the Office of the Federal Register August 31, 1987.

[FR Doc. 87–20295 Filed 9–2–87; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Parts 80, 86, and 600

[AMS-FRL-3256-2]

Control of Gasoline and Alcohol Blends Volatility and Evaporative Emissions, and Refueling Emissions From New Motor Vehicles and Engines

AGENCY: Environmental Protection Agency.

ACTION: Notice of public hearing.

SUMMARY: This notice announces the time and place for a combined public hearing on EPA's proposed regulation to control refueling emissions and the proposed regulation to control the volatility of gasoline and alcohol blends sold in the summertime. These proposals were both published in the **Federal Register** on August 19, 1987 (52 FR 31162 and 52 FR 31274).

DATES: This hearing is scheduled to take place on October 27–29, 1987. The hearing will be convened at 9:00 a.m. on each day and will adjourn at 5:00 p.m. or

such later time as may be necessary for completion of testimony. Depending upon the extent of testimony, the full three days may not be needed. In that case, the hearing will conclude upon presentation of all testimony.

ADDRESSES: The public hearing will be held at the Dulles International Airport Holiday Inn, 1000 Sully Road, Sterling, Virginia (outside Washington, DC). Materials relevant to the proposed refueling emission controls are available in Public Docket No. A-87-11. Materials relevant to the proposed gasoline volatility regulations are available in Public Docket No. A-85-21. These dockets are located at the Environmental Protection Agency, Central Docket Section, Room 4, South Conference Center, Waterside Mall, 401 M Street SW., Washington, DC 20460. The docket section is open for inspection weekdays between 8:00 a.m. and 3:00 p.m. A reasonable fee may be charged for providing copies of material in the dockets.

FOR FURTHER INFORMATION CONTACT: Mr. Philip Carlson, U.S. Environmental Protection Agency, Emission Control Technology Division, 2565 Plymouth Road, Ann Arbor, MI 48105, Telephone: (313) 668-4270.

SUPPLEMENTARY INFORMATION: Any person desiring to make a statement at the public hearing should notify the contact person indicated above of such intention, in writing or by telephone, by October 13, 1987. When notifying the contact person of your intent to make a statement at the hearing, please specify any need for audio-visual equipment. It is suggested that sufficient copies of any written statement or material be brought to the hearing for distribution to the audience.

A sign-up sheet will be available at the registration table the morning of the hearing for scheduling the order of testimony. However, depending on the number of people wishing to testify, the hearing officer may elect to schedule panels of testifiers in order to facilitate conduction of the hearing.

A joint hearing has been scheduled for these two proposals in recognition of the interactions between some aspects of the proposals. However, in order to insure an orderly public review and clearly distinguish between the two, commenters wishing to testify on both proposals are requested to prepare their testimony so as to furnish separate comments on each proposal.

Also, EPA recommends that parties interested in commenting on Bonner and Moore's most recent refinery modeling comment on the final report rather than on the draft report which is already in Public Docket No. 85-21 (Document No. II-A-30). The final report will be placed in this docket on or about September 11. It will contain a number of sensitivity analyses not contained in the draft as well as correct errors in the draft report.

The record for the hearing will remain open until November 30, 1987, to allow submission of rebuttal testimony and supplementary information. Any material submitted during this period of time should be sent to the EPA Central Docket Section at the address given above, Attention: Docket No. A-87-11 for the refueling emission control proposal, or Attention: Docket A-85-21, for the gasoline volatility control proposal. It is also requested, but not required, that a copy of this submittal be sent directly to the contact person indicated above.

Persons intending to participate in the hearing may submit written questions on any matters relevant to this proposal to the presiding officer at any time. To the extent that time permits, the presiding officer, at his discretion, may direct these questions to witnesses testifying at the hearing or as appropriate to EPA personnel present at the hearing for answers. If time does not permit all such written questions to be addressed at the hearing, EPA will provide the remaining questions to the appropriate witnesses or EPA personnel for written response to be placed in the rulemaking docket.

Commenters desiring to submit proprietary information should clearly distinguish such information from other comments to the greatest extent possible, and label it "Confidential Business Information." Submissions containing such proprietary information should be sent directly to the EPA contact person indicated above, and not to the Public Docket, to insure that proprietary information is not inadvertently placed in the docket.

Information covered by such a proprietary claim will be disclosed by EPA only to the extent, and by means of the procedures set forth in 40 CFR Part 2. If no claim of confidentiality accompanies the information when it is received by EPA, it will be made available to the public without further notice to the commenter.

Mr. J. Craig Potter, Assistant Administrator for the Office of Air and Radiation, is hereby designated as the Presiding Officer of the hearing. The hearing will be conducted informally and technical rules of evidence will not apply. A written transcript of the hearing will be taken. Anyone desiring to purchase a copy of this transcript should make arrangements individually with the court reporter recording the hearing.

Date: August 27, 1987.

W. Ray Cunningham,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 87-20296 Filed 9-2-87; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 261

[SW-FRL-3254-2]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Proposed Exclusion

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule and request for comment.

SUMMARY: The Environmental Protection Agency (EPA) today is proposing to exclude from the list of hazardous wastes contained in 40 CFR 261.31 and 261.32 solid waste that will be generated from the treatment of Syntex lagoon sludge by EPA's Mobile Incineration System located in McDowell, Missouri. This action responds to a delisting petition submitted under 40 CFR 260.20, which allows any person to petition the Administrator to modify or revoke any provision of Parts 260 through 265, 124, 270, and 271 of Title 40 of the Code of Federal Regulations and 40 CFR 260.22, which specifically provides generators the opportunity to petition the Administrator to exclude a waste on a "generator-specific basis" from the hazardous waste list.

DATES: EPA will accept public comments on this proposed action until October 5, 1987. Comments postmarked after the close of the comment period will be stamped "late."

Any person may request a hearing on this proposed action by September 14, 1987. The request must contain the information prescribed in 40 CFR 260.20(d).

ADDRESSES: Send three copies of your comments to EPA. Two copies should be sent to the Docket Clerk, Office of Solid Waste (WH-562), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. A third copy should be sent to Jim Kent, Variances Section, Assistance Branch, PSP/OSW (WH-563), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. Identify your comments at the top with this regulatory docket number: "F-87-SSDP-FFFFF."

Requests for a hearing should be addressed to Bruce Weddle, Director, Permits and State Programs Division, Office of Solid Waste (WH-563), U.S.

Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

The RCRA regulatory docket for this proposed action is located at U.S. Environmental Protection Agency, 401 M Street, SW. (sub-basement), Washington, DC 20460, and is available for viewing from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding Federal holidays. Call (202) 475–9327 for appointments. The public may copy a maximum of 50 pages of material from any one regulatory docket at no cost. Additional copies cost $.20 per gage.

FOR FURTHER INFORMATION CONTACT: RCRA Hotline, toll free at (800) 424–9346, or at (202) 382–3000. For technical information, contact Myles Morse, Office of Solid Waste (WH-563), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 382–4788.

SUPPLEMENTARY INFORMATION:

I. Background

A. Authority

On January 16, 1981, as part of its interim final and final regulations implementing section 3001 of RCRA, EPA published an amended list of hazardous wastes from non-specific and specific sources. This list has been amended several times and is published in 40 CFR 261.31 and 261.32. These wastes are listed as hazardous because they typically and frequently exhibit any of the characteristics of hazardous wastes identified in Subpart C of Part 261 (*i.e.*, ignitability, corrosivity, reactivity, and extraction procedure [EP] toxicity) or meet the criteria for listing contained in 40 CFR 261.11 (a)(2) or (a)(3).

Individual waste streams may vary, however, depending on raw materials, industrial processes, and other factors. Thus, while a waste that is described in these regulations generally is hazardous, a specific waste from an individual facility meeting the listing description may not be. For this reason, 40 CFR 260.20 and 260.22 provide an exclusion procedure, allowing persons to demonstrate that a specific waste from a particular generating facility should not be regulated as a hazardous waste.

To be excluded, petitioners must show that a waste generated at their facility does not meet any of the criteria under which the waste was listed. (See 40 CFR 260.22(a) and the background documents for the listed wastes.) In addition, the Hazardous and Solid Waste Amendments (HSWA) of 1984 require the Agency to consider factors (including additional constituents) other than those for which the waste was listed, if there is a reasonable basis to believe that such additional factors could cause the waste to be hazardous. Accordingly, a petitioner must demonstrate also that the waste does not exhibit any of the hazardous waste characteristics (*i.e.*, ignitability, reactivity, corrosivity, and EP toxicity), and present sufficient information for the Agency to determine whether the waste contains any other toxicants at hazardous levels. (See 40 CFR 260.22(a); section 222 of the Hazardous and Solid Waste Amendments of 1984, 42 U.S.C. 6921(f); and the background documents for the listed wastes.) Although wastes which are "delisted" (*i.e.*, excluded) have been evaluated to determine whether or not they exhibit any of the characteristics of a hazardous waste, generators remain obligated to determine whether their waste remains non-hazardous based on the hazardous waste characteristics.

In addition to wastes listed as hazardous in 40 CFR 261.31 and 261.32, residues from the treatment, storage, or disposal of listed hazardous wastes also are eligible for exclusion and remain hazardous wastes until excluded. (See 40 CFR 261.3 (c) and (d)(2).) Again, the substantive standard for "delisting" is (1) that the waste not meet any of the criteria for which it was listed originally; and (2) that the waste is not hazardous after considering factors (including additional constituents) other than those for which the waste was listed, if there is a reasonable basis to believe that such additional factors could cause the waste to be hazardous. Where the waste is derived from one or more listed hazardous waste, the demonstration may be made with respect to each constituent or the waste mixture as a whole. (See 40 CFR 260.22(b).) Generators of these excluded treatment, storage, or disposal residues remain obligated to determine on a periodic basis whether these residues exhibit any of the hazardous waste characteristics.

B. Approach to Evaluating Delisting Petitions

The Agency first will evaluate the petition to determine whether or not the waste is hazardous based on the factors for which the waste was originally listed. If the Agency determines that, based on the original listing factors, the waste is still hazardous, it will propose to deny the petition. If the Agency agrees with the petitioner that the waste is non-hazardous with respect to the criteria for which the waste was listed, it then will evaluate the waste with respect to other factors or criteria, if there is a reasonable basis to believe that such additional factors could cause the waste to be hazardous.

The Agency is using a hierarchical approach in evaluating petitions for the other factors or contaminants (*i.e.*, those listed in Appendix VIII of Part 261). In some cases, this approach may eliminate the need for additional testing. The petitioner can choose to submit a raw materials list and process descriptions. The Agency will evaluate this information to determine whether any Appendix VIII hazardous constituents are used or formed in the manufacturing and treatment process and are likely to be present in the waste at significant levels. If so, the Agency then will request that the petitioner perform additional analytical testing. If the petitioner disagrees, he may present arguments on why the toxicants would not be present in the waste, or, if present, why they would pose no toxicological hazard. The reasoning may include descriptions of closed or segregated systems, or mass balance arguments relating volume of raw materials used to the rate of waste generation. If the Agency finds that the arguments presented by the petitioner are not sufficient to eliminate the reasonable likelihood of the toxicant's presence in the waste, the petition would be tentatively denied on the basis of insufficient information. The petitioner then may choose to submit the additional analytical data on representative samples of the waste during the public comment period.

As an alternative to submitting a raw materials list, petitioners may test their waste for any additional toxic constituents that may be present and submit these data to the Agency. In this case, the petitioner should submit an explanation of why any constituents from Appendix VIII of Part 261, for which no testing was done, would not be present in the waste or, if present, why they would not pose a toxicological hazard.

In making a delisting determination, the Agency evaluates each petitioned waste against the listing criteria and factors cited in 40 CFR 261.11 (a)(2) and (a)(3). Specifically, the Agency considers whether the waste is acutely toxic, and considers the toxicity of the constituents, the concentration of the constituents in the waste, their tendency to migrate and bioaccumulate, their persistence in the environment once released from the waste, plausible types of management of the waste, and the quantities of waste generated. In this regard, the Agency has developed an analytical approach in evaluating wastes that are landfilled and land treated. (See 50 FR 7882 (February 26, 1985), 50 FR 48886 (November 27, 1985),

50 FR 48943 (November 27, 1985), and 51 FR 41084 (November 13, 1986).) The overall approach, which includes a ground-water transport model, is used to predict reasonable worst-case contaminant levels in ground water in nearby receptor wells (*i.e.*, the model estimates the ability of an aquifer to dilute the toxicant from a specific volume of waste). The land treatment model also has an air component and predicts the concentration of specific toxicants at some distance downwind of the facility. The compliance point concentration determined by the model then is compared directly to a level of regulatory concern. If the value at the compliance point predicted by the model is less than the level of regulatory concern, then the waste could be considered non-hazardous and a candidate for delisting. If the value at the compliance point is above this level, however, then the waste probably still will be considered hazardous, and not excluded from Subtitle C control.

This approach evaluates the petitioned wastes by assuming reasonable worst-case land disposal scenarios. This approach has resulted in the development of a sliding regulatory scale which suggests that a large volume of waste exhibiting a given extract level would be considered hazardous, while a smaller volume of the same waste could be considered non-hazardous. (Other factors, such as actual ground-water monitoring data or spot check verification data, may result in the denial of a petition.) The Agency believes this to be a reasonable outcome since a larger quantity of the waste (and the toxicants in the waste) might not be diluted sufficiently to result in compliance point concentrations that are less than level of regulatory concern. This approach predicts that the larger the waste volume, the higher the level of toxicants at the compliance point. The mathematical relationship (with respect to ground water) yields at least a six-fold dilution of the toxicant concentration initially entering the aquifer (*i.e.*, any waste exhibiting extract levels equal to or less than six times a level of regulatory concern will generate a toxicant concentration at the compliance point equal to or less than the level of regulatory concern). Depending on the volume of waste, an additional fivefold dilution may be imparted, resulting in a total dilution of up to thirty-two times.

Under certain circumstances, a petitioner may request an "upfront" delisting. An "upfront" delisting allows an exclusion to be granted based on untreated waste characterizations, pilot-scale data if available, process descriptions and conditional batch testing requirements to show that, once on-line, a system can meet the Agency's verification testing limitations and can therefore generate a non-hazardous waste. A list of constituents is developed for the verification testing and maximum allowable treated waste concentrations for these constituents are determined by backcalculating from the regulatory standards through the VHS model and Organic Leachate Model (OLM).

The Agency has adopted upfront delisting because it has the advantage of allowing the applicant to know what constituent levels must be achieved before investing in new or modified waste treatment systems. Additionally, upfront delistings should be processed more quickly since evaluation of the petition will not be held up pending completion of construction or permitting activities. Therefore, new or modified treatment systems should be brought on line sooner than otherwise possible. At the same time, conditions requiring submission of on-line data verifying that the delisting levels are achieved will guarantee the integrity of the delisting program and ensure that only non-hazardous wastes are removed from Subtitle C control.

Upfront conditional exclusions are very similar to the approach the Agency proposed on June 3, 1987 (see 52 FR 20914), which, if finalized, will incorporate a delisting function into permits for treatment units which have either full scale test data or preliminary treatment residue characterizations from bench scale processes with submission of on-line verification data. The Agency has used this upfront delisting approach in evaluating the wastes discussed in today's publication. As a result of this evaluation, the Agency is proposing to grant the petition discussed in this notice.

Finally, the Hazardous and Solid Waste Amendments of 1984, specifically require the Agency to provide notice and an opportunity for comment before granting or denying a final exclusion. Thus, a final decision will not be made for the petition proposed today until all public comments (including those at requested hearings, if any) are addressed.

II. Disposition of Exclusion Petition

A. Syntex Agribusiness, Inc., Springfield, Missouri

1. Petition for Exclusion

Syntex Agribusiness, Inc. (Syntex), located in Springfield, Missouri, has submitted a petition to exclude wastes generated from the incineration of dioxin-contaminated sludge in the EPA's Mobile Incineration System (MIS) located in McDowell, Missouri. This sludge is presently listed as EPA Hazardous Waste No. F020—Wastes (except wastewater and spent carbon from hydrogen chloride purification) from the production or manufacturing use (as a reactant, chemical intermediate, or component in a formulating process) of tri- or tetrachlorophenol, or of intermediates used to produce their pesticide derivatives. The listed constituents of concern are tetra- and pentachlorodibenzo-p-dioxins; tetra- and pentachlorodibenzofurans; and tri- and tetrachlorophenols and their chlorophenoxy derivative acids, esters, ethers, amine, and other salts. Syntex claims that the incineration residues from the treatment of this waste should be excluded because they will not meet the criteria for which they were listed. The sludge originated from the treatment of wastewater generated from pilot-scale hexachlorophene production in 1969 when the Syntex facility was owned by Hoffman-Taff and leased by the Northeastern Pharmaceutical & Chemical Co., Inc (NEPACCO). The waste originally settled in a lagoon and was subsequently removed to an on-sit concrete storage bunker. As part of a site cleanup program, Syntex plans to remove the sludge from the bunker, transport the sludge to McDowell, MO where the MIS is located, mix the sludge with contaminated soils (whose treatment residues were previously excluded), and incinerate the sludge/soil mixture. Approximately 775 cubic yards of sludge will be mixed and incinerated with 1,200 to 2,700 cubic yards of soil.

2. Process Description

On June 5, 1985, EPA proposed to exclude certain wastes generated by the MIS from the list of hazardous wastes (see 50 FR 23721). This proposed rule was in response to a petition submitted pursuant to 40 CFR 260.20 and 260.22 by EPA's Releases Control Branch (RCB), located in Edison, NJ. The final rule was issued July 25, 1985 (see 50 FR 30272) and included several conditions requiring monitoring of certain waste streams from the MIS, specifically, analyzing each batch for mercury, selenium, and chromium EP toxicity levels in the wastes. The Syntex lagoon sludge was not included in that exclusion and thus a separate petition has been filed to address incineration residues from the treatment of the Syntex sludge. Since the original MIS

exclusion was granted, the MIS has been modified. A second trial burn is being conducted and will include a demonstration on the Syntex lagoon sludge. This notice addresses the lagoon sludge treatment residues as well as the system modifications.

A detailed description of the MIS prior to modification is presented in the MIS proposed exclusion (see 50 FR 23721, June 5, 1985). The RCB submitted enigneering reports which describe the modifications to the MIS including increased feed rate, replacement of one kiln burner with an oxygen enriched burner, addition of a cyclone before the secondary combustion chamber (SCC), and replacement of the cleanable high efficiency air filter (CHEAF) with a wet electrostatic precipitator (WEP). The design modifications were made to increase on-stream time and through-put rate.

Modifications to the mechanical feed system have increased the design feed rate from 2,000 lb/hr to 5,000 lb/hr. In order to accommodate the higher feed rate, one of the two kiln burners has been replaced with an oxygen enriched "Linde" burner, which will reduce the flue gas volume, with the added benefit of improving the pressure profile throughout the system and reducing kiln turbulence which in turn reduces particulate carryover to the Secondary Combustion Chamber (SCC). In order to further minimize particulate carryover to the SCC, a cyclone has been added between the kiln and the SCC. The particulates collected from the cyclone will contain a higher distribution of fine particulates than the kiln ash and will be drummed separately from the kiln ash. The cleanable high efficiency air filter (CHEAF), described in the original MIS exclusion, has been replaced with a wet electrostatic precipitator (WEP). The WEP cleans SCC flue gas by electrically attracting particulates to the walls of the WEP. The collected particulates are removed from the WEP by a water wash. The solids are removed by the MIS's wastewater treatment system and will be landfilled under the terms of the permit.

3. Waste Characterization

Syntex submitted analytical data which quantified the priority pollutants and other organic constituents likely to be present in the untreated sludge. The maximum contaminant concentrations of eight samples analyzed are summarized in Table 1. The samples were collected with a 3-inch continuous auger. The augers were power-driven into the sludge until the flights discharged sludge at the top or until refusal. One sample penetrated to the maximum depth of 6.5 feet, 2 samples penetrated 4.0 feet, and the last sample penetrated 5.3 feet. The augers were manually extracted from the sludge, and samples were taken and composited from the material adhering to the flights. Two samples were taken at each of four locations in the bunker; one sample was used for volatiles analysis and the remaining sample for all other analyses.

TABLE 1.—HAZARDOUS ORGANIC CONSTITUENT ANALYSIS (PPM)

[Untreated Sludge]

Constituent	Concentration
Chloroform	20
1,2-Dichloroethane	172
Dichloromethane	6,250
2,3,7,8-TCDD	0.046
Toluene	6,100
Trichloroethylene	212

Since Syntex intends to mix the sludge with contaminated soils (addressed in the original MIS exclusion), a list of the contaminants likely to be present in the contaminated soils is presented in Table 2.

Table 2.—Hazardous Organic Constituents Potentially Present in Contaminated Soils

Constituent

Benz(a)pyrene
Benz(b)fluoranthene
Chrysene
Dibenzo(a,h)anthracene
2,5-Dichlorophenol
3,4-Dichlorophenol
Hexachlorophene
Indeno(1,2,3-c,d)pyrene
Polychlorinated biphenyls (PCBs)
1,2,3,5-Tetrachlorobenzene
1,2,4,5-Tetrachlorobenzene
2,3,4,5-Tetrachlorophenol
2,3,4,6-Tetrachlorophenol
2,3,4-Trichlorophenol
2,4,5-Trichlorophenol
2,4,6-Trichlorophenol

Syntex has requested an "upfront" delisting thus no analytical data from actual treatment residues as generated by the modified MIS were available for the Agency's review.

4. Agency Analysis and Action

The Agency considers the sampling procedures used by Syntex to be adequate, and that the reported analytical data representative of the sludge. A significant amount of mixing occurred when the sludge was excavated from the lagoon and placed in the storage bunker. The excavation process included the following steps:

- The exposed lagoon slopes above the sludge level were first scraped to a depth of 6 inches, and the resulting material was discharged into the lagoon.
- The lagoon sludge was excavated with a clamshell and placed in an elevated hopper. (Some mixing occurred as the clamshell positioned the sludge in more accessible locations.) Calcium oxide was added to the material in the hopper to facilitate dewatering.
- The contents of the hopper were dumped in a cement mix truck and vigorously mixed for approximately 5 minutes.
- The truck dumped each batch onto an inclined conveyor, which fed the sludge onto a horizontal conveyor, which in turn discharged the sludge into alternating openings in the roof of the bunker.

The Agency, therefore, believes that the composite samples taken from four positions in the bunker adequately represent any variations which may occur in the untreated waste.

As discussed in the background section of this notice, the Agency will grant upfront delistings with conditions. Accordingly, the Agency is proposing a conditional exclusion for Syntex which will require (1) batch testing for metals throughout the incineration of the Syntex lagoon sludge, and (2) verification testing for certain organics (identified by the characterization of the untreated sludge and contaminated soils) to demonstrate that the MIS actually performs as expected. The batch testing requirements for each waste stream generated by the modified MIS will ensure that the system continues to operate at least as efficiently as during the trial burn.

The Agency is therefore proposing to grant an exclusion for the solid resudes and wastewater generated from EPA's Mobile Incineration System's treatment of the Syntex lagoon sludge in McDowell, Missouri, with the following conditions:

(1) MIS's performance is continuously monitored to ensure efficient destruction of the wastes (i.e., meet test burn parameters for destruction efficiencies, kiln temperature, SCC temperature, oxygen and carbon monoxide concentrations in the exhaust gas, combustion gas velocity, scrubber water pH and flow rates, and pressure drops across the system).

The purpose of this condition, as in the initial exclusion for the MIS, is to ensure efficient destruction of the constituents of concern. If the data collected under this condition show that the MIS is not operating properly, the residues must be retreated or disposed as hazardous.

(2) Four grab samples must be taken and composited from each tank of wastewater generated and the compositive must be analyzed for the EP toxic metals, nickel, and cyanide. If arsenic, chromium, lead, and silver EP leachate test results do not exceed 0.061 ppm, berium levels do not exceed 12 ppm, cadmium and selenium levels do not exceed 0.1 ppm, mercury levels do not exceed 0.02 ppm, nickel levels do not exceed 4.3 ppm, and cyanide levels do not exceed 2.4 ppm, the wastewater will be considered non-hazardous. Analyses must be performed according to SW-846 methodologies.

(3) Grab samples must be taken from each drum of ash, sludge, and soil and composited daily. An EP leachate test must be performed on these samples and the leachate analyzed for the EP toxic metals, nickel, and cyanide. If arsenic, chromium, lead, and silver EP leachate test results do not exceed 0.33 ppm, barium levels do not exceed 6.6 ppm, cadmium and selenium levels do not exceed 0.07 ppm, mercury levels do not exceed 0.01 ppm, nickel levels do not exceed 2.3 ppm, and cyanide levels (using a distilled water extraction) do not exceed 1.3 ppm, the wastes will be considered non-hazardous. Analyses must be performed according to SW-846 methodologies.

Since the unmodified MIS occasionally produced residues with unacceptable EP leachate levels of chromium selenium, and mercury, conditions (2) and (3) have been included to ensure that the residues generated are uniformly non-hazardous. If the data collected under conditions (2) and (3) show that a batch is still hazardous, that batch must be retreated or disposed as hazardous.

(4) Each batch for each of the petitioned residues must be analyzed to demonstrate that the treatment residues (i.e, the kiln ash, cyclone ash, wastewater treatment sludge, and filtered wastewater) do not exceed the maximum allowable waste concentrations listed in Table 3. Sampling must be conducted as specified in conditions (2) and (3). Analyses should be performed according to SE-846 methodologies. Any residues which have constituents which exceed the levels listed in Table 3 must be retreated or disposed as hazardous. This testing requirement will continue until Syntex demonstrates that the residues from four consecutive batches do not exceed any of the maximum allowable treatment residue concentrations listed below.

TABLE 3.—MAXIMUM ALLOWABLE TREATMENT RESIDUE CONCENTRATIONS

Constituent	Solid residue and sludge [1] (ppm)	Wastewater [1] (ppm)
Benz(a)anthracene	0.1	1×10^{-4}
Benz(a)pyrene	0.04	4×10^{-5}
Benz(b)fluoranthene	0.18	2×10^{-4}
Chloroform	0.01	0.006
Chrysene	17	0.002
Dibenzo(a,h) anthracene	0.008	9×10^{-6}
1,2-Dichloroethane	0.009	0.005
Dichloromethane	9.1	0.68
Indeno(1,2,3,-c,d)pyrene	33	0.002
Polychlorinated biphenyls (PCBs)	0.03	1×10^{-4}
1,2,4,5-Tetrachlorobenzene	72	0.13
2,3,4,6-Tetrachlorophenol	706	4.3
Toluene	15%	130
Trichloroethylene	0.66	0.04
2,4,5-Trichlorophenol	0.19%	43
2,4,6-Trichlorophenol	0.34	0.02

[1] Assumes solids waste volume of 3,500 yd^3 and wastewater volume of 3,000,000 gallons.

Maximum allowable treatment residue concentrations were not included in Table 3 for six compounds (*e.g.*, 2,5-dichlorophenol, 3,4-dichlorophenol, hexachlorophene, 1,2,3,5-tetrachlorobenzene, 2,3,4,5-tetrachlorophenol, and 2,3,4-trichlorophenol), which were detected in the untreated sludge or are potentially present in the contaminated soil, because regulatory standards are not currently available for these compounds. If any of these standards become available before this rule is promulgated, they will be added to Table 3.

Condition (4) was added to ensure that the hazardous constituents of concern in the untreated sludge and contaiminated soils are destroyed or reduced to non-hazardous levels. Under condition (4), if Syntex does not detect a constituent listed in Table 3 and the lowest achievable detection limit has been reached (when the appropriate SW-846 methodology has been used correctly) and this detection limit exceeds the maximum allowable treatment residue concentrations, the Agency, as a matter of policy, will not regulated the residue as hazardous. If, however, the data collected under condition (4) show higher detected levels than listed in Table 3, the waste must be retreated or disposed as hazardous. This conditional testing requirement will remain in effect until Syntex can demonstrate that four consecutive batches of the petitioned residues are non-hazardous, that is, the constituents in the wastes do not exceed any of the levels listed in Table 3, and as with all waste generators, that the wastes do not exhibit any of the characteristics of hazardous wastes. The Agency has added this testing termination provisions to this condition for the following reasons: (1) based on the past performance of the MIS, the Agency believes that consistently non-hazardous wastes can be generated from this fixed volume of uniformly mixed wastes and thus testing every batch for the organics listed in Table 3 would be excessive; and (2) termination of this condition after four consecutive clean batches is consistent with existing policy that petitioners submit a minimum of four representative samples in support of their petitions for delisting where wastes are well mixed and uniform. The Agency is specifically requesting comments on this condition termination provision. Future upfront delisting decisions issued by the Agency may include different testing requirements based on an evaluation of the uniformity of the process and waste, the waste volume (including whether there is a fixed volume of waste or an infinite source), and other factors normally considered in the petition review process. For example, variable wastes which have been discussed in previous decisions for multiple wastes (see 51 FR 41323) require continuous batch testing due to continuous variability in the client base. (A similar termination provision has not been included in conditons (2) and (3) because those conditions are for metals which have occasionally been found at failing levels in past residues generated by the MIS. The presence of these metals is not related to the efficacy of the incineration process but rather the inherant metals content of the incinerator feed streams.

(5) Each batch for each of the petitioned residues must be analyzed to demonstrate that the residues do not contain tetra-, penta-, or hexachlorodibenzo-p-dioxins or furans at levels as specified in conditons (2) and (3). The TCDD equivalant levels for solids must be less than 0.5 ppt and for wastewater the levels must be below 0.002 ppt. A high resolution gas chromatography and high resolution mass spectroscopy (HRGC/HRMS)

analytical method must be used. Any residues which exceed the levels listed above must be retreated or disposed as hazardous. This testing requirement will continue until Syntex demonstrates that the residues from four consecutive batches do not exceed the maximum allowable treatment residue concentrations listed above.

This condition has been added to ensure that the dioxin destruction is at least as effective as demonstrated in the original MIS exclusion. The toxicity equivalency levels of tetra-, penta-, or hexachlorodibenzo-p-dioxin or -furan and summing the values for comparison to the equivalent levels set in condition (5). When the petitioner is able to determine that a detected homolog is not 2,3,7,8-substituted, the factors listed below under "Non-2,3,7,8-PCDDs and PCDFs" may be used. If the petitioner determines that either 2,3,7,8-substituted homologs are present or the analysis cannot differentiate the ring substitution pattern, then the factors listed below under "2,3,7,8-PCDD's and PCDF's or Unspecified Homologs" must be used.

TOXICITY EQUIVALENCE FACTORS

Homolog	2,3,7,8-PCDDs and PCDFs or Unspecified Homologs	Non-2,3,7,8-PCDDs and PCDFs
TCDDs	1	0.01
PeCDDS	0.5	.005
HxCDDs	.04	.0004
TCDFs	.1	.001
PeCDFs	.1	.001
HxCDFs	.01	.0001

These factors were developed by the Agency's Chlorinated Dioxins Workgroup (CDWG) to assess the risks associated with exposure to a mixture of chlorinated dioxin homologs, and were derived from an evaluation of the structure-activity relationships of the homologs using their carcinogenic, reproductive, an biochemical effects.[1] Syntex will use the "Region VII" HRGC/MRMS method;[2] this method is available in the public docket for this notice. The Agency is requiring Syntex to use a NRGC/HRMS method in place or SW-846 method 8280 because of the significant difference between the achievable detection limits for method 8280 (1 ppb for liquids) and the maximum allowable treatment levels listed in this condition (0.002 ppt for liquids). The HRGC/HRMS methods is capable of achieving a significantly lower detection limit and thus is a more appropriate tool for evaluating whether the residues are non-hazardous. The Agency is currently developing a HRGC/HRMS method, which we intend to add to SW-846. When this method is available, all petitioners testing for dioxin content may be required to use it. Until that time, however, the Agency will request that petitioners submit a HRGC/MRMS method for review and approval. Syntex submitted the Region VII method which has been used extensively in the characterization of dioxin contamination in Missouri. The method has been reviewed and approved for use in demonstrating compliance with condition (5) of this exclusion.

Under condition (5), if Syntex does not detect any of the homologs listed above and the lowest achievable detection limit has been reached (using the Region VII methodology correctly) and this detection limit exceeds the maximum allowable treatment residue concentrations, the Agency, as a matter of policy, will not regulate the residue as hazardous. If, however, the data collected under condition (5) show higher levels than are acceptable, the wastes must be retreated or disposed as hazardous. This condition will terminate under the same conditions and for the same reasons listed earlier for condition (4).

The maximum allowable waste concentrations discussed in conditions (2), (3), (4), and (5) and listed in Table 3 were derived from the Organic Leachate Model (OLM) and the vertical and horizontal spread (VHS) model. (See 51 FR 41084, November 13, 1986 for a discussion of the Agency's final OLM. See 50 FR 48896, Appendix, November 27, 1985 for a discussion of the Agency's final VHS model.) The OLM is used to predict leachable concentrations of organic constituents in a waste. The VHS model is used to predict the concentration of a constituent in the ground water at a hypothetical compliance point. The maximum allowable wastewater concentrations were derived by back-calculating from regulatory standards through the VHS model to predict allowable leachate concentrations. The concentrations for solids were back-calculated through the OLM from the predicted VHS model leachate concentrations.

(6) The test data from conditions (1), (2), (3), (4), and (5) must be kept on file at the facility for inspection purposes and must be compiled, summarized, and submitted to the Administrator by certified mail on a monthly basis and when the treatment of Syntex's sludge is concluded.

(7) Syntex must provide a signed copy of the following certification statement when submitting data in response to the conditions listed above: "Under civil and criminal penalty of law for the making or submission of false or fraudulent statements or representations, I certify that the information contained in or accompanying this document is true, accurate and complete. As to the (those) identified section(s) of this document for which I cannot personally verify its (their) truth and accuracy, I certify as the company official having supervisory responsibility for the persons who, acting under my direct instructions, made the verification that this information is true, accurate and complete."

Condition (7) is being added as a standard condition for all conditional and upfront exclusions.

The Agency believes that the engineering descriptions of the modifications to the MIS and the untreated sludge characterization data submitted by Syntex, in conjunction with the proposed contingency testing requirements, are a reasonable basis for the upfront conditional exclusion. The modifications to the MIS have been designed to improve the efficacy of the system and thus the Agency expects that the treatment residues from the modified MIS will be non-hazardous. The confirmatory data (e.g., conditions (1) through (5)) will be used to ensure that the MIS can actually meet the terms of the proposed exclusion.

III. Effective Date

The Hazardous and Solid Waste Amendments of 1984 amended section 3010 of RCRA to allow rules to become effective in less than 6 months when the regulated community does not need the 6-month period to come into compliance. This is the case here since this rule reduces, rather than increases, the existing requirements for generators of hazardous wastes. In light of the unnecessary hardship and expense which would be imposed on this petitioner by an effective date 6 months after promulgation, and the fact that such a deadline is not necessary to achieve the purpose of section 3010, we are proposing that this rule be effective immediately upon promulgation. These

[1] Risk Assessment Forum, "Interim Procedures for Estimating Risk Associated with Exposures to Mixtures of Chlorinated Dibenzo-p-Dioxins and -Dibenzofurans (CDDs and CDFs), October, 1986.

[2] *Determination of Polychlorinated Dibenzodioxins and Polychlorinated Dibenzofurans in Environmental Samples Using HRGC/MRMS*, Roy F. Weston, Inc., Spill Prevention and Emergency Response Division, Region VII Technical Assistance Team, July 1986.

reasons also provide a basis for making this rule effective immediately, upon promulgation, under the Administrative Procedure Act, pursuant to 5 U.S.C. 553(d).

IV. Regulatory Impact

Under Executive Order 12291, EPA must judge whether a regulation is "major" and, therefore, subjet to the requirements of a Regulatory Impact Analysis. This rule to grant an exclusion is not major since its effect is to reduce the overall costs and economic impact of EPA's hazardous waste management regulations. This reduction is achieved by excluding from EPA's hazardous waste list wastes generated at a specific facility, thereby enabling the facility to treat its waste as non-hazardous.

V. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601–612, whenever an Agency is required to publish a general notice of rulemaking for any proposed or final rule, the Agency must prepare and make available for public comment a regulatory flexibility analysis which describes the impact of the rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions). The Administrator may certify, however, that the rule will not have a significant economic impact on a substantial number of small entities.

This amendment will not have an adverse economic impact on small entities since its effect will be to reduce the overall cost of EPA's hazardous waste regulations. Accordingly, I hereby certify that this regulation will not have a significant impact on a substantial number of small entities.

This regulation, therefore, does not require a regulatory flexibility analysis.

List of Subjects in 40 CFR Part 261

Hazardous Waste, Recycling.

Date: August 19, 1987.

Marcia Williams,

Director, Office of Solid Waste.

For the reasons set out in the preamble, 40 CFR Part 261 is proposed to be amended as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for Part 261 continues to read as follows:

Authority: Sectons 1006, 2002(a), 3001, and 3002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6905, 6921(a), 6912, and 6922).

Appendix IX—[Amended]

2. In Appendix IX, add the following wastestream in alphabetical order to Table 1 as indicated:

TABLE 1—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES

Facility	Address	Waste description
Syntex Agribusiness	Springfield, MO	Kiln ash, cyclone ash, wastewater, and wastetreatment solids (except spent activated carbon) (EPA Hazardous Wastes Nos. F020, F022, F023, F026, F027, and F028) generated during the treatment of wastewater treatment sludge by the EPA's Mobile Incineration System at the Denney Farm Site in McDowell, MO after [insert date of final rule publication in FEDERAL REGISTER], so long as: (1) the incinerator is monitored continuously and is in compliance with trial burn parameters; (2) four grab samples are taken and composited from each tank of wastewater generated and the EP leachate values of the composite for arsenic, chromium, lead, and silver do not exceed 0.61 ppm, barium levels do not exceed 12 ppm, cadmium and selenium levels do not exceed 0.1 ppm, mercury levels do not exceed 0.02 ppm, nickel levels do not exceed 4.3 ppm, and cyanide levels do not exceed 2.4 ppm. Analyses must be performed according to SW-846 methodology; (3) a grab sample is taken from each drum of soil, ash, and sludge generated and the EP leachate values of daily composites of arsenic, chromium, lead, and silver do not exceed 0.33 ppm, barium levels do not exceed 6.6 ppm, cadmium and selenium levels do not exceed 0.7 ppm, mercury levels do not exceed 0.01 ppm, nickel levels do not exceed 2.3 ppm, and cyanide levels do not exceed 1.3 ppm. Analyses must be performed according to SW-846 methodology; (4) each batch of each of the excluded wastes is analyzed to demonstrate that detected solid and sludge concentrations do not exceed the following levels: 0.1 ppm benz(a)-anthracene, 0.18 ppm benz(b)fluoranthene, 0.04 ppm benzo(a)pyrene, 0.01 ppm chloroform, 17 ppm chrysene, 0.008 ppm dibenzo(a,h)anthracene, 0.009 ppm 1,2-dichloroethane, 9.1 ppm dichloromethane, 33 ppm indeno(1,2,3-c,d) pyrene, 0.03 ppm PCBs, 72 ppm 1,2,4,5-tetrachlorobenzene, 710 ppm 2,3,4,6-tetrachlorophenol, >15 % toluene, 0.66 ppm trichloroethylene, 0.2 % ppm 2,4,5-trichlorophenol, and 0.34 ppm 2,4,6-trichlorophenol; and detected wastewater concentrations do not exceed the following levels: $1x10^{-4}$ ppm benz(a)anthracene, $2x10^{-4}$ ppm benz(b)fluoranthene, $4x10^{-5}$ ppm benzo(a)pyrene, 0.006 ppm chloroform, 0.002 ppm chrysene, $9x10^{-6}$ ppm dibenz(a,h)anthracene, 0.005 ppm 1,2-dichloroethane, 0.68 ppm dichloromethane, 0.002 ppm ideno(1,2,3-c,d)pyrene, $1x10^{-4}$ ppm PCBs, 0.13 ppm 1,2,4,5-tetrachlorobenzene, 4.3 ppm 2,3,4,6-tetrachlorophenol, 130 ppm toluene, 0.04 ppm trichloroethylene, 43 ppm 2,4,5-trichlorophenol, and 0.02 ppm 2,4,6-trichlorophenol. Sampling must be conducted as specified in conditions (2) and (3). Analyses must be performed according to SW-846 methods. Any residues which contain constituents which exceed these levels must be retreated or disposed as hazardous. This testing requirement will continue until Syntex demonstrates that the residues from four consecutive batches are non-hazardous; (5) each batch for each of the petitioned residues is analyzed to demonstrate that total equivalent dioxin concentrations in the excluded solid wastes do not exceed 0.5 ppt, and the equivalent wastewater concentration does not exceed 0.002 ppt. Sampling must be conducted as specified in conditions (2) and (3). A high resolution gas chromatography/high resolution mass spectrometry method must be used. Any residues which contain total dioxin equivalent concentrations which exceed these levels must be retreated or disposed as hazardous. This testing requirement will continue until Syntex demonstrates that the residues from four consecutive batches are non-hazardous; (6) the test data from conditions (1), (2), (3), (4), and (5) are kept on file at the facility for inspection purposes and must be compiled, summarized, and submitted to the Administrator by certified mail on a monthly basis and when the treatment of Syntex's sludge is concluded; and (7) Syntex must provide a signed copy of the following certification statement when submitting data in response to the conditions listed above: "Under civil and criminal penalty of law for the making or submission of false or fraudulent statements or representations, I certify that the information contained in or accompanying this document is true, accurate and complete. As to the (those) identified section(s) of this document for which I cannot personally verify its (their) truth and accuracy, I certify as the company official having supervisory responsibility for the persons who, acting under my direct instructions, made the verification that this information is true, accurate and complete."

[FR Doc. 87-19916 Filed 9-2-87; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 300

[FRL-3255-9]

National Priorities List (NPL) for Uncontrolled Hazardous Waste Sites; Deletion of Sites

AGENCY: Environmental Protection Agency.

ACTION: Notice of intent to delete sites; request for comments.

SUMMARY: The Environmental Protection Agency (EPA) announces its intent to delete three sites from the National Priorities List (NPL) and requests public comment. The NPL is Appendix B to the National Oil and Hazardous Substances Contingency Plan (NCP), which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA).

DATES: Comments may be submitted on or before October 5, 1987.

ADDRESSES: Comments may mailed to Russel H. Wyer, Director, Hazardous Site Control Division (Attn: Design and Construction Management Branch), Office of Emergency and Remedial Response (WH-548E), Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. The Headquarters Docket clerk will maintain some background information on each site. Comprehensive information on each site is available through the EPA Regional docket clerks.

The Headquarters public docket is located in EPA Headquarters, Waterside Mall subbasement, 401 M Street, SW., Washington, DC 20460, and is available for viewing by appointment only from 9:00 a.m. to 4:00 p.m., Monday through Friday excluding holidays. Requests for copies of the background information from the Headquarters public docket should be directed to the EPA Headquarters Docket Office. Requests for comprehensive copies of documents should be directed formally to the appropriate Regional Docket Office. Addresses for the Headquarters and Regional Docket Offices are:

For background information on all three sites: Tina Maragousis, (WH-548D), U.S. EPA CERCLA Docket Office, Waterside Mall, Subbasement, 401 M Street, SW., Washington, DC 20460, 202/382-3046.

For the Middletown Road Dump, Annapolis, Maryland site: Diane McCreary, Region III, U.S. EPA Library, 5th Floor, 841 Chestnut Bldg., 9th & Chestnut Streets, Philadelphia, PA 19107, 215/597-0580.

For the Harris (Farley Street), Houston, Texas site: Leticia Lane, Region VI, U.S. EPA Library, 12th Floor, Mail Code 6M-IR, 1445 Ross Avenue, Dallas, TX 75202-2733, 214/655-6444.

For the Mountain View Mobile Home Estates, Glove, Arizona site: Jean Circiello, Region IX, U.S. EPA Library, 6th Floor, 215 Fremont Street, San Francisco, CA 94105, 415/974-8076.

FOR FURTHER INFORMATION CONTACT: Paul Nadeau, Chief, Design and Construction Management Branch, Hazardous Site Control Division, Office of Emergency and Remedial Response (WH-548E), Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, Phone (800) 424-9346 (or 382-3000 in the Washington, DC, metropolitan area).

SUPPLEMENTARY INFORMATION:

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I. Introduction
II. NPL Deletion Criteria
III. Deletion Procedures
IV. Basis for Intended Site Deletions

I. Introduction

The Environmental Protection Agency (EPA) announces its intent to delete three sites from the National Priorities List (NPL), Appendix B, of the National Oil and Hazardous Substances Contingency Plan (NCP), and requests comments on these deletions. The EPA identifies sites that appear to present a significant risk to human health or the environment and maintains the NPL as the list of those sites. Sites on the NPL may be the subject of the Hazardous Substance Response Fund (Trust Fund) financed remedial actions. Any sites deleted from the NPL remain eligible for Fund-financed remedial actions in the unlikely event that conditions at the site warrant such action.

The three sites EPA intends to delete from the NPL are:

1. Middletown Road Dump, Annapolis, Maryland
2. Harris (Farley Street), Houston, Texas
3. Mountain View Mobile Home Estates, Globe, Arizona

The EPA will accept comments on these three sites for thirty days after publication of this notice in the **Federal Register.**

Section II of this notice explains the criteria for deleting sites from the NPL. Section III discusses procedures that EPA is using for this action and those that the Agency is considering using for future site deletions. Section IV discusses each site and explains how each site meets the deletion criteria.

II. NPL Deletion Criteria

Amendments to the NCP published in the **Federal Register** on November 20, 1985 (50 FR 47912) establish the criteria the Agency uses to delete sites from the NPL. Section 300.66(c)(7) of the NCP provides that:

> . . . sites may be deleted from or recategorized on the NPL where no further response is appropriate. In making this determination, EPA will consider whether any of the following criteria has been met:
>
> (i) EPA, in consultation with the State, has determined that responsible or other parties have implemented all appropriate response actions required;
>
> (ii) All appropriate Fund-financed response under CERCLA has been implemented, and EPA, in consultation with the State, has determined that no further cleanup by responsible parties is appropriate; or
>
> (iii) Based on a remedial investigation, EPA, in consultation with the State, has determined that the release poses no significant threat to public health or the environment and, therefore, taking of remedial measures is not appropriate.

Before deciding to delete a site, EPA will make a determination that the remedy or decision that no remedy is necessary, is protective of human health and the environment, consistent with section 121(d) of the Superfund Amendments and Reauthorization Act of 1986.

Deletion of a site from the NPL does not preclude eligibility for subsequent Fund-financed actions if future conditions for subsequent Fund-financed actions if future conditions warrant such actions. Section 300.66(c)(8) of the NCP states that Fund-financed actions may be taken at sites that have been deleted from the NPL.

III. Deletion Procedures

Deletion of sites from the NPL does not itself create, alter, or revoke any individual rights or obligations. The NPL is designed primarily for informational purposes and to assist Agency management. As mentioned in Section II of this notice, § 300.66(c)(8) of the NCP states that deletion of a site from the NPL does not preclude eligibility for future Fund-financed response actions.

For the deletion of this group of three sites, EPA's Headquarters Office will accept and evaluate public comments before making the final decision to delete. Comments from the local community surrounding the sites considered for deletion are likely to be the most pertinent to deletion decisions. The following procedures were used for

the intended deletion of these three sites:

1. EPA Regional Offices recommended deletion and prepared relevant documents.

2. EPA Regional Offices provided a two to three week public comment period on the deletion package for the Harris (Farley St), TX and the Mountain View Mobile Home Estates, AZ sites, both of which had undergone remedial measures. A public meeting for discussion of the Remedial Investigation and No-Action alternative (no remedial action was necessary) was provided instead of a public comment period on the deletion package for the Middletown Road site where an Emergency Removal preceded a No-Action Decision. For all three sites, notifications were provided to local residents through local and community newspapers. The Region made all relevant documents available in the Regional Offices and local site information repositories. Notice was also given at the time of public meetings if they were determined to be necessary.

3. Comments received during the notice and comment period were evaluated and a Responsiveness Summary prepared before the tentative decision to delete was made.

A deletion occurs when the Assistant Administrator for Solid Waste and Emergency Response places a notice in the **Federal Register**, and the NPL will reflect those deletions in the next final update. Public notices and copies of the Responsiveness Summary will be made available to the local residents by the Regional Offices.

IV. Basis for Intended Site Deletions

The following summaries provide the Agency's rationale for intending to delete these sites from the NPL.

Harris (Farley Street) Site, Houston, TX

The Harris (Farley Street) site is a 2.07-acre site located in southeast Houston, Texas. In early 1958 the site was used as a disposal site for chemical wastes. In 1959 the trenches were backfilled with native soil. The waste was uncovered in 1981 in the process of installing a swimming pool. The site was listed on the NPL in December 1982 based on potential ground water contamination.

In June 1983, one of the site's potentially responsible parties (PRP) signed an Administrative order on Consent with EPA to perform the Remedial Investigation and Feasibility Study (RI/FS) for the site. The Remedial Investigation Report was submitted to EPA in November 1983 and the Field Study was submitted in May 1984. The RI indicated that wastes consisting of styrene tars and their degradation products were present. Ground water monitoring wells installed next to the trenches and down-gradient of the site showed no sign of ground water contamination. As a result of these findings the Enforcement Decision Document was signed by the Regional Administrator on September 27, 1985 and a second Administrative Order on Consent was signed with the PRP in September 1985 for the Remedial Design (RD) and Remedial Action (RA) to be conducted and funded by the PRP.

The waste materials were chemically characterized as alkanes, substituted benzenes, substituted biphenyls, polynuclear aromatic hydrocarbons and non-aromatic cyclics. Measurement of total extractable organics was employed as a surrogate for quantification of total contamination. Initial laboratory tests indicated that the total extractable organics (TEO) test adequately measured to total amount of contamination. Background level was defined as from 0 to 10 parts per million (ppm) TEO with a detection limit of <2 ppm.

A series of four removals was initiated by the PRP in April 1986 and completed in July 1986 with disposal of contaminated soils in a Class I, RCRA landfill. Subsequent soil sampling indicated wastes had been removed to background levels in 54 of 57 samples, with three samples with TEO levels slightly elevated above background, and the environmental threat presented by the site had been effectively mitigated.

Because the action was a complete removal of the contamination source, no ground water monitoring was done after the removal and no operation or institutional controls were found to be necessary for the site. All activities and decisions are consistent with those outlined in the Enforcement Decision Document and comply with current standards.

The property will be turned over to a disposal company once the site has been deleted from the National Priorities List and will become a part of a private construction material, Class IV landfill (a non-hazardous materials landfill), which now bounds the site on two sides. A sandpit which lies to the south of the site is also scheduled to become a landfill cell once the useable sand has been removed.

A three week public comment period concerning the proposed deletion was held from August 27 to September 17, 1986. No written comments were received. Oral comments were received from the Assistant Director of the Department of Health and Human Services for the City of Houston. Three concerns were raised: (a) Why was the test for total extractable organics (TEOs) used as the indicator parameter for completion of the clean-up; (b) is the TEO test applicable to the types of waste found at the Harris (Farley Street) site; and (c) what about small patches of stained soil left at the site after completion of removal. Subsequently, the State reviewed a summary of EPA/PRP data documenting the analytical relationship between the TEO test and the site contaminants and determined that the TEO test was indeed appropriate. The State also agreed that the small amount of remaining material posed an insignificant threat to human health and the environment and continuation of removal was not justifiable. These concerns and their resolution are detailed in the Responsiveness Summary.

EPA, in consultation with the State of Texas, has determined that the site is protective of human health and the environment, that responsible parties have implemented all appropriate response actions required and that no further cleanup by responsible parties is appropriate.

Mountain View Mobile Home Estates, Globe, AZ

Mountain View Mobile Home Estates was a 17-acre mobile home subdivision located in Globe, Arizona, approximately 75 miles east of Phoenix. The subdivision was developed in 1973 on the site of the Metate Asbestos Corporation chrysotile asbestos mill after the mill ceased operation by order of the Gila County Air Quality Control District. Metate Asbestos mill tailings and contaminated soil were used as fill to level the site. Forty-seven mobile homes were eventually placed on the subdivision's 55 lots and the site was occupied by approximately 130 residents.

Asbestos contamination of the soil in the subdivision was discovered in October 1979 by State and local health officials. Subsequent sampling of air and soil in the subdivision confirmed the presence of asbestos fibers. Mountain View Mobile Homes Estates was added to the National Priorities List in July 1982.

The Remedial Investigation/Feasibility Study commenced on April 4, 1983. The final draft Remedial Investigation/Feasibility Study Report (RI/FS) was published in May 1983. During the RI/FS activity, EPA and the Federal Emergency Management Agency (FEMA) offered to temporarily relocate Mountain View residents on a

voluntary basis pending a decision on the permanent remedy for the site.

The RI/FS found that residents of Mountain View Mobile Home Estates were being exposed to significant quantities of asbestos fibers both from contaminated soil on-site and from airborne fibers from a nearby mill. Direct contact with asbestos by children was of the greatest concern because their life expectancy exceeds the latency periods for asbestos related disease. Polarized light microscopy was the analytical method used to identify and quantify asbestos for all samples collected at the site.

A Record of Decision was signed on June 2, 1983 selecting Site Abandonment by Permanent Relocation as the remedial action. Permanent relocation of residents was completed in March 1985 and ownership of the purchased property was transferred to the State of Arizona. Following relocation of the site residents, remediation of the site was completed.

The homes and other structures were crushed and buried on-site in two natural depressions. Drainage culverts and enclosed pipes were installed to reduce the potential for erosion of the cover. A non-woven filter fabric was placed over the entire site to act as a physical barrier to upward movement of asbestos fibers and as an indicator of erosion. Twenty-one inches of uncontaminated soil was placed over the filter fabric in lifts and compacted. Three inches of crushed rock was added to complete the cover. The site was fenced to protect the integrity of the cover.

Analytical results from 107 post-closure soil samples of the site cover are non-detectable for asbestos or show only traces <1% consistent with background readings. Twenty-five final cover samples were also non-detectable. Physical inspections of the site found no problem with integrity of the site other than minor settling and erosion. The State of Arizona has committed to maintenance of the site for a minimum of twenty years. All actions taken are consistent with those outlined in the Record of Decision and comply with current standards.

The Region provided a three week public comment period from August 29th to September 19, 1986 on the proposed deletion. No written or oral comments were received.

All appropriate Fund-financed response under CERCLA has been implemented, and EPA, in consultation with the State of Arizona, has determined that no further cleanup by responsible parties is appropriate and that the site is protective of human health and the environment.

Middletown Road Dump, Annapolis, MD

The Middletown Road Dump site is located off Maryland Route 50 near Annapolis, Anne Arundel County, Maryland. This 2.3 acre site was operated as a dump, primarily for rubble and construction debris, over several decades without proper state permits. The owner accepted drums of unidentified industrial wastes and marine paints which were discovered during an October 1982, EPA Field Investigation Team (FIT) Investigation of the property. As a result of the FIT Investigation, based on potential ground water and surface water contamination, the site was placed on the National Priorities List (NPL) in December 1982.

A site assessment in April 1983, revealed that emergency conditions existed on-site, threatening ground and surface waters. Stream sediments and surface soils showed significant heavy metals contamination. Immediate removal measures were initiated, contaminated on-site materials were removed, plus additional soils until background levels were achieved.

A Remedial Investigation (RI) was initiated on January 2, 1985. Evaluation of possible routes of contaiminant migration included water quality assessment from existing data from on-site and off-site wells and surface waters; and soils and sediments evaluation by site sampling and analysis for priority metals, volatile organics and base/neutral extractables. All air, water, soil and sediment contaminant levels were very close to naturally occurring background levels, based on previously collected State data.

The RI determined that there was no significant threat to public health or the environment via direct contact, inhalation or ingestion and that No-Action is the proper alternative for the Middletown Road site. A No-Action Record of Decision was signed by the Acting Regional Administrator on March 17, 1986.

The State will monitor the on-site wells at least annually as a part of its existing closed waste site inspection schedule. Uncontaminated tires remain on site. However, the State has entered into a Consent Order with the owner to have them removed and disposed of properly.

A public meeting was held on August 27, 1985, to discuss the final RI and No-Action alternative. No written or verbal comments from the public were received.

Based on the remedial investigation, EPA, in consultation with the State of Maryland, has determined that the site poses no significant threat to human health or the environment and remedial measures are not appropriate.

Dated: August 25, 1987.

Thaddeus L. Juszczak, Jr.,

Acting Deputy Assistant Administrator, Office of Solid Waste and Emergency Response.

[FR Doc. 87-20297 Filed 9-2-87; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF TRANSPORTATION
Coast Guard
46 CFR Part 25
[CGD 87-016]

Emergency Position Indicating Radio Beacons for Uninspected Fishing, Fish Processing, and Fish Tending Vessels

AGENCY: Coast Guard, DOT.

ACTION: Noice of proposed rule making.

SUMMARY: The Coast Guard is proposing to amend the uninspected vessel regulations by requiring emergency position indicating radio beacons (EPIRBs) to be carried on uninspected fishing, fish processing, and fish tender vessels operating on the high seas. Congress amended the shipping laws of the United States by requiring those vessels to have the number and type of EPIRBs prescribed by regulation. By implementing the law, the regulations will ensure rapid and effective search and rescue during emergency situations.

DATES: Comments must be submitted on or before: October 19, 1987.

ADDRESSES: Comments should be submitted to the Commandant (G-CMC/21), U.S. Coast Guard, 2100 Second St., SW., Washington, DC 20593-0001. Between the hours of 8:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays, comments may be delivered to, and are available for inspection and copying at, the Marine Safety Council (G-CMC) Room 2110 U.S. Coast Guard Headquarters, 2100 Second St., SW., Washington, DC 20593-0001, (202) 267-1477. The Draft Evaluation may also be inspected or copied at the Marine Safety Council.

FOR FURTHER INFORMATION CONTACT: LCDR William M. Riley, Survival Systems Branch, Room 1404, U.S. Coast Guard Headquarters, 2100 Second St., SW., Washington, DC 20593-0001, (202) 267-1444. Normal office hours are between 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this rulemaking by

submitting written views, data or arguments. Comments should include the name and address of the person making them, identify this notice (CGD 87-016) and the specific section to which each comment applies, and give reasons for the comments. If an acknowledgement is desired, a stamped, pre-addressed post card or envelope should be enclosed. All comments received before the expiration of the comment period will be considered before final action is taken on this proposal. The proposal may be changed in light of comments received.

No public hearing is planned, but one may be held at a time and place to be set in a later notice in the **Federal Register** if written requests are received from interested persons raising relevant issues and desiring to comment orally at a public hearing and it is determined that the opportunity to make oral presentations will aid in the rulemaking process.

Drafting Information

The principal persons involved in drafting these regulations are: LCDR William M. Riley, Project Manager, and Mr. Stanley Colby, Project Counsel, Office of Chief Counsel.

Discussion of the Proposed Regulations

Fishing vessels frequently sink suddenly without calling for help. When a distress call is made, it often does not include an accurate or complete identification of the vessel, description of the situation, or position. Fishing vessels do not have established routes or schedules, and in fact often guard the secret of where they fish most successfully as a trade secret. Therefore, the position of a fishing vessel, and even whether or not it is overdue, is often unknown to anyone ashore. These factors greatly reduce the chance of anyone being rescued alive following a fishing vessel casualty. In contrast, when there is an EPIRB to provide prompt notification of the casualty and a homing beacon to guide rescuers to the scene, the chance of saving lives—as opposed to recovering bodies—increases dramatically.

The Coast Guard agreed to seek legislative authority to require EPIRBs on fishing vessels and other uninspected vessels in a response to the April 24, 1980 recommendation resulting from the National Transportation Safety Board (NTSB) investigation of the 1978 loss of the F/V LOBSTA I. Coast Guard investigations of a number of fishing vessel casualties have also resulted in internal recommendations for EPIRBs. These casualties include the F/V ELSIE JANE, F/V MARBLEHEAD, F/V BARBIE I, F/V MARY LOU, F/V NOREEN ANN, F/V EQUINOX, and F/V CITY OF SEATTLE. Navigation and Vessel Inspection Circular 5-86 contained voluntary safety standards for all vessels engaged in the commercial fisheries, and included a recommendation for the carriage of EPIRBs, and COMDTINST 2370.2A of October 28, 1981 instructed Coast Guard personnel to encourage all fishing vessel operators to carry EPIRBs.

Regulations prescribing EPIRB carriage by fishing vessels do not now exist because the Coast Guard did not previously have the authority to issue those regulations. On November 10, 1986, the Ninety-Ninth Congress passed Pub. L. 99-640, known as the "Coast Guard Authorization Act of 1986" (100 Stat. 3545). Section 16 of the Act amended section 4102 of Title 46 of the United States Code by adding paragraph (e) which requires uninspected fishing vessels operating on the high seas to carry the number and type of EPIRBs prescribed by regulation. Except for the type of EPIRB required, this notice would implement that law to require uninspected fishing, fish processing, and fish tender vessels operating on the high seas to carry EPIRBs by proposing regulations that are similar to the carriage, testing, and maintenance requirements for EPIRBs in 46 CFR Subchapter I, (Cargo and Miscellaneous Vessels). If adopted, the regulations will be published in 46 CFR Subchapter C, (Uninspected Vessels).

The regulations would require the use of FCC Type Accepted float-free EPIRBs operating on the dedicated satellite frequency of 406.025 MHz. The 406 MHz satellite EPIRB not only provides improved alerting and locating over conventional EPIRBs operating on aircraft and marine frequencies, but also avoids most of the false alarm problems on those frequencies. Necessary final rules permitting manufacture and sale of such beacons are expected to be completed by the Federal Communications Commission (FCC) before February 1988. These beacons should be readily available before mid-1988.

The Coast Guard recognizes that many owners and operators of fishing vessels have voluntarily installed EPIRBs in response to the previous educational campaign and that this equipment has a long service life. Therefore the proposed rules would allow 121.5/243 MHz Class A (float-free) EPIRBs that are installed on or before the effective date of the final rules to be carried for about 10 years. To allow adequate time for installation of satellite EPIRBs, the Coast Guard intends to establish a compliance date approximately one year after the effective date of the final rules. The Coast Guard will consult with the FCC and manufacturers prior to publication of the final rule and will adjust the compliance date, if necessary, to allow approximately six months for installation of satellite EPIRBs after the units are readily available. If production is subsequently delayed, further adjustments to the effective date will be made and published in the **Federal Register**.

Although conventional 121.5/243 MHz Class A EPIRBs would be acceptable for the proposed 10 year phase-in period, there are a number of problems with these EPIRBs. The 121.5/243 MHz system has a serious false alarm problem. Although COSPAS/SARSAT search and rescue satellites are designed to receive 121.5 MHz signals, 121.5/243 MHz EPIRBs are not designed as "satellite EPIRBs" and their coverage area and alert and locate ability is significantly inferior to that of the 406 MHz satellite EPIRB. An estimated 25% of the existing 121.5/243 MHz EPIRBs will not be detected by COSPAS/SARSAT satellites because their transmitter spectrum does not comply with the modulation requirements of Federal Aviation Administration Technical Standard Order (TSO) C91a. A pending regulatory project by the Federal Communications Commission published in the June 5, 1987 issue of the **Federal Register** (52 FR 21334) would solve this problem for future production Class A EPIRBs, but not for existing units.

Although conventional 121.5/243 MHz Class A EPIRBs would be acceptable for the proposed 10 year phase-in period, the proposals in this notice would not allow Class B 121.5/243 MHz EPIRBs or Class C VHF-FM EPIRBs to be counted toward the EPIRB carriage requirement. Class B EPIRBs will float, but are not automatically deployed and activated. The signal from a VHF-FM Class C EPIRB is not detectable by the COSPAS/SARSAT satellites, and can often go unnoticed by coast and ship radio stations.

All fishing vessels operating on the high seas are included in the EPIRB carriage requirements proposed in this notice, including small fishing vessels regardless of length, tonnage, numbering or documentation, manning, accommodation spaces, or propulsion. Pub. L. 99-640 makes no provision for exemption of such vessels.

Comments are specifically invited on the following:

(1) The proposed 10 year phase-out period for Class A EPIRBs. We are considering a shorter phase-out period of 6 years in consideration of the shortcomings of the 121.5/243 MHz system.

(2) Class A EPIRBs which do not comply with TSO C91a. We are considering prohibiting the carriage of non-complying EPIRBs during the phase-out period in consideration of their questionable performance with COSPAS/SARSAT satellites.

(3) the non-acceptability of existing Class B and C EPIRBs during the phase-out period. Persons suggesting that Class B and Class C EPIRBs should be allowed to be carried should also address the appropriate phase-out period, as well as the number of these EPIRBs thought to be in service on the affected vessels.

Regulatory Evaluation

These proposed regulations are considered to be non-major under Executive Order 12291 and nonsignificant under the DOT regulatory policies and procedures (44 FR 11034; February 26, 1979). A draft regulatory evaluation has been prepared and placed in the docket. It may be inspected or copied at the Office of the Marine Safety Council (see "**ADDRESSES**", above).

The draft evaluation estimates a cost of about $600 for each of the estimated 31,555 fishing vessels that would be affected. Approximately half of these vessels would have to install satellite EPIRBs within a year, at a cost of about $9.5 million. The remainder would replace their existing conventional EPIRBs over a 10-year period at a cost, adjusted to 1988 dollars, of about $7.5 million, for a total of about $17 million for the industry to comply with the requirements in the proposed rules.

In addition to the saving of lives, the primary benefits of the proposed regulations are identified in the draft evaluation as more timely notification that a casualty has occurred, more accurate identification of the area to be searched, and consequently large savings of money for the Coast Guard and other organizations involved in a search.

In the three-year period from 1982 to 1984, 288 lives were lost as a result of total losses of fishing vessels. Using the minimally accepted value of a human life of one million dollars, it is evident that the savings of only a few of the lives lost each year would justify the cost of this proposal.

More tangible benefits can be identified in the reduction of search and rescue costs. The search for the fishing vessel AMAZING GRACE took 16 days and cost $12 million before the search was abandoned. There was no definite notice that a casualty had occurred, and the area to be searched was unknown. In contrast, a number of searches for pleasure vessels and fishing vessels have been expedited by EPIRBs carried voluntarily. The savings to the government as a result of elimination or significant reduction of only two or three searches of the scope of the AMAZING GRACE operation, would justify the cost of these proposed rules, even without considering the benefit of the unknown number of lives that will be saved by more timely location of vessels in distress.

The agency certifies that this proposal will not have a significant economic impact on a substantial number of small entities. Generally, fishing vessel operators are considered to be small entities in that they are typically not part of large diversified corporations, and generally own no more than a few vessels. The $600 cost is not considered significant for any of these vessels.

It has been determined that this rulemaking is categorically excluded from a detailed environmental evaluation. The Categorical Exclusion Determination is available in the docket for examination, copying, and public comment.

List of Subjects in 46 CFR Part 25

Fire prevention, Marine safety.

In consideration of the foregoing, it is proposed to amend Subchapter C of Title 46, Code of Federal Regulations, as follows:

PART 25—[AMENDED]

1. The authority citation to Part 25 continues to read as follows:

Authority: 46 U.S.C. 4104 and 4302; 49 CFR 1.46.

2. By amending Part 25 by adding a new Subpart 25.26 to read as follows:

Subpart 25.26—Emergency Position Indicating Radio Beacons

Sec.
25.26-1 Uninspected Fishing, Fish Processing, and Fish Tender Vessels.
25.26-5 Servicing of EPIRBs.

Subpart 25.26—Emergency Position Indicating Radio Beacons

§ 25.26-1 Uninspected fishing, fish processing, and fish tender vessels.

(a) After [insert date one year after effective date], the owner of an uninspected vessel that is a fishing vessel, a fish processing vessel, or a fish tender vessel shall ensure that the vessel does not operate on the high seas unless it has on board an FCC Type Accepted float-free, automatically activated, 406 MHz Emergency Position Indicating Radio Beacon (EPIRB); or a 121.5/243 MHz Class A EPIRB meeting paragraph (b) of this section.

(b) Until [insert date 10 years after effective date], a 121.5/243 MHz Class A EPIRB may be on board a vessel, under paragraph (a) of this section, if the EPIRB is operable and installed on the vessel on or before [insert effective date].

§ 25.26-5 Servicing of EPIRBs.

(a) The master of each vessel required to have an EPIRB under this subpart shall ensure that each EPIRB on board that is not installed in an inflatable life raft is tested and serviced as required by this section.

(b) The EPIRB must be tested by the visual or audio output indicator to determine whether or not it is operating immediately after installation and at least once each month thereafter. If the EPIRB is not operating, it must be repaired or be replaced with an operating EPIRB.

(c) The battery of the EPIRB must be replaced—

(1) immediately after the EPIRB is used for any purpose other than being tested; and

(2) before the expiration date that is marked on the battery.

Dated: August 6, 1987.

J.W. Kime,

Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 87-20335 Filed 9-2-87; 8:45 am]

BILLING CODE 4910-14-M

DEPARTMENT OF DEFENSE

Office of the Secretary

48 CFR Parts 209, 225, and 252

Defense Federal Acquisition Regulation Supplement (DFARS); Acquisition From Firms Owned or Controlled by Foreign Governments That Support Terriorism

AGENCY: Department of Defense (DOD).

ACTION: Proposed rule and request for comments.

SUMMARY: The defense Acquisition Regulatory (DAR) Council is proposing to amend the DFARS to further implement 10 U.S.C. 2327 regarding exclusion of contractors, owned or controlled by foreign governments that support terrorism, from award of contracts by DOD. The proposed rule defines the term "significant interest" and prescribes a solicitation provision to facilitate offeror compliance with 10 U.S.C. 2327.

DATE: Comments on the proposed rule should be submitted in writing to the Executive Secretary, DAR Council, at the address shown below, on or before October 5, 1987, to be considered in the formulation of the final rule. Please cite DAR Case 86-169 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 OUSD(A) (M&RS), Room 3D139, The Pentagon, Washington, DC 20301-3062.

If commenters choose to hand-carry comments to the DAR Council Office at 1211 South Fern Street, Arlington, VA, arrangements for hand-carried comments must be made with the DAR Council Staff Members. Security Guards at this location are not permitted to accept or sign for hand-delivered comments of any kind.

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

SUPPLEMENTARY INFORMATION:

A. Background

10 U.S.C. 2327 prohibits award, without a waiver from the Secretary of Defense, of a contract by a Defense agency to a firm or a subsidiary of a firm in which a foreign government owns or controls a significant interest, if such foreign government is the government of a country that has been determined by the Secretary of State to be one that has repeatedly provided support for acts of international terrorism.

The proposed rule would require that contractors certify that no foreign government, as described above, holds a significant interest in the firm or subsidiary (or, in the case of a subsidiary, in the firm that owns the subsidiary).

B. Regulatory Flexibility Act

The proposed rule is not expected to have significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 et seq. because few, if any, small businesses responding to DOD solicitations are likely to be owned or controlled by governments that repeatedly support acts of international terrorism. Additionally, 10 U.S.C. 2327 makes no provision for differentiating between large and small businesses with regard to its application. Further, ownership and control of a small business is generally common knowledge since they tend to be concentrated in a few individuals who are actively involved in day-to-day operations. An initial regulatory flexibility analysis has therefore not been performed. Comments are invited from small businesses and other interested parties. Comments from small entities concerning the affected FAR Subpart 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 proposed rule does not impose information collection requirements within the meaning of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq., and OMB approval of the proposed rule is not required pursuant to 5 CFR Part 1320 et seq.

List of Subjects in 48 CFR Parts 209, 225, and 252

Government procurement.

Charles W. Lloyd,

Executive Secretary, Defense Acquisition Regulatory Council.

Therefore, it is proposed that 48 CFR Parts 209, 225, and 252 be amended as follows:

1. The authority citation for 48 CFR Parts 209, 225, 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 209—CONTRACTOR QUALIFICATIONS

2. Sections 209.170 through 209.170-4 are added to read as follows:

209.170 Acquisition from firms owned or controlled by foreign governments that support terrorism.

209.170-1 Definition.

"Significant interest" as used in this section means—

(a) Ownership of or beneficial interest in five percent or more of the firm's or subsidiary's securities. Beneficial interest includes holding five percent or more of any class of the firm's securities in "nominee shares", "street names", or some other method of holding securities that does not disclose the beneficial owner'

(b) Holding a management position in the firm such as a director or officer;

(c) Ability to control or influence the election, appointment, or tenure of directors or officers in the firm;

(d) Ownership of 10 percent or more of the assets of a firm such as equipment, buildings, real estate, or other tangible assets of the firm; or

(e) Holding 50 percent or more of the indebtedness of a firm.

209.170-2 Disclosure.

10 U.S.C. 2327 requires that, for contracts expected to equal or exceed $100,000, Department of Defense agencies obtain from any firm, or subsidiary of a firm, submitting a bid or proposal, a disclosure in that bid or proposal of any significant interest in such firm or subsidiary (or, in the case of a subsidiary, in the firm that owns the subsidiary) which is owned or controlled, directly or indirectly, by a foreign government or an agent or instrumentality of a foreign government, if such foreign government is the government of a country that has been determined by the Secretary of State under 50 U.S.C. 2405(j)(1)(A) to have repeatedly provided support for acts of international terrorism.

209.170-3 Prohibition.

10 U.S.C. 2327(b) prohibits a Defense agency from awarding a contract of $100,000 or more to a firm or a subsidiary of a firm in which a foreign government owns or controls a significant interest, directly or indirectly, in such firm or subsidiary (or, in the case of a subsidiary, in the firm that owns the subsidiary), if such foreign government is the government of a country that has been determined by the Secretary of State under U.S.C. 2405(j)(1)(A) to have repeatedly provided support for acts of international terrorism. The Secretary of Defense may waive this prohibition in accordance with 10 U.S.C. 2327(c).

209.170-4 Solicitation provision.

The contracting officer shall insert the provision at 252.209-7000, Certification or Disclosure of Ownership or Control by a Foreign Government that Supports Terrorism, in solicitations when the contract is expected to equal or exceed $100,000.

PART 225—FOREIGN ACQUISITION

3. Section 225.702 is added to read as follows:

225.702 Restrictions.

(S-70) (Reserved)

(S-71) See 209.170 for restrictions on contracting with firms owned or controlled by foreign governments that support terrorism.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

4. Section 252.209-7000 is added to read as follows:

252.209-7000 Certification or disclosure of ownership or control by a foreign government that supports terrorism.

As prescribed at 209.170-4, insert the following provision:

Certification or Disclosure of Ownership or Control by a Foreign Government That Supports Terrorism (Date)

(a) "Significant interest" as used in this provision means—

(1) Ownership of or beneficial interest in five percent (5%) or more of the firm's or subsidiary's securities. Beneficial interest includes holding five percent (5%) or more of any class of the firm's securities in "nominee shares", "street names", or some other method of holding securities that does not disclose the beneficial owner;

(2) Holding a management position in the firm such as director or officer;

(3) Ability to control or influence the election, appointment, or tenure of directors or officers of the firm;

(4) Ownership of ten percent (10%) or more of the assets of a firm such as equipment, buildings, real estate, or other tangible assets of the firm; or

(5) Holding 50 percent (50%) or more of the indebtedness of a firm.

(b) Unless paragraph (c) of this section has been completed, the Offeror, by submission of its offer, certifies, to the best of its knowledge and belief, that no government of a foreign country, or agent or instrumentality of a foreign country, listed below, has, directly or indirectly, a significant interest in the Offeror or, if the Offeror is a subsidiary, in the firm that owns or controls, directly or indirectly, the Offeror. Such countries currently include:

(1) Cuba;

(2) Iran;

(3) Libya;

(4) Syria; and

(5) South Yemen.

(c) If the Offeror is unable to certify in accordance with (b) above, the Offeror represents that the following country or countries (listed in (b) of this section) or an agent or instrumentality of such country or countries, have a significant interest in the Offeror's firm:

Country _____

Significant Interest _____

(End of provision)

[FR Doc. 87-20312 Filed 9-2-87; 8:45 am]

BILLING CODE 3810-01-M

Notices

Federal Register
Vol. 52, No. 171
Thursday, September 3, 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.

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

August 28, 1987.

The Department of Agriculture has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) An indication of whether section 3504(h) of Pub. L. 96-511 applies; (9) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, Room 404-W Admin. Bldg., Washington, DC 20250, (202) 447-2118.

Comments on any of the items listed should be submitted directly to: Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Attn: Desk Officer for USDA.

If you anticipate commenting on a submission but find that preparation time will prevent you from doing so promptly, you should advise the OMB Desk Officer of your intent as early as possible.

Extension

• Animal and Plant Health Inspection Service
Cooperative National Plant Pest Survey and Detection Program
PPQ-391 and 395
On occasion; Semi-annually
State or local governments; 350,850 responses; 1,700 hours; not applicable under 3504(h)
Thomas E. Wallenmaier, (301) 436-6405

• Federal Grain Inspection Service
Applications for Service and Designations under USGSA & AMA
CP-5, CP-5-1, FGIS-4, FGIS-100, FGIS-907, FGIS-908, FGIS-942, FGIS-943, FGIS-944, FGIS-955, WH-30
• On occasion; Varies
State or local governments; Businesses or other for-profit; 154,051 responses; 22,576 hours; not applicable under 3504(h)
Robert "E" Soderstrom, (202) 382-0231

• Rural Electrification Administration
Financial and Statistical Report
REA-479
Annually
Small businesses or organizations; 1,000 responses; 14,000 hours; not applicable under 3504(h)
Monte Heppe, Jr., (202) 382-8530

• Rural Electrification Administration
Operating Report
REA-12a-i
Recordkeeping; Annually
Small businesses or organizations; 315 responses; 6,930 hours; not applicable under 3504(h)
Archie W. Cain, (202) 382-1900

• Rural Electrification Administration
Financial Forecast Electric Distribution Systems
REA-325 a-k
On occasion
Small businesses or organizations; 500 responses; 10,025 hours; not applicable under 3504(h)
Archie W. Cain, (202) 382-1900

New

• Food and Nutrition Service
WIC Vendor Management Study
One-time Survey
State or local governments; 49 responses; 147 hours; not applicable under 3504(h)
Jerry Burns, (703) 756-3127

• Food and Nutrition Service
Evaluation of the Food Stamp Employment and Training Program
On occasion
Individuals or households; State or local governments; 35,515 responses; 10,220 hours; not applicable under 3504(h)
Boyd Kowal, (703) 756-3130.

Jane A. Benoit,
Departmental Clearance Officer.

[FR Doc. 87-20277 Filed 9-2-87; 8:45 am]
BILLING CODE 3410-01-M

Agricultural Stabilization and Conservation Service

Tobacco Marketing Fire-Cured (Type 21), Fire-Cured (Types 22-23), Dark Air-Cured, Virginia Sun-Cured, and Cigar-Filler and Binder (Types 42, 43, 44, 53, 54 & 55) Tobaccos; 1987-88 Marketing Quotas and Acreage Allotments

AGENCY: Agricultural Stabilization and Conservation Service, USDA.

ACTION: Notice of determination of 1987-88 marketing quotas and acreage allotments.

SUMMARY: The purpose of this notice is to affirm determinations which were made by the Secretary of Agriculture on March 3, 1987, with respect to the 1987 crops of fire-cured (type 21), fire-cured (types 22-23), dark air-cured, Virginia sun-cured, and cigar-filler and binder tobaccos. In addition to other determinations, the Secretary declared national acreage allotments for the following kinds of tobaccos: Fire-cured (type 21), 6,546 acres; fire-cured (types 22-23), 11,874 acres; dark air-cured, 4,035 acres; Virginia sun-cured, 920 acres; and cigar-filler and binder (types 42-44 & 53-55), 8,526 acres.

This notice also affirms the proclamation made by the Secretary that marketing quotas will be in effect for cigar-filler and binder tobacco for the three marketing years beginning October 1, 1987 and sets forth the results of the referendum held during the period March 23-27, 1987, in which producers of cigar-filler and binder tobacco approved marketing quotas for the 1987-88, 1988-89, and 1989-90 marketing years.

EFFECTIVE DATE: March 3, 1987.

FOR FURTHER INFORMATION CONTACT: Robert L. Tarczy, Agricultural Economist, Commodity Analysis Division, ASCS, Room 3736 South Building, P.O. Box 2415, Washington, DC 20013, (202) 447-5187. The Final Regulatory Impact Analysis describing the options considered in developing

this notice and the impact of implementing each option is available on request from Robert L. Tarczy.

SUPPLEMENTARY INFORMATION: This notice has been reviewed under USDA procedures established in accordance with Executive Order 12291 and Departmental Regulation No. 1512-1 and has been classified "not major." This action has been classified "not major" since implementation of these determinations will not result in: (1) An annual effect on the economy of $100 million or more, (2) a major increase in costs or prices for consumers, individual industries, Federal, State or local governments, or geographical regions, or (3) significant adverse effects on competition, employment, investment, productivity, innovation, the environment, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The title and number of the Federal Assistance Program to which this notice applies are: Title—Commodity Loans and Purchases; Number 10.051, as set forth in the Catalog of Federal Domestic Assistance.

It has been determined that the Regulatory Flexibility Act is not applicable to this notice since the Agricultural Stabilization and Conservation Service (ASCS) is not required by 5 U.S.C. 553 or any provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this notice.

This program/activity is not subject to the provisions of the Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115 (June 24, 1983).

The purpose of this notice is to affirm the determinations of the national marketing quotas for the 1987 crops of fire-cured (type 21), fire-cured (types 22-23), dark air-cured, sun-cured, and cigar-filler and binder (types 42-44 & 53-55) tobacco which were announced by the Secretary on March 3, 1987 and to set forth certain other determinations with respect to these kinds of tobacco. On March 3, 1987 the Secretary also announced that a referendum would be conducted by mail with respect to cigar-filler and binder tobacco.

During the period March 23-27, 1987, eligible cigar-filler and binder producers voted in a referendum to determine whether such producers disapprove marketing quotas for the 1987-88, 1988-89, and 1989-90 marketing years for cigar filler and binder tobacco. Of the producers voting, 76.0 percent favored marketing quotas. Accordingly, such quotas are in effect for the 1987-88 marketing year.

In accordance with section 312(a) of the Agricultural Adjustment Act of 1938, as amended (the "Act"), the Secretary of Agriculture is required to proclaim not later than February 1 of any marketing year with respect to any kind of tobacco, other than flue-cured tobacco, a national marketing quota for any such kind of tobacco for each of the next 3 marketing years if such marketing year is the last year of three consecutive years for which marketing quotas previously proclaimed will be in effect. With respect to cigar-filler and binder tobacco, the 1986-87 marketing year is the last year of three such consecutive years. Accordingly, a marketing quota for cigar-filler and binder tobacco is proclaimed for each of the three marketing years beginning October 1, 1987, October 1, 1988, and October 1, 1989. Sections 312 and 313 of the Act also provide that the Secretary shall announce the reserve supply level and the total supply of fire-cured (type 21), fire-cured (types 22-23), dark air-cured, Virginia sun-cured, and cigar-filler and binder (types 42-44 & 53-55) tobaccos for the marketing year beginning October 1, 1986, and the amounts of the national marketing quotas, national acreage allotments, and national acreage factors for apportioning the national acreage allotments (less reserves) to old farms, and the amounts of the national reserves and parts thereof available for (a) new farms and (b) making corrections and adjusting inequities in old farms allotments for fire-cured (type 21), fire-cured (types 22-23), dark air-cured, Virginia sun-cured, cigar-filler and binder (types 42-44 & 53-55) tobaccos for the 1987-88 marketing year.

Section 312(b) of the Act provides, in part, that the amount of the national marketing quota for a kind of tobacco is the total quantity of that kind of tobacco which may be marketed which will make available during such marketing year a supply of such tobacco equal to the reserve supply level. Since producers of these kinds of tobacco generally produce less than their respective national acreage allotments, it has been determined that a larger quota would be necessary to make available production equal to the reserve supply level. The amount of the national marketing quota so announced may, not later than the following March 1, be increased by not more than 20 percent if the Secretary determines that such increase is necessary in order to meet market demands or to avoid undue restriction of marketings in adjusting the total supply to the reserve supply levels.

Section 301(B)(14)(B) of the Act defines "reserve supply level" as the normal supply, plus 5 percent thereof, to insure a supply adequate to meet domestic consumption and export needs in years of drought, flood, or other adverse conditions, as well as in years of plenty. The "normal supply" is defined in section 301(b)(10)(B) of the Act as a normal year's domestic consumption and exports, plus 175 percent of a normal year's domestic use and 65 percent of a normal year's exports as an allowance for a normal year's carryover. A "normal year's domestic consumption" is defined in section 301(b)(11)(B) of the Act as the average quantity produced and consumed in the United States during the marketing years immediately preceding the marketing year in which such consumption is determined, adjusted for current trends in such consumption.

A "normal year's exports" is defined in section 301(b)(12) of the Act as the average quantity produced in and exported from the United States during the 10 marketing years immediately preceding the marketing year in which such exports are determined, adjusted for current trends in such exports.

On January 30, 1987, a Notice of Proposed Determination was published (52 FR 3032) in which interested persons were requested to comment with respect to these issues.

Discussion of Comments

Fourteen written responses were received in response to the Notice of Proposed Determination. Some of these comments addressed the establishment of quotas with respect to more than one kind of tobacco. A summary of these comments by kind of tobacco is as follows:

Fire-cured (type 21) tobacco: Two comments were received. Both comments recommended that the marketing quotas established for this kind of tobacco be established on an acreage basis, 10 percent below the level which was applicable for the 1986 marketing year.

Virginia sun-cured (type 37) tobacco: Two comments were received. Both comments recommended that marketing quotas established for this kind of tobacco be established on an acreage basis at the same level which was applicable for the 1986 marketing year.

Fire-cured (types 22-23) tobacco: Three comments were received. These comments recommended that the

marketing quota be reduced by 10 to 25 percent from the 1986 marketing quota.

Dark air-cured tobacco: Four comments were received. These comments ranged from a recommendation of no change in the marketing quota to a reduction of 20 percent from the 1986 marketing year.

Cigar-filler and binder (types 42–44 & 53–55) tobacco: Three comments were received. All comments recommended that marketing quotas established for this kind of tobacco be established on an acreage basis at the same level which was applicable for the 1986 marketing year.

Based upon a review of these comments and the latest available statistics of the Federal Government, the following determinations have been made.

Fire-Cured (Type 21) Tobacco

The yearly average quantity of fire-cured (type 21) tobacco produced in the United States which is estimated to have been consumed in the United States during the 10 marketing years preceding the 1986–87 marketing year was approximately 2.6 million pounds. The average annual quantity of fire-cured (type 21) tobacco produced in the United States and exported from the United States during the 10 marketing years preceding the 1986–87 marketing year was 3.0 million pounds (farm sales weight basis). Both domestic use and exports have fluctuated erratically. Accordingly, a normal year's domestic consumption has been determined to be 1.5 million pounds and a normal year's exports have been determined to be 2.3 million pounds. Application of the formula prescribed by section 301(b)(14)(B) of the Act results in a reserve supply level of 8.3 million pounds.

Manufacturers and dealers reported stocks of fire-cured (type 21) tobacco held on October 1, 1986, of 5.9 million pounds. The 1986 fire-cured (type 21) tobacco crop is estimated to be 3.1 million pounds. Therefore, the total supply of fire-cured (type 21) tobacco for the 1986–87 marketing year is 9.0 million pounds. During the 1986–87 marketing year, it is estimated that disappearance will total approximately 5.0 million pounds. By deducting this disappearance from the total supply, a carryover of 4.0 million pounds at the beginning of the 1987–88 marketing year is obtained.

The difference between the reserve supply level and the estimated carryover on October 1, 1987 is 4.3 million pounds. This represents the quantity of fire-cured (type 21) tobacco which may be marketed which will make available during such marketing year a supply equal to the reserve supply level.

During the past 5 years, slightly more than half of the announced national marketing quota has been produced. Accordingly, it has been determined that a national marketing quota of 7.6 million pounds is necessary to make available production of 4.0 million pounds. Accordingly, the 1987–88 national marketing quota is 7.6 million pounds.

In accordance with section 313(g) of the Act, the 1987–88 national marketing quota divided by the 1982–86 5-year national average yield of 1,161 pounds per acre results in a 1987 national acreage allotment of 6,546.08 acres.

Pursuant to the provisions of section 313(g) of the Act, a national acreage factor of 0.90 is determined by dividing the national acreage allotment, less a national reserve of 42.0 acres, by the total of 1987 preliminary farm acreage allotments. The preliminary farm acreage allotments reflect the factors specified in section 313(g) of the Act for apportioning the national acreage allotment, less the national reserve, to old farms.

Fire-Cured (Types 22–23) Tobacco

The yearly average quantity of fire-cured (types 22–23) tobacco produced in the United States which is estimated to have been consumed in the United States during the 10 years preceding the 1986–87 marketing year was approximately 16.6 million pounds. The average annual quantity of fire-cured (types 22–23) tobacco produced in the United States and exported during the 10 marketing years preceding the 1986–87 marketing year was approximately 16.6 million pounds. The average annual quantity of fire-cured (types 22–23) produced in the United States and exported during the 10 marketing years preceding the 1986–87 marketing year was 19.1 million pounds (farm-sales weight basis). Domestic use and exports fluctuate widely. Accordingly, a normal year's domestic consumption has been determined to be 28.0 million pounds and a normal year's exports have been determined to be 20.7 million pounds. Application of the formula prescribed by section 301(b)(14)(B) of the Act results in a reserve supply level of 116.7 million pounds.

Manufacturers and dealers reported stocks of fire-cured (types 22–23) tobacco on October 1, 1986, of 96.3 million pounds. The 1986 fire-cured (types 22–23) crop is estimated to be 35.1 million pounds. Therefore, the total supply of fire-cured (types 22–23) tobacco for the marketing year beginning October 1, 1986, is 131.4 million pounds. During the 1986–87 marketing year, it is estimated that disappearance will total approximately 33.0 million pounds. By deducting this disappearance from the total supply, a carryover of 98.4 million pounds at the beginning of the 1987–88 marketing year is obtained.

The difference between the reserve supply level and the estimated carryover on October 1, 1987 is 18.3 million pounds. This represents the quantity of fire-cured (types 22–23) tobacco which may be marketed which will make available during the 1987–88 marketing year a supply equal to the reserve supply level. During the past 5 years, about 95 percent of the announced national marketing quota has been produced. Accordingly, it has been determined that a national marketing quota for the 1987–88 marketing year of 19.2 million pounds is necessary to make available production of 18.3 milion pounds. In accordance with section 312(b) of the Act, it has been further determined that the 1987–88 national marketing quota must be increased by 20 percent in order to avoid undue restriction of marketings. This results in a national marketing quota for the 1987–88 marketing year of 23.0 million pounds.

In accordance with section 313(g) of the Act, the national marketing quota for the 1987–88 marketing year has been divided by the 1982–86 5-year national average yield of 1,937 pounds per acre to obtain a national acreage allotment of 11,874.03 acres, for the 1987–88 marketing year.

Pursuant to the provisions of section 313(g) of the Act, a national acreage factor of 0.60 is determined by dividing the national acreage allotment for the 1987–88 marketing year less a national reserve of 18 acres by the total of the 1987 preliminary farm acreage allotments. The preliminary farm acreage allotments reflect the factors specified in section 313(g) of the Act for apportioning the national acreage allotment, less the national reserve, to old farms.

Dark Air-Cured Tobacco

The yearly average quantity of dark air-cured tobacco produced in the United States which is estimated to have been consumed in the United States during the 10 years preceding the 1986–87 marketing year was approximately 13.0 million pounds. The average annual quantity produced domestically and exported during this period was 2.1 million pounds (farm-sales weight basis). Both domestic use and exports have been erratic. Accordingly, 17.2 million pounds have

been used as a normal year's domestic consumption and 3.0 million pounds have been used as a normal year's exports. Application of the formula required by section 301(14)(B) of the Act results in a reserve supply level of 54.9 million pounds.

Manufacturers and dealers reported stocks of dark air-cured tobacco held on October 1, 1986, of 50.9 million pounds. The 1986 dark air-cured crop is estimated to be 11.1 million pounds. Therefore, the total supply for the market year beginning October 1, 1986, is 62.0 million pounds. During the 1986–87 marketing year, it is estimated that disappearance will total approximately 13.0 million pounds. By deducting this disappearance from the total supply, carryover of 49.0 million pounds at the beginning of the 1987–88 marketing year is obtained.

The difference between the reserve supply level and the estimated carryover on October 1, 1987 is 5.9 million pounds. This represents the quantity of dark air-cured tobacco which may be marketed which will make available during such marketing year a supply equal to the reserve supply level. During the last 5 years, about 90 percent of the announced national marketing quota has been produced. Accordingly, it has been determined that a national marketing quota for the 1987–88 marketing year of 6.5 million pounds is necessary to make available production of 5.9 million pounds. In accordance with section 312(b) of the Act, it has been further determined that the 1987–88 marketing quota must be increased by 20 percent in order to avoid undue restriction of marketings. This results in a national marketing quota for the 1987–88 marketing year of 7.8 million pounds.

In accordance with sections 313(g) of the Act, the 1987–88 national marketing quota, divided by the 1982–86, 5-year national average yield of 1,933 pounds per acre, results in a national acreage allotment of 4,035.18.

Pursuant to the provisions of section 313(g) of the Act, a national acreage factor of 0.65 is determined by dividing the national acreage allotment, less a national reserve of 33 acres, by the total of the 1987 preliminary farm acreage allotments. The preliminary farm acreage allotments reflect the factors specified in section 313(g) for apportioning the national acreage allotment, less the national reserve, to old farms.

Virginia Sun-Cured Tobacco

The yearly average quantity of Virginia sun-cured tobacco produced in the United States which is estimated to have been consumed in the United States during the 10 marketing years preceding the 1986–87 marketing year was approximately 6,000 thousand pounds. The average annual quantity produced in the United States and exported during the same period was approximately 200 thousand pounds (farm-sales weight basis). Both domestic use and exports have shown a downward trend. Accordingly, a quantity of 250 thousand pounds has been determined to be a normal year's domestic consumption and a quantity of 149 thousand pounds has been determined to be a normal year's exports. Application of the formula prescribed by section 301(b)(14)(B) of the Act results in a reserve supply level of 980 thousand pounds.

Manufacturers and dealers reported stocks of Virginia sun-cured tobacco held on October 1, 1986 or 900 thousand pounds. The 1986 Virginia sun-cured tobacco crop is estimated to be 140 thousand pounds. Therefore, the total supply of Virginia sun-cured tobacco for the 1986–87 marketing year is 1,040 thousand pounds. During the 1986–87 marketing year, it is estimated that disappearance will total approximately 350 thousand pounds. By deducting this disappearance from the total supply, a carryover of 690 thousand pounds at the beginning of the 1987–88 marketing year is obtained.

The difference between the reserve supply level and the estimated carryover on October 1, 1987 is 290 thousand pounds. This represents the quantity of Virginia sun-cured tobacco which may be marketed which will make available during such marketing year a supply equal to the reserve supply level. During the last 5 years, only approximately one-third of the announced national marketing quota has been produced. Accordingly, it has been determined that a national marketing quota of 870 thousand pounds is necessary to make available production of 290 thousand pounds. Increasing the quota by 20 percent in accordance with section 312(b) of the Act to 1,044 thousand pounds is necessary to avoid undue restriction of marketings. This results in a national marketing quota for the 1987–88 marketing year of 1,044 thousand pounds.

In accordance with section 313(g) of the Act, the 1987–88 national marketing quota divided by the 1982–86 5-year national average yield of 1,135 pounds per acre, results in a 1987 national acreage allotment of 919.82 acres.

Pursuant to the provisions of section 313(g) of the Act, a national acreage factor of 1.0 is determined by dividing the national acreage allotment, less a national reserve of 4 acres, by the total of the 1987 preliminary farm acreage allotments. The preliminary farm acreage allotments reflect the factors specified in section 313(g) of the Act for apportioning the national acreage allotment, less the national reserve, to old farms.

Cigar-Filler and Binder (Types 42–44 & 53–55) Tobacco

The yearly average quantity of cigar-filler and binder (types 42–44 & 53–55) tobacco produced in the United States which is estimated to have been consumed in the United States during the 10 years preceding the 1986–87 marketing year was approximately 22.5 million pounds. The average annual quantity of cigar-filler and binder (types 42–44 & 53–33) tobacco produced in the United States and exported from the United States during the 10 marketing years preceding the 1986–87 marketing year was very small. Domestic use is steady and exports are negligible. Accordingly, a normal year's domestic consumption has been established at 22.1 million pounds while a normal year's exports has been established at 0.0 million pounds. Application of the formula prescribed by section 301(b)(14)(B) of the Act results in a reserve supply level of 63.8 million pounds.

Manufacturers and dealers report stocks of cigar-filler and binder (types 42–44 & 53–55) tobacco held on October 1, 1986 of 60.5 million pounds. The 1986 cigar-filler and binder crop is estimated to be 12.2 million pounds. Therefore, the total supply of cigar-filler and binder (types 42–44 & 52–55) tobacco for the 1986–87 marketing year is 72.7 million pounds. During the 1986–87 marketing year, it is estimated that disappearance will total about 20.0 million pounds. By deducting this disappearance from the total supply, a carryover of 52.7 million pounds at the beginning of the 1987–88 marketing year is obtained.

The difference between the reserve supply level and the estimated carryover on October 1, 1987 is 11.1 million pounds. This represents the quantity of cigar-filler and binder tobacco which may be marketed which will make available during such marketing year a supply equal to the reserve supply level. During the past 5 years, approximately 77 percent of the announced national marketing quota has been produced. Accordingly, it has been determined that

a 1987–88 national marketing quota of 14.4 million pounds is necessary to make available production of 11.1 million pounds. Increasing the quota by 20 percent in accordance with section 312(b) of the Act to 17.3 million pounds is necessary to avoid undue restriction of marketings. This results in a national marketing quota for the 1987–88 marketing year of 17.3 million pounds.

In accordance with section 313(g) of the Act, the 1987–88 national marketing quota of 17.3 million pounds divided by the 1982–86 5-year national average yield of 2,029 pounds per acre results in a 1987–88 national acreage allotment of 8,526.37 acres.

Pursuant to the provisions of section 313(g), a national acreage factor of .95 is determined by dividing the national acreage allotment, less a national reserve of 11 acres, by the total of the 1987 preliminary farm acreage allotments. The preliminary farm acreage allotments reflect the factors specified in section 313(g) for apportioning the national acreage allotment, less the national reserve, to old farms.

Proclamations of National Marketing Quotas for Cigar-Filler and Binder Tobacco

Since the 1986–87 marketing year is the last of 3 consecutive years for which marketing quotas previously proclaimed will be in effect for cigar-filler and binder tobacco, a national marketing quota for such kind of tobacco for each of the 3 marketing years beginning October 1, 1987, October 1, 1988, and October 1, 1989 was proclaimed. Subsequently, a referendum was held to determine whether producers disapproved of such quotas.

Referendum Results

In the referendum held during the period March 23–27, 1987, 76.0 percent of producers of cigar-filler and binder tobacco voted in favor of marketing quotas. Accordingly, marketing quotas shall be in effect for the 1987–88 marketing year for cigar-filler and binder tobacco.

The following is a summary, by State, of the results of the referendum:

	Total votes	Yes votes	No votes	Percent votes
Minnesota	7	7	0	100.0
Ohio	138	80	58	58.0
Wisconsin	2,196	1,691	505	77.0
Total	2,341	1,778	563	76.0

Determinations for the 1987–88 Marketing Years of Fire-Cured (Type 21), Fire-Cured (Types 22–23), Dark Air-Cured, Virginia Sun-Cured, and Cigar-Filler and Binder (Types 42–44 and 53–55) Tobacco

With respect to fire-cured (type 21) tobacco for the marketing year beginning October 1, 1987:

(a) *Reserve supply level.* The reserve supply level for fire-cured (type 21) tobacco is 8.3 million pounds.

(b) *Total supply.* The total supply of fire-cured (type 21) tobacco for the marketing year beginning October 1, 1986, is 9.0 million pounds.

(c) *Carryover.* The estimated carryover of fire-cured (type 21) tobacco for the marketing year beginning October 1, 1987, is 4.0 million pounds.

(d) *National marketing quota.* The amount of fire-cured (type 21) tobacco which will make available during the marketing year beginning October 1, 1987 a supply equal to the reserve supply level of such tobacco is 4.3 million pounds. Because producers have been producing slightly more than half of the announced national marketing quota during the past 5 marketing years, the amount of the national marketing quota for fire-cured (type 21) tobacco for the marketing year beginning October 1, 1987 is 7.6 million pounds.

(e) *National acreage allotment.* The national acreage allotment is 6,546.08 acres.

(f) *National acreage factor.* The national acreage factor for use in determining farm acreage allotments is 0.90.

(g) *National reserve.* The national acreage reserve is 42 acres of which 7 acres are made available for the 1987 new farms and 35 acres are made available for making corrections and adjusting inequities in old farm allotments.

With respect to fire-cured (types 22–23) tobacco for the marketing year beginning October 1, 1987:

(a) *Reserve supply level.* The reserve supply level for fire-cured (types 22–23) tobacco is 116.7 million pounds.

(b) *Total supply.* The total supply of fire-cured (types 22–23) tobacco for the marketing year beginning October 1, 1986, is 131.4 million pounds.

(c) *Carryover.* The estimated carryover of fire-cured (types 22–23) tobacco for the marketing year beginning October 1, 1987, is 98.4 million pounds.

(d) *National marketing quota.* The amount of fire-cured (types 22–23) tobacco which will make available during the marketing year beginning October 1, 1987, a supply equal to the reserve supply level of such tobacco is 18.3 million pounds. Because producers have been producing about 95 percent of the announced national marketing quota during the past 5 marketing years, it has been determined that a national marketing quota for the 1987–88 marketing year of 19.2 million pounds is necessary to make available production of 18.3 million pounds. Accordingly, a 1987–88 national marketing quota of 19.2 million pounds is announced. It has been determined, however, that the 1987–88 national marketing quota in the amount of 19.2 million pounds would result in undue restriction of marketing during the 1987–88 marketing year in adjusting the total supply to the reserve supply level. Accordingly, such amount is increased by 20 percent. Therefore, the amount of 1987–88 national marketing quota for fire-cured (types 22–23) tobacco for the marketing year beginning October 1, 1987, is 23.0 million pounds.

(e) *National acreage allotment.* The national acreage allotment is 11,874.03 acres.

(f) *National acreage factor.* The national acreage factor for use in determining farm acreage allotments for the 1987–88 marketing year is 0.60.

(g) *National reserve.* The national acreage reserve is 18 acres of which 2 acres are made available for 1987 new farms, and 16 acres are made available for making corrections and adjusting inequities in old farm allotments.

With respect to dark air-cured tobacco for the marketing year beginning October 1, 1987:

(a) *Reserve supply level.* The reserve supply level for dark air-cured tobacco is 54.9 million pounds.

(b) *Total supply.* The total supply of dark air-cured tobacco for the marketing year beginning October 1, 1986, is 62.0 million pounds.

(c) *Carryover.* The estimated carryover of dark air-cured tobacco for the marketing year beginning October 1, 1987, is 49.0 million pounds.

(d) *National marketing quota.* The amount of dark air-cured tobacco which will make available during the marketing year beginning October 1, 1987, a supply equal to the reserve supply level of such tobacco is 5.9 million pounds. Because producers have been producing about 90 percent of the announced national marketing quota during the past 5 marketing years, it has been determined that a 1987–88 national marketing quota of 6.5 million pounds is necessary to make available production of 5.9 million pounds. Accordingly, a 1987–88 national marketing quota of 6.5 million pounds is announced. It has

been determined, however, that a national marketing quota in the amount of 6.5 million pounds would result in undue restriction of marketings during the 1987–88 marketing year in adjusting the total supply to the reserve supply level. Accordingly, such amount is increased by 20 percent. Therefore, the amount of the 1987–88 national marketing quota for dark air-cured (types 35 & 36) tobacco for the marketing year beginning October 1, 1987, is 7.8 million pounds.

(e) *National acreage allotment.* The national acreage allotment is 4.035.18 acres.

(f) *National acreage factor.* The national acreage factor for use in determining farm acreage allotments for the 1987–88 marketing year is 0.65.

(g) *National reserve.* The national acreage reserve is 33.0 acres, of which 6.0 acres are made available for 1987 new farms and 27.0 acres are made available for making corrections and adjusting inequities in old farm allotments.

With respect to Virginia sun-cured tobacco for the marketing year beginning October 1, 1987:

(a) *Reserve supply level.* The reserve supply level for Virginia sun-cured tobacco is 980 thousand pounds.

(b) *Total supply.* The total supply of Virginia sun-cured tobacco for the marketing year beginning October 1, 1986 is 1,040 thousands pounds.

(c) *Carryover.* The estimated carryover of Virginia sun-cured tobacco for the marketing year beginning October 1, 1987, is 690 thousand pounds.

(d) *National marketing quota.* The amount of Virginia sun-cured tobacco which will make available during the marketing year beginning October 1, 1987, a supply equal to the reserve supply level of such tobacco is 290 thousand pounds. Because producers have been producing about one-third of the announced national marketing quota over the past 5 years, it has been determined that a national marketing quota of 870 thousand pounds is necessary to make available production of 290 thousand pounds.

Accordingly, a national marketing quota of 870 thousand pounds is announced. It has been determined, however, that a national marketing quota in the amount of 870 thousand pounds would result in undue restriction of marketings during the 1987–88 marketing year. Accordingly, such amount is increased by 20 percent. Therefore, the amount of the national marketing quota for Virginia sun-cured (type 37) tobacco for the marketing year beginning October 1, 1987, is 1,044 thousand pounds.

(e) *National acreage allotment.* The national acreage allotment is 919.82 acres.

(f) *National acreage factor.* The national acreage factor for use in determining farm acreage allotments for the 1987–88 marketing year is 1.0.

(g) *National reserve.* The national acreage reserve is 4.0 acres, of which 1.0 acres are made available for 1987 new farms, and 3.0 acres are made available for making corrections and adjusting inequities in old farm allotments.

With respect to cigar-filler and binder (types 42–44 & 53–55) tobacco for the marketing year beginning October 1, 1987:

(a) *Reserve supply level.* The reserve supply level for cigar-filler and binder (types 42–44 & 53–55) tobacco is 63.8 million pounds.

(b) *Total supply.* The total supply of cigar-filler and binder (types 42–44 & 53–55) tobacco for the marketing year beginning October 1, 1986 is 72.7 million pounds.

(c) *Carryover.* The estimated carryover of cigar-filler and binder (types 42–44 & 53–55) tobacco for the marketing year beginning October 1, 1987 is 52.7 million pounds.

(d) *National marketing quota.* The amount of cigar-filler and binder (types 42–44 & 53–55) tobacco which will make available during the marketing year beginning October 1, 1987, a supply equal to the reserve supply level of such tobacco is 11.1 million pounds. Because producers have been producing about 77 percent of the announced national marketing quota over the past 5 years, it has been determined that a national marketing quota of 14.4 million pounds is necessary to make available production of 11.1 million pounds. Accordingly, a national marketing quota of 14.4 million pounds is announced. It has been determined, however, that a national marketing quota in the amount of 14.4 million pounds would result in undue restriction of marketings during the 1987–88 marketing year in adjusting the total supply to the reserve supply level. Accordingly, such amount is increased by 20 percent. Therefore, the amount of the national marketing quota for cigar-filler and binder (types 42–44 & 53–55) tobacco for the marketing year beginning October 1, 1987, is 17.3 million pounds.

(e) *National acreage allotment.* The national acreage allotment is 8,526.37 acres.

(f) *National acreage factor.* The national acreage factor for use in determining farm acreage allotments for the 1987–88 marketing year is 0.95.

(g) *National reserve.* The national acreage reserve is 11 acres, of which 3.0 acres are made available for 1987 new farms, and 8.0 acres are made available for making corrections and adjusting inequities in old farm allotments.

Authority: Secs. 301, 312, 313, 375, 52 Stat. 38, as amended, 46, as amended, 47, as amended, 66, as amended (7 U.S.C. 1301, 1312, 1313, 1375).

Signed at Washington, DC on August 28, 1987.

Milton Hertz,

Administrator, Agricultural Stabilization and Conservation Service.

[FR Doc. 87–20356 Filed 9–2–87; 8:45 am]

BILLING CODE 3410-05-M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 359]

Approval for Expansion of Foreign-Trade Zone No. 9; Honolulu, HI

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), and the Foreign-Trade Zones Board Regulations (15 CFR Part 400), the Foreign-Trade Zones Board (the Board) adopts the following order:

Whereas, the Hawaii Department of Planning and Economic Development, on behalf of the State of Hawaii, Grantee of Foreign-Trade Zone No. 9, has applied to the Board for authority to expand its general-purpose zone in Honolulu, Hawai, to include a site at the James Campbell Industrial Park, Ewa, Oahu, Hawaii, adjacent to the Honolulu Customs port of entry;

Whereas, the application was accepted for filing on September 10, 1985, and notice inviting public comment was given in the **Federal Register** on September 30, 1985 (Docket 30–85, 50 FR 39743);

Whereas, the application was amended on June 10, 1986, reducing the scope of the request;

Whereas, an examiners committee has investigated the application in accordance with the Board's regulations and recommends approval;

Whereas, the expansion is necessary to improve and expand zone services in the Honolulu area; and,

Whereas, the Board has found that the requirements of the Foreign-Trade Zones Act, as amended, and the Board's regulations are satisfied, and that approval of the application is in the public interest;

Now, therefore, the Board hereby orders:

That the Grantee is authorized to expand its zone in accordance with the

application filed September 10, 1985, as amended. The grant does not include authority for manufacturing operations, and the Grantee shall notify the Board for approval prior to the commencement of any manufacturing or assembly operations. The authority given in this Order is subject to settlement locally by the District Director of Customs and the District Army Engineer regarding compliance with their respective requirements relating to foreign-trade zones.

Signed at Washington, DC, this 21st day of August 1987.

Paul Freedenberg,

Assistant Secretary of Commerce for Trade Administration, Chairman, Committee of Alternates, Foreign-Trade Zones Board.

Attest:

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 87-20315 Filed 9-2-87; 8:45 am]

BILLING CODE 3510-DS-M

[Docket No. 13-87]

Application for Subzone Chrysler Auto Components Plants, Detroit Area; Foreign-Trade Zone 70, Detroit, MI

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Greater Detroit Foreign-Trade Zone, Inc., grantee of FTZ 70, requesting special-purpose subzone status for five Detroit area plants of the Chrysler Corporation, which produce a variety of components for its North American auto assembly operations. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a-81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on August 25, 1987.

The five Chrysler plants, which employ a total of some 4,800 persons, are: Detroit Trim Plant (28 acres), 12501 Dequindre, Detroit (interior and exterior trim); Trenton Chemical Division Plant (60 acres), 5473 W. Jefferson Avenue, Trenton (brake pads, paint, sealants and chemicals); McGraw Glass Plant (40 acres), 9400 McGraw Avenue, Detroit (automative glass); Mound Road Engine plant (33 acres), 20300 Mound Road, Detroit (engines, bearing cups, and yokes); and, Detroit Axle plant (47 acres), 6700 Lynch Road, Detroit (axle assemblies).

Certain parts and material for these plants are sourced abroad, including vinyl roll goods, carbon fiber, sheet glass, bearings, gears, and miscellaneous auto parts. Foreign materials account for less than 5 percent of total production costs at each of the plants.

Zone procedures would exempt Chrysler from Customs duties on the foreign components that are reexported either as auto parts or in assembled autos. On products shipped to U.S. auto assembly plants with subzone status, the company would be able to take advantage of the same duty rate available to importers of complete automobiles. The duty rates on components used at the five plants range from 3.2 to 11.0 percent, whereas the rate on autos is 2.5 percent. The savings will help improve the company's international competitiveness.

In accordance with the Board's regulations, an examiners committee has been appointed to investigate the application and report to the Board. The committee consists of: Dennis Puccinelli (Chairman), Foreign-Trade Zones Staff, U.S. Department of Commerce, Washington, DC 20230; William Morandini, District Director, U.S. Customs Service, North Central Region, 477 Michigan Avenue, Detroit, Michigan 48226; and Colonel Robert F. Harris, District Engineer, U.S. Army Engineer District Detroit, P.O. Box 1027, Detroit, Michigan 48231.

Comments concerning the proposed subzone are invited in writing from interested parties. They shall be addressed to the Board's Executive Secretary at the address below and postmarked on or before September 30, 1987.

A copy of the application is available for public inspection at each of the following locations:

U.S. Department of Commerce District Office, 1140 McNamara Building, 477 Michigan Avenue, Detroit, Michigan 48226

Office of the Executive Secretary Foreign-Trade Zones Board U.S. Department of Commerce, Room 1529 Washington, DC 20230

Dated: August 28, 1987.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 87-20316 Filed 9-2-87; 8:45 am]

BILLING CODE 3510-DS-M

International Trade Administration

[A-588-021]

Preliminary Results of Antidumping Duty Administrative Review; Cell-Site Transceivers and Related Subassemblies From Japan

AGENCY: International Trade Administration, Import Administration, Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review.

SUMMARY: In response to a request from one manufacturer/exporter, the Department of Commerce has conducted an administrative review of the antidumping duty order on cell-site transceivers and related subassemblies from Japan. The review covers one manufacturer/exporter of this merchandise to the U.S., Kokusai Electric Co., Ltd. ("Kokusai"), and the period January 1, 1986 through December 31, 1986. There were no known shipments of this merchandise to the United States by Kokusai during the period and there are no known unliquidated entries.

Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: September 3, 1987.

FOR FURTHER INFORMATION CONTACT: Michael J. Heaney or John Kugelman, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-5505/3601.

SUPPLEMENTARY INFORMATION:

Background

On August 14, 1987, the Department of Commerce ("the Department") published in the **Federal Register** (52 FR 30413) the final results of its last administrative review of the antidumping duty order on cell-site transceivers and related subassemblies from Japan. Kokusai requested in accordance with § 353.53a(a) of the Commerce Regulations that we conduct an administrative review. We published a notice of initiation on February 23, 1987 (52 FR 5479). The Department has now conducted that administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of the Review

The United States has developed a system of tariff classification based on the international harmonized system of Customs nomenclature. Congress is considering legislation to convert the United States to the Harmonized System ("HS") by January 1, 1988. In view of this, we will be providing both the appropriate *Tariff Schedules of the United States Annotated ("TSUSA")* item number(s) and the HS item number(s) with our product descriptions on a test basis, pending Congressional approval. As with the TSUSA, the HS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

We are requesting petitioners to include the appropriate HS item

number(s) as well as TSUSA number(s) in all new petitions filed with the Department. A reference copy of the proposed Harmonized System schedule is available for consultation at the Central Records Unit, Room B-099, U.S. Department of Commerce, 14th and Constitution Avenue, NW, Washington, DC 20230. Additionally, all Customs offices have reference copies, and petitioners may contact the Import Specialist at their local Customs office to consult the schedule.

Imports covered by the review are cell-site transceivers and related subassemblies which are part of the radio frequency (RF) equipment in the base station of a cellular radio communications system. This single-package RF equipment functions as a locating receiver and provides simultaneous two-way voice and data communications between the base station and the subscriber's mobile telephone by using different frequencies to transmit and receive. Subassemblies are an assemblage of parts dedicated for use in cell-site transceivers as defined above. These products are currently classifiable under TSUSA items 685.2810 and 685.2820 and HS item numbers 8525.20.15, 8525.20.20, and 8525.20.30.

The review covers one known manufacturer/exporter of this merchandise, Kokusai, and the period January 1, 1986 through December 31, 1986. There were no known shipments by Kokusai of this merchandise to the United States during the period and there are no known unliquidated entries.

Preliminary Results of the Review

As a result of our review, we preliminarily determine that the following margin exists during the period:

Manufacturer/exporter	Time period	Margin (percent)
Kokusai	1/1/86-12/31/86	[1] 0.08

[1] No shipments during the period.

Interested parties may submit written comments on these preliminary results within 45 days of the date of publication of this notice and may request disclosure and/or a hearing within 10 days of the date of publication. Any hearing, if requested, will be held 45 days after the date of publication or the first workday thereafter. Any request for an administrative protective order must be made no later than 5 days after the date of publication. The Department will publish the final results of the administrative review including the results of its analysis of any such comments or hearing.

Further, since the rate for Kokusai is less than 0.5 percent and, therefore, *de minimis* for cash deposit purposes, the Department shall not require a cash deposit of estimated antidumping duties. This waiver is effective for all shipments of Japanese cell-site transceivers and related subassemblies, entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 353.53a of the Commerce Regulations (19 CFR 353.53a).

Date: August 27, 1987.

Joseph A. Spetrini,

Acting Deputy Assistant Secretary, Import Administration.

[FR Doc. 87-20317 Filed 9-2-87; 8:45 am]

BILLING CODE 3510-DS-M

[A-580-007]

Final Results of Antidumping Duty Administrative Review; Certain Circular Welded Carbon Steel Pipes and Tubes From Korea

AGENCY: International Trade Administration, Import Administration, Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On June 19, 1987, the Department of Commerce published the preliminary results of its administrative review of the antidumping duty order that was in effect prior to October 1, 1984 on certain circular welded carbon steel pipes and tubes from Korea. The review covers three exporters of this merchandise and the period October 24, 1983 through September 30, 1984.

We gave interested parties an opportunity to comment on the preliminary results. Based on our analysis of the comments received, we have changed the margins from those presented in the preliminary results.

EFFECTIVE DATE: September 3, 1987.

FOR FURTHER INFORMATION CONTACT: G. Leon McNeill or Maureen Flannery, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-3601/5255.

SUPPLEMENTARY INFORMATION:

Background

On October 21, 1985, the Department of Commerce ("the Department") revoked the antidumping duty order on certain circular welded carbon steel pipes and tubes from Korea, effective October 1, 1984 (50 FR 42582). On June 19, 1987, the Department published in the **Federal Register** (52 FR 23321) the preliminary results of its administrative review of the antidumping duty order that was in effect prior to October 1, 1984. We have now completed that administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of the Review

Imports covered by the review are shipments of certain circular welded carbon steel pipes and tubes, currently classifiable under items 610.3231, 610.3234, 610.3241 and 610.3252 of the Tariff Schedules of the United States Annotated.

The review covers three manufacturers/exporters of Korean circular welded carbon steel pipes and tubes to the United States, Hyundai Steel Pipe Co., Korea Steel Pipe Co., and Pusan Steel Pipe Co., and the period October 24, 1983 through September 30, 1984.

Analysis of Comments Received

We invited interested parties to comment on the preliminary results. We received the following comments from the petitioner:

Comment 1: Petitioner contends that the Department's reliance on the proposed Commerce regulations to deny its request to conduct a sales below cost investigation is unfair and would not hold up in court. The Department should delay completion of the review in order to proceed with the cost of production investigation.

Department's Position: We disagree. The Department denied petitioner's request to conduct such an investigation on the grounds that the request was untimely. We did not rely on the proposed regulations to deny the request but on a standard of reasonableness. Under the proposed regulations, cost allegations should be received within 120 days after the date of publication of the notice of initiation of the review. Normally, this should be within 30-45 days from receipt of the questionnaire responses. We recognize the delays that occurred during the course of this administrative review. Nevertheless, petitioner did not request that the Department conduct a cost investigation for more than three and one-half months after the respondents submitted their questionnaire responses. Petitioner based its April 22, 1987 request on the non-proprietary version of the

questionnaire response which it had received in January 1987. To conduct a cost investigation at this stage of the review would delay our review far beyond the one-year period set forth in our regulations. Although the annual administrative review process was in part created to grant speedy relief to injured domestic industries, it was also intended to relieve importers of the economic uncertainties connected with lengthy delays in assessment of antidumping duties. Any parties in an antidumping proceeding wishing to allege that sales in the home market are below the cost of production should make their allegations at the earliest possible time during the course of a review in order to avoid unduly delaying the review.

Comment 2: Petitioner maintains that the drawback cannot be tied to the exports under review. Therefore, the claim for drawback should not be allowed as an adjustment.

Department's Position: Respondents in their original submission provided information on total drawback received on all products whether or not these products were covered in the scope of the review. The total drawback was then divided by the total exports of all products to calculate the weighted-average drawback amount per metric ton. The Department requested additional information relative to the drawback, imported coil, and the exports in question. In a letter dated August 12, 1987, respondents stated that they were not able to provide the requested information in the time allotted by the Department. Since the respondents have not adequately quantified this claim for drawback, the Department has disallowed the claim.

Comment 3: Petitioner argues that the additional rebate claimed by Pusan was retroactively applied and this adjustment should be disallowed until additional information is provided regarding the timing of the rebate payments. Petitioner notes that the Department denied a claimed allowance for retroactive rebates during the fair value investigation in this case.

Department's Position: During the fair value investigation Pusan made a claim for two types of rebates: A regular rebate which was based on its customers' monthly purchases, and a special rebate to help distributors in the home market compete. The Department allowed the regular rebate but disallowed the additional special rebate because it reflected a change made after the initiation of the antidumping investigation, and the respondent did not demonstrate that it was normal in the trade. Pusan made no claim for the additional rebate in this review, and the Department has only allowed the regular rebate, which it considers to be in the normal course of trade.

Final Results of the Review

Based on our analysis of the comments received, we have changed the final results of our review from those presented in the preliminary results. We determine that the following margins exist for the period October 24, 1983 through September 30, 1984:

Manufacturer/exporter	*Margin (percent)*
Hyundai Steel Pipe Co.	0.149
Korea Steel Pipe Co.	0.409
Pusan Steel Pipe Co.	0.144

The Department will instruct the Customs Service to assess antidumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentages stated above. The Department will issue appraisement instructions directly to the Customs Service.

This administrative review, covering the period October 24, 1983 through September 30, 1984, does not affect the revocation of the antidumping duty order. Therefore, we will instruct the Customs Service to continue to liquidate entries of this merchandise entered, or withdrawn from warehouse, for consumption on or after October 1, 1984 without regard to antidumping duties.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.53a.

Date: August 28, 1987.

Joseph A. Spetrini,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. 20318 Filed 9-2-87; 8:45 am]

BILLING CODE 3510-DS-M

[A-588-501]

Offshore Platform Jackets and Piles From Japan; Intention To Review and Preliminary Results of Changed Circumstances Adminstrative Review and Tentative Determination To Revoke Antidumping Duty Order

AGENCY: International Trade Administration, Import Administration, Department of Commerce.

ACTION: Notice of intention to review and preliminary results of changed circumstances administrative review and tentative determination to revoke antidumping duty order.

SUMMARY: The Department of Commerce has received information which shows changed circumstances sufficient to warrant an administrative review, under section 751(b)(1) of the Traiff Act of 1930, of the antidumping duty order on offshore platform jackets and piles from Japan. The review covers the period from November 25, 1985. The petitioners in this proceeding have notified the Department that they are no longer interested in the antidumping duty order. Their affirmative statement of no interest provides a reasonable basis for the Department to revoke the order. Therefore, we tentatively determine to revoke the order. In accordance with the petitioners' notification, the revocation will apply to offshore platform jackets and piles from Japan exported on or after November 25, 1985.

Interested parties are invited to comment on thise preliminary results and tentative determination to revoke.

EFFECTIVE DATE: November 25, 1985.

FOR FURTHER INFORMATION CONTACT: Linda L. Pasden or Robert J. Marenick, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-5255.

SUPPLEMENTARY INFORMATION:

Background

On May 21, 1986, the Department of Commerce ("the Department") published in the **Federal Register** (51 FR 18641) an antidumping duty order on offshore platform jackets and piles from Japan.

In a letter dated July 17, 1987, Kaiser Steel Corporation and the International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers, the petitioners in this proceeding, informed the Department that they are no longer interested in the order and stated their support of revocation of the order. Under section 751 of the Tariff Act of 1930 ("the Tariff Act"), the Department may revoke an antidumping duty order that is no longer of interest to domestic interested parties.

Scope of Review

The United States has developed a system of tariff classification based on the international harmonized system of Customs nomenclature. Congress is considering legislation to convert the United States to this Harmonized System ("HS") by January 1, 1988. In view of this, we will be providing both the appropriate Traiff Schedules of the United States Annotated ("TSUSA")

item numbers and the appropriate HS item numbers with our product descriptions on an test basis, pending Congressional approval. As with the TSUSA, the HS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

We are requesting petitioners to include the appropriate HS item number(s) as well as the TSUSA item number(s) in all new petitions filed with the Department. A reference copy of the proposed Harmonized System schedule is available for consultation at the Central Record Unit, Room B-099, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Additionally, all Customs offices have reference copies, and petitioners may contact the Import Specialist at their local Customs office to consult the schedule.

Imports covered by the review are shipments of steel jackets (templates) and/or piles for offshore platforms, subassemblies thereof that do not require removal from a transportation vessel and further U.S. onshore assembly, and appurtenances attached to the jackets and piles. These products constitute the supporting structures which permanently affix drilling and/or production platforms to the ocean floor. Appurtenances include grouting systems, boat landings, pre-installed conductor pipes, and similar attachments. Offshore platform jackets and piles are currently classifiable under TSUS number 652.97 and HS item numbers 8430.49.40 and 8431.43.00. The review covers the period from November 25, 1985.

Preliminary Results of the Review and Tentative Determination To Revoke

As a result of our review, we preliminarily determine that the petitioners' affirmative statement of no interest in continuation of the antidumping duty order on offshore platform jackets and piles from Japan provides a reasonable basis for revocation of the order. In light of the November 25, 1985 effective date for revocation requested by the petitioners, there is good cause (as required by section 751(b)(2) of the Tariff Act) to conduct this review at this time.

Therefore, we tentatively determine to revoke the order on offshore platform jackets and piles from Japan effective November 25, 1985. We intend to instruct the Customs Service to proceed with liquidation of all unliquidated entries of this merchandise exported on or after November 25, 1985, without regard to antidumping duties and to refund any estimated antidumping duties collected with respect to those entries.

The current requirement for a cash deposit of estimated antidumping duties will continue until publication of the final results of this review.

Interested parties may submit written comments on these preliminary results and tentative determination to revoke within 30 days of the date of publication of this notice, and may request a hearing within five days of the date of publication. Any hearing, if requested, will be held 30 days after the date of publication or the first workday thereafter. The Department will publish the final results of the administrative review and its decision on revocation, including its analysis of any such comments or hearing.

This intention to review, administrative review, tentative determination to revoke, and notice are in accordance with sections 751(b) and (c) of the Tariff Act (19 U.S.C. 1675(b), (c)) and §§ 353.53 and 353.54 of the Commerce Regulations (19 CFR 353.53, 353.54).

Joseph A. Spetrini,

Acting Deputy Assistant Secretary, Import Administration.

August 28, 1987.

[FR Doc. 87-20319 Filed 9-2-87; 8:45 am]

BILLING CODE 3510-DS-M

[A-580-505]

Offshore Platform Jackets and Piles From the Republic of Korea; Intention To Review and Preliminary Results of Changed Circumstances Administrative Review and Tentative Determination To Revoke Antidumping Duty Order

AGENCY: International Trade Administration, Import Administration, Department of Commerce.

ACTION: Notice of intention to review and preliminary results of changed circumstances administrative review and tentative determination to revoke antidumping duty order.

SUMMARY: The Department of Commerce has received information which shows changed circumstances sufficient to warrant an administrative review, under section 751(b)(1) of the Tariff Act of 1930, of the antidumping duty order on offshore platform jackets and piles from the Republic of Korea. The review covers the period from November 25, 1985. The petitioners in this proceeding have notified the Department that they are no longer interested in the antidumping duty order. Their affirmative statement of no interest provides a reasonable basis for the Department to revoke the order. Therefore, we tentatively determine to revoke the order. In accordance with the petitioners' notification, the revocation will apply to offshore platform jackets and piles from the Republic of Korea exported on or after November 25, 1985.

Interested parties are invited to comment on these preliminary results and tentative determination to revoke.

EFFECTIVE DATE: November 25, 1985.

FOR FURTHER INFORMATION CONTACT: Linda L. Pasden or Robert J. Marenick, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-5255.

SUPPLEMENTARY INFORMATION:

Background

On May 21, 1986, the Department of Commerce ("the Department") published in the **Federal Register** (51 FR 18642) an antidumping duty order on offshore platform jackets and piles from the Republic of Korea.

In a letter dated July 17, 1987, Kaiser Steel Corporation and the International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers, the petitioners in this proceeding, informed the Department that they are no longer interested in the order and stated their support of revocation of the order. Under section 751 of the Tariff Act of 1930 ("the Tariff Act"), the Department may revoke an antidumping duty order that is no longer of interest to domestic interested parties.

Scope of Review

The United States has developed a system of tariff classification based on the international harmonized system of Customs nomenclature. Congress is considering legislation to convert the United States to this Harmonized System ("HS") by January 1, 1988. In view of this, we will be providing both the appropriate Tariff Schedules of the United States Annotated ("TSUSA") item numbers and the appropriate HS item numbers with our product descriptions on a test basis, pending Congressional approval. As with the TSUSA, the HS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

We are requesting petitioners to include the appropriate HS item number(s) as well as the TSUSA item number(s) in all new petitions filed with the Department. A reference copy of the proposed Harmonized System schedule

is available for consultation at the Central Records Unit, Room B-099, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Additionally, all Customs offices have reference copies, and petitioners may contact the Import Specialist at their local Customs office to consult the schedule.

Imports covered by the review are shipments of steel jackets (templates) and/or piles for offshore platforms, subassemblies thereof that do not require removal from a transportation vessel and further U.S. onshore assembly, and appurtenances attached to the jackets and piles. These products constitute the supporting structures which pemanently affix drilling and/or production platforms to the ocean floor. Appurtenances include grouting systems, boat landings, pre-installed conductor pipes, and similar attachments. Offshore platform jackets and piles are currently classifiable under TSUS number 652.97 and HS item numbers 8430.49.40 and 8431.43.00. The review covers the period from November 25, 1985.

Preliminary Results of the Review and Tentative Determination To Revoke

As a result of our review, we preliminarily determine that the petitioners' affirmative statement of no interest in continuation of the antidumping duty order on offshore platform jackets and piles from the Republic of Korea provides a reasonable basis for revocation of the order. In light of the November 25, 1985 effective date for revocation requested by the petitioners, there is good cause (as required by section 751(b)(2) of the Tariff Act) to conduct this review at this time.

Therefore we tentatively determine to revoke the order on offshore platform jackets and piles from the Republic of Korea effective November 25, 1985. We intend to instruct the Customs Service to proceed with liquidation of all unliquidated entries of this merchandise exported on or after November 25, 1985, without regard to antidumping duties and to refund any estimated antidumping duties collected with respect to those entries.

The current requirement for a cash deposit of estimated antidumping duties will continue until publication of the final results of this review.

Interested parties may submit written comments on these preliminary results and tenative determination to revoke within 30 days of the date of publication of this notice, and may request a hearing within five days of the date of publication. Any hearing, if requested, will be held 30 days after the date of publication or the first workday thereafter. The Department will publish the final results of the administrative review and its decision on revocation, including its analysis of any such comments or hearing.

This intention to review, administrative review, tenative determination to revoke, and notice are in accordance with sections 751(b) and (c) of the Tariff Act (19 U.S.C. 1675(b), (c)) and §§ 353.53 and 353.54 of the Commerce Regulations (19 CFR 353.53, 353.54).

Joseph A. Spetrini,

Acting Deputy Assistant Secretary, Import Administration.

August 28, 1987.

[FR Doc. 87-20320 Filed 9-2-87; 8:45 am]

BILLING CODE 3510-DS-M

Final Results of Changed Circumstances Administrative Review and Revocation of Antidumping Duty Order; Certain Steel Wire Nails From The People's Republic of China

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of final results of changed circumstances administrative review and revocation of antidumping duty order.

SUMMARY: Because of changed circumstances, we are revoking the antidumping duty order on certain steel wire nails from the People's Republic of China. The revocation applies to all entries of steel wire nails from the PRC entered, or withdrawn from warehouse, for consumption on or after January 1, 1986.

EFFECTIVE DATE: January 1, 1986.

FOR FURTHER INFORMATION CONTACT: Michael Rill or Maureen Flannery, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-5255.

SUPPLEMENTARY INFORMATION:

Background

On June 25, 1987, the Department of Commerce ("the Department") published in the **Federal Register** (52 FR 23878) the preliminary results of its changed circumstances administrative review and tentative determination to revoke the antidumping duty order on certain steel wire nails from the People's Republic of China (PRC). We have now completed the administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of the Review

The products covered by the review are certain steel wire nails from the PRC. These nails are: one-piece steel wire nails as currently provided for in the Tariff Schedules of the United States Annotated (TSUSA) under item numbers 646.25 and 646.26, and similar steel wire nails of one-piece construction, whether at, over or under 0.065 inch in diameter, as provided for in item number 646.3040 of the TSUSA; two-piece steel wire nails provided for in item number 646.32 of the TSUSA; and steel wire nails with lead heads provided for in item number 646.36 of the TSUSA. These products are currently classifiable under HS item numbers 7317.00.55, 7317.00.65 and 7317.00.75.

The review covers the period from January 1, 1986.

Final Results of the Review and Revocation

We invited interested parties to comment on the preliminary results and tentative determination to revoke. We received no comments or requests for a hearing. The final results are unchanged from the preliminary results.

As a result of our review, we determine that the petitioners' affirmative statement of no interest in continuation of the antidumping duty order on certain steel wire nails from the PRC provides a reasonable basis for revocation of the order.

Therefore, we are revoking the order on certain steel wire nails from the PRC effective January 1, 1986. We will instruct the Customs Service to proceed with liquidation of all unliquidated entries of this merchandise entered, or withdrawn from warehouse, for consumption on or after January 1, 1986 without regard to antidumping duties and to refund any estimated antidumping duties collected with respect to those entries.

This administrative review, revocation and notice are in accordance with sections 751 (b) and (c) of the Tariff Act (19 U.S.C. 1675 (b) and (c)) and 19 CFR 353.53 and 353.54.

Joseph A. Spetrini,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. 87-20321 Filed 9-2-87; 8:45 am]

BILLING CODE 3510-DS-M

[A-588-041]

Preliminary Results of Antidumping Duty Administrative Review; Synthetic Methionine From Japan

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review.

SUMMARY: In response to a request by the petitioner, the Department of Commerce has conducted an administrative review of the antidumping finding on synthetic methionine from Japan. The review covers four manufacturers/exporters and one third-country reseller of this merchandise to the United Staes and the period July 1, 1985 through June 10, 1986. The review indicates the existence of dumping margins during the period.

As a result of the review, the Department has preliminarily determined to assess dumping duties equal to the calculated differences between United States price and foreign market value.

Since information received in response to our questionnaire from the one third-country reseller for the period was inadequate, we used the best information available for that firm.

Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: September 3, 1987.

FOR FURTHER INFORMATION CONTACT: Dennis U. Askey or John R. Kugelman, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-2923/3601.

SUPPLEMENTARY INFORMATION:

Background

On April 2, 1987, the Department of Commerce ("the Department") published in the **Federal Register** (52 FR 10600) the final results of its last administrative review of the antidumping finding on synthetic methionine from Japan (38 FR 18392, July 10, 1973). The petitioner requested in accordance with section 353.53a(a) of the Commerce Regulations that we conduct the administrative review. We published a notice of initiation of the antidumping duty administrative review on August 25, 1986 (51 FR 30259). The Department has now conducted that administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of the Review

The United States has developed a system of tariff classification based on the international harmonized system of Customs nomenclature. Congress is considering the legislation to convert the United States to this Harmonized System ("HS") by January 1, 1988. In view of this, we will be providing both the appropriate *Tariff Schedules of the United States Annotated ("TSUSA")* item numbers and the appropriate HS item numbers with our product descriptions on a test basis, pending Congressional approval. As with the TSUSA, the HS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

We are requesting petitioners to include the appropriate HS item number(s) as well as the TSUSA number(s) in all new petitions filed with the Department. A reference copy of the proposed Harmonized System schedule is available for consultation at the Central Records Unit, Room B-099, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC 20230. Additionally, all Customs offices have reference copies, and petitioners may contact the Import Specialist at their local Customs office to consult the schedule.

Imports covered by this review are shipments of synthetic methionine other than L methionine. Synthetic methionine is an amino acid produced in two grades, DL methionine national formula grade (used for research and pharmaceutical purposes) and L methionine feed grade (used as a food additive). Both grades of synthetic methionine are currently classifiable under TSUSA item 425.0430 and HS item number 2922.42.50.

The review covers four manufacturers/exporters and one third-country reseller of Japanese synthetic methionine and the period July 1, 1985 through June 30, 1986.

Three firms had no shipments during the period and Central Soya (Canada) provided an inadequate response to the Department's questionnaire for the period. Specifically, among other things, Central Soya failed to furnish the identity of its Japanese suppliers and any information on its prices or expenses. Therefore, the Department used the best information available, which was based on information provided by the petitioner.

Preliminary Results of the Review

As a result of our review, we preliminarily detrmine that the following margins exist for the period July 1, 1985 through June 30, 1986.

Manufacturer/exporter/third-country reseller (Country)	*Margin (percent)*
Nippon Kayaku	*48.0
Nippon Soda/Mitsui	*3.35
Nippon Soda/Mitsui/Central Soya (Canada)	79.0
Sumitomo Chemical	*0

*No shipments during the period.

Interested parties may submit written comments on these preliminary results within 21 days of the date of publication of this notice, and may request disclosure and/or an administrative protective order within 5 days of the date of publication. Any request for a hearing must be made no later than 8 days after the date of publication.

Any hearing, if requested, will be held 21 days after the date of publication or the first workday thereafter. The Department will publish the final results of the administrative review including the results of its analysis of any such comments or hearing. The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. The Department will issue appraisement instructions directly to the Customs Service. Further, as provided by section 751(a)(1) of the Tariff Act, a cash deposit of estimated antidumping duties based on the above margins shall be required for all shipments by the reviewed firms of Japanese synthetic DL methionine. For any shipments from the remaining known manufacturers, exporters, and third-country resellers not covered by this review, the cash deposit will continue to be at the rates published in the final results of the last administrative review for each of those firms (48 FR 55153, December 9, 1983 and 52 FR 10600, April 2, 1987).

For any future entries of this merchandise from a new exporter, not covered in this or prior administrative reviews, whose first shipments occurred after June 30, 1986 and who is unrelated to any reviewed firm or any previously reviewed firm, a cash deposit of 3.35 percent shall be required. This is in accordance withour practice of not using the most recently reviewed rate as a basis for a cash deposit for new shippers when we have based the recent rate on best information available.

These deposit requirements are effective for all shipments of Japanese synthetic methionine entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1))

and § 353.53a of the Commerce Regulations (19 CFR 353.53a).

Date: August 28, 1987.

Joseph A. Spetrini,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. 87-20322 Filed 9-2-87; 8:45 am]

BILLING CODE 3510-DS-M

[C-580-504]

Intention To Review and Preliminary Results of Changed Circumstances Administrative Review and Tentative Determination To Revoke Countervailing Duty Order; Offshore Platform Jackets and Piles From the Republic of Korea

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of intention to review and preliminary results of changed circumstances administrative review and tentative determination to revoke countervailing duty order.

SUMMARY: The Department of Commerce has received information which shows changed circumstances sufficient to warrant an administrative review of the countervailing duty order on offshore platform jackets and piles from the Republic of Korea. Because the petitioners have notified the Department that they are no longer interested in maintaining the countervailing duty order, we tentatively determine to revoke the order. We invite interested parties to comment on these preliminary results and tentative determination to revoke.

EFFECTIVE DATE: July 19, 1985.

FOR FURTHER INFORMATION CONTACT: Stephanie Moore or Paul McGarr, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 377-2786.

SUPPLEMENTARY INFORMATION:

Background

On July 17, 1987, Kaiser Steel Corporation and the International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers, the petitioners in this proceeding, informed the Department of Commerce ("the Department") that they were no longer interested in maintaining the countervailing duty order on offshore platform jackets and piles from the Republic of Korea (51 FR 18643, May 21, 1986) and requested that the Department revoke the order.

Scope of Review

The United States has developed a system of tariff classification based on the international harmonized system of Customs nomenclature. Congress is considering legislation to convert the United States to this Harmonized System ("HS") by January 1, 1988. In view of this, we will be providing both the appropriate *Tariff Schedules of the United States Annotated* ("TSUSA") item numbers and the appropriate HS item numbers with our product descriptions on a test basis, pending Congressional approval. As with the TSUSA, the HS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

We are requesting petitioners to include the appropriate HS item number(s) as well as the TSUSA item number(s) in all new petitions filed with the Department. A reference copy of the proposed Harmonized System schedule is available for consultation at the Central Records Unit, Room B-099, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Additionally, all Customs offices have reference copies, and petitioners may contact the Import Specialist at their local Customs office to consult the schedule.

Imports covered by the review are steel jackets (templates) and/or piles for offshore platforms, subassemblies thereof that do not require removal from a transportation vessel and further U.S. onshore assembly, and appurtenances attached to the jackets and piles. These products constitute the supporting structures which permanently affix offshore drilling and/or production platforms to the ocean floor. These products are used for "conventional" steel template platforms. Jackets and/or piles for "tower-type" platforms are not included in the order. Appurtenances include grouting systems, boat landings, pre-installed conductor pipes and similar attachments. Such merchandise is currently classifiable under item 652.97 of the Tariff Schedules of the United States. These products are currently classifiable under HS item numbers 8430.49.40 and 8431.43.00. The review covers the period from July 19, 1985.

Preliminary Results of Review and Tentative Determination

As a result of our review, we preliminarily determine that the domestic interested parties' statement that they are no longer interested in maintaining the countervailing duty order on offshore platform jackets and piles from the Republic of Korea provides a reasonable basis for revocation of the order.

Therefore, we tentatively determine to revoke the order on offshore platform jackets and piles from the Republic of Korea effective July 19, 1985. We intend to instruct the Customs Service to liquidate, without regard to countervailing duties, all unliquidated entries of this merchandise entered, or withdrawn from warehouse, for consumption on or after July 19, 1985, and to refund any estimated countervailing duties collected with respect to those entries. The current requirement for a cash deposit of estimated countervailing duties will continue until publication of the final results of this review.

Interested parties may submit written comments on these preliminary results and tentative determination to revoke within 30 days of the date of publication of this notice and may request disclosure and/or a hearing within five days of the date of publication. Any hearing, if requested, will be held 45 days after the date of publication, or the first workday following. The Department will publish the final results of the review and its decision on revocation, including its analysis of issues raised in any such written comments or at a hearing.

This intention to review, administrative review, tentative determination to revoke, and notice are in accordance with section 751 (b) and (c) of the Tariff Act of 1930 (19 U.S.C. 1675 (b) and (c)) and §§ 355.41 and 355.42 of the Commerce Regulations (19 CFR 355.41, 355.42).

Date: August 27, 1987.

Joseph A. Spectrini,

Acting Deputy Assistant Secretary, Import Administration.

[FR Doc. 87-20323 Filed 9-2-87; 8:45 am]

BILLING CODE 3510-DS-M

Export Trade Certificate of Review

ACTION: Notice of issuance of an Export Trade Certificate of Review, Application #87-00009.

SUMMARY: The Department of Commerce has issued an export trade certificate of review to the California Cherry Export Association of San Joaquin County. This notice summarizes the conduct for which certification has been granted.

FOR FURTHER INFORMATION CONTACT: George Muller, Acting Director, Office of Export Trading Company Affairs, International Trade Administration,

202-377-5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 ("the Act") (Pub. L. No. 97-290) authorizes the Secretary of Commerce to issue export trade certificates of review. The regulations implementing Title III are found at 15 CFR Part 325 (50 FR 1804, January 11, 1985).

The Office of Export Trading Company Affairs is issuing this notice pursuant to 15 CFR 325.6(b), which requires the Department of Commerce to publish a summary of a certificate in the **Federal Register.** Under section 305(a) of the Act and 15 CFR 325.11(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

Description of Certified Conduct:

Export Trade

Fresh sweet cherries.

Export Markets

Japan.

Members (in Addition to Applicant)

Reynolds Packing Company, Lodi, CA; O-G Packing, Stockton, CA; Chinchiolo Fruit Company, Stockton, CA; Sunniland Fruit, Inc., Stockton, CA; Delta Packing Co. of Lidi, Inc., Lodi CA; Linden Associated Growers, Linden, CA; Blossom Farms, Linden, CA; Sunworld, Inc., Lodi, CA; J & B Farms, Linden, CA; and A. Sambado & Son, Inc., Linden, CA.

Export Trade Activities and Methods of Operation

To engage in Export Trade in the Export Markets, CCEA and its members are certified to:

1. On behalf and with the advice of the members, advise and cooperate with the U.S. Government in establishing procedures regulating the export of sweet cherries.

2. On behalf and with the advice of the members, participate in negotiations and enter into agreements with foreign governments and foreign persons regarding:

a. Fumigating, packing, and other quality control procedures to be followed by the members in the export of sweet cherries.

b. The quantities, time periods, prices, and terms and conditions upon which the members shall export sweet cherries.

3. On behalf and with the advice of the members, establish and operate fumigation facilities for use in the export of sweet cherries.

4. On behalf and with the advice of the members, establish export prices for and allocate export quotas among the members.

5. Enter into agreements for the processing, including fumigation and packing, of the members sweet cherries for export to Japan. Such agreements are not assignable by the members without the prior written consent of CCEA.

6. Enter into a Corporate Redemption and Cross Purchase Agreement which restricts the sale or transfer of each member's stock in CCEA, except when the sale or transfer is made to:

a. Any partnership, corporation, or other entity in which the member holds an eighty percent controlling interest;

b. The individual owner(s) of a member which is a corporation, partnership, or similar entity upon the liquidation or dissolution of that member; or

c. Any other member.

The Corporation Redemption and Cross Purchase Agreement gives CCEA and its remaining members a right of first refusal to buy a departing member's stock in CCEA.

A copy of each certificate will be kept in the International Trade Administration's Freedom of Information Records Inspection Facility, Room 4102, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

Date: August 28, 1987.

George Muller,

Acting Director, Office of Export Trading Company Affairs.

[FR Doc. 87-20427 Filed 9-2-87; 8:45 am]

BILLING CODE 3510-DR-M

COMMISSION OF FINE ARTS

Meeting

The Commission of Fine Arts next scheduled meeting is Friday, September 18, 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 H. Atherton, Secretary, Commission of Fine Arts, at the above address or call the above number.

Dated in Washington, DC, August 24, 1987.

Charles H. Atherton,

Secretary.

[FR Doc. 87-20241 Filed 9-2-87; 8:45 am]

BILLING CODE 6330-01-M

COMMISSION ON MERCHANT MARINE AND DEFENSE

Meeting

SUMMARY: The Commission on Merchant Marine and Defense was established by Public Law 98-525 (as amended), and the Commission was constituted in December 1986. The Commission's mandate is to study and report on problems relating to transportation of cargo and personnel for national defense purposes in time of war or national emergency, the capability of the Merchant Marine to meet the need for such transportation, and the adequacy of the shipbuilding mobilization base to support naval and merchant ship construction. In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the Commission announces the following meeting:

Dates and Times: Thursday, September 10, 1987, Beginning 9:00 a.m.; Friday, September 11, 1987, Beginning 9:00 a.m.

Place: Suite 520, 4401 Ford Avenue, Alexandria Virginia, 22301-0268.

Type of Meeting: Closed.

Contract Person: Allan W. Cameron, Executive Director, Commission on Merchant Marine and Defense, Suite 520, 4401 Ford Avenue, Alexandria, Virginia 22302-0268, Telephone (202) 756-0411.

Purpose of Meeting: To receive additional information pertaining to the needs of the national defense for the Merchant Marine and the shipbuilding industry, and to discuss and to deliberate facts and opinions obtained from briefings and public hearings.

SUPPLEMENTARY INFORMATION: The executive meetings of the Commission will be closed to the public pursuant to 5 U.S.C. 552b(c)(1) and 552b(c)(4) in the interests of national security and to protect proprietary information provided to the Commission in confidence.

Allan W. Cameron,

Executive Director, Commission on Merchant Marine and Defense.

[FR Doc. 87-20256 Filed 9-2-87; 8:45 am]

BILLING CODE 3820-01-M

DEPARTMENT OF EDUCATION

Invitation to Comment on Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, Information Technology Services, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: Interested persons are invited to submit comments on or before October 5, 1987.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place, NW., Room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Margaret B. Webster, Department of Education, 400 Maryland Avenue, SW., Room 5624, Regional Office Building 3, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Margaret B. Webster, (202) 732-3915.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Director, Information Technology Services, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Agency form number (if any); (4) Frequency of collection; (5) The affected public; (6) Reporting burden; and/or (7) Recordkeeping burden; and (8) Abstract. OMB invites public comment at the address specified above. Copies of the requests are available from Margaret Webster at the address specified above.

Dated: August 31, 1987.

Carlos U. Rice,

Director for Information Technology Services.

Office of Special Education and Rehabilitative Services

Type of Review: Revision
Title: Report of Handicapped Children and Youth Receiving Special Education and Related Services Under Part B of the Education of the Handicapped Act
Agency Form Number: ED 869-5 and 869-8
Frequency: Annually
Affected Public: State or local governments
Reporting Burden:
Responses: 58
Burden Hours: 12,238
Recordkeeping Burden:
Recordkeepers: 0
Burden Hours: 0
Abstract: This form will be used by States to report the number of handicapped children and youth receiving special education and related services under Part B of the Education of the Handicapped Act, as amended. The Department will use these data for monitoring activities and for distributing formula grant funds.

Office of Special Education and Rehabilitative Services

Type of Review: Reinstatement
Title: Report of Special Education and Related Services in Need of Improvement
Agency Form Number: ED 869-2
Frequency: Annually
Affected Public: State or local governments
Reporting Burden:
Responses: 58
Burden Hours: 116
Recordkeeping Burden:
Recordkeepers: 0
Burden Hours: 0
Abstract: This form will collect information from States on the number and type of special education programs and related services in need of improvement. This information is used by the Department to assist in establishing programmatic priorities and for reporting purposes.

Office of Special Education and Related Services

Type of Review: Reinstatement
Title: Report of Handicapped Children and Youth Exiting the Educational System
Agency Form Number: ED 869-3
Frequency: Annually
Affected Public: State or local governments
Reporting Burden:
Responses: 58
Burden Hours: 13,978
Recordkeepping Burden:
Recordkeepers: 0
Burden Hours: 0
Abstract: This form will be used by States to report the number of handicapped youth exiting the school system and the services needed by these youth in the following year. The Department uses this information to assess the progress and effectiveness of State efforts to implement programs under Part B of the Education of the Handicapped Act, as amended.

Office of Management

Type of Review: Extension
Title: Student Rights in Research, Experimental Activities, and Testing Information Collections
Agency Form Number: ED 2470
Frequency: On occasion
Affected Public: Individuals or households; State or local governments
Reporting Burden:
Responses: 50
Burden Hours: 25
Recordkepping Burden:
Recordkeepers: 25
Burden Hours: 6.25
Abstract: This form will be used by parents of a child who alleges a violation of rights accorded by section 439 of the General Education Provisions Act (GEPA). The Department uses this information to assure compliance with these requirements under GEPA.

Office of Management

Type of Review: Reinstatement
Title: GEPA 406A: State Uses of Federal Funds Under State-Administered Federal Education Programs
Agency Form Number: P75-7P
Frequency: Annually
Affected Public: State or local governments
Reporting Burden:
Responses: 51
Burden Hours: 2550
Recordkepping Burden:
Recordkeepers: 0
Burden Hours: 0
Abstract: This survey will collect information from State educational agencies on how Federal funds are distributed under Federal state-administered education programs. The Department uses this information for an annual report to Congress mandated by section 406A of the General Education Provisions Act.

Office of Postsecondary Education

Type of Review: Extension
Title: Continuation Application for Grants under the Strengthening Program
Agency Form Number: ED 851
Frequency: Annually
Affected Public: Institutions of higher education
Reporting Burden:
Responses: 115
Burden Hours: 1725
Recordkepping Burden:
Recordkeepers: 115
Burden Hours: 345
Abstract: This form will be used by eligible institutions of higher education to submit a request for non-competitive continuation of Federal assistance under the Strengthening Program. The information collected will be used by the Department to determine whether the institution has maintained its eligibility for continued Federal assistance.

Office of Postsecondary Education

Type of Review: Extension
Title: Continuation Application for Grants under the Special Needs Program
Agency Form Number: ED 852
Frequency: Annually
Affected Public: Institutions of higher education
Reporting Burden:
Responses: 38
Burden Hours: 570
Recordkepping Burden:
Recordkeepers: 38
Burden Hours: 114
Abstract: This form will be used by eligible institutions of higher education to submit a request for non-competitive continuation of Federal assistance under the Special Needs Program. The information collected will be used by the Department to determine whether the institution has maintained its eligibility for continued Federal assistance.

[FR Doc. 87-20301 Filed 9-2-87; 8:45 am]
BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. QF87-583-000 et al.]

Small Power Production and Cogeneration Facilities; Qualifying Status; Certificate Applications, etc.; City of Spokane et al.

August 28, 1987.

COMMENT DATE: Thirty days from publication in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

Take notice that the following filings have been made with the Commission.

1. City of Spokane

[Docket No. QF87-583-000]

On August 6, 1987, City of Spokane (Applicant), of Spokane Regional Solid Waste Disposal Project, W. 720 Boone, Suite 201, Spokane, Washington 99201-2006 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The small power production facility will be located in Spokane County, Washington. The facility will consist of two (2) 400-TPD mass-fired refuse-burning steam generators and a turbine generator. The net electric power production capacity wil be 22.9 megawatts. The primary energy source will be biomass in the form of municipal solid waste. Natural gas will be used for flame stabilization, start-up and shut-down purposes. Such fossil fuel uses, however, will not exceed 25 percent of the total energy input to the facility during any calendar year period. Construction of the facility will begin in January 1988.

2. Tarkington Independent School District

[Docket No. QF87-548-000]

On August 12, 1987, Tarkington Independent School District (Applicant), of Route 6, Box 130, Cleveland, Texas 77327 submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located in Cleveland, Texas. The facility will consist of six (6) engine generator sets, a heat recovery steam generator, and heat exchangers. Thermal energy recovered from the facility will be used for space heating and cooling. The net electric power production capacity will be 1,320 kilowatts. The primary energy source will be natural gas. Construction of the facility began August 15, 1987.

3. Panguitch Micro Energy Cogeneration Inc.

[Docket No. QF87-577-000]

On August 4, 1987, Panguitch Micro Energy Cogeneration Inc. (Applicant), c/o Ashley Valley Engineering, of P.O. Box 68, Magna, Utah 84044 submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located in Panguitch, Utah. The facility will consist of a steam generator and a extraction/condensing turbine generator. Steam recovered from the facility will be used for space heating and lumber kiln. The net electric power production capacity will be 4,250 kilowatts. The primary energy source will be coal and woodwaste. Construction of the facility will begin in early 1988.

4. Eacalante Micro Energy Cogeneration Inc.

[Docket No. QF87-576-000]

On August 4, 1987, Eacalante Micro Energy Cogeneration Inc. (Applicant), c/o Ashley Valley Engineering, of P.O. Box 68, Magna, Utah, 84044 submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located in Escalante, Utah. The facility will consist of a steam generator and an extraction/condensing turbine generator. Steam recovered from the facility will be used in a lumber kiln. The net electric power production capacity will be 4,250 kilowatts. The primary energy source will be coal and woodwaste. Construction of the facility will begin in the fall of 1987.

5. Hopewell Cogeneration, Inc.

[Docket No. QF87-217-001]

On August 10, 1987, Hopewell Cogeneration, Inc. (Applicant), of 1177 West Loop South, Suite 900, Houston, Texas 77027, submitted for filing an application for recertification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located in Hopewell, Virginia. The facility as originally proposed was to consist of a combustion turbine generator, a heat recovery steam generator, and an extraction/condensing turbine generator. Thermal energy recovered from the facility will be used in chemical manufacturing operations and space heating by Hercules, Incorporated. The primary energy source will be natural gas. The net

electric power production capacity of the facility as originally proposed was to be 130 MW.

By order issued March 30, 1987, the Director of Office of Electric Power Regulation granted certification of the facility as a cogeneration facility under Docket No. QF87-217-000.

The recertification is requested due to change of ownership of the facility from CRSS Hopewell Cogenerators to Hopewell Cogeneration, Inc., and change from one combustion turbine with one heat recovery steam generator to multiple combustion turbines with multiple heat recovery steam generators. The net electric power production capacity of the facility will increase to 302.55 MW. Installation of the facility will begin in March, 1988. All other facility's characteristics remain unchanged.

6. Idaho Natural Energy, Inc.

[Docket No. QF84-269-001]

On August 12, 1987, Idaho Natural Energy, Inc. (Applicant), of 699 E. South Temple, Suite 220, Salt Lake City, Utah 87102 submitted for filing an application for recertification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The 30 MW hydroelectric facility (FERC P. 7948) will be located on Smith Creek in Boundary County, Idaho.

Recertification is requested due to a change in the electric power production capacity of the facility. Under the instant application, the electric power production capacity of the facility will increase from 11 MW to 30 MW.

A separate application is required for a hydroelectric project license, preliminary permit or exemption from licensing. Comments on such applications are requested by separate public notice. Qualifying status serves only to establish eligibility for benefits provided by PURPA, as implemented by the Commission's regulations, 18 CFR Part 292. It does not relieve a facility of any other requirements of local, State or Federal law, including those regarding siting, construction, operation, licensing and pollution abatement.

7. Ogden Martin Systems of Fairfax, Inc.

[Docket No. QF87-605-000]

On August 14, 1987, Ogden Martin Systems of Fairfax, Inc. (Applicant), of 40 Lane Road, Fairfield, New Jersey 07007-2615 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The small power production facility will be located in Lorton, Virginia. The facility will consist of four (4) mass-burn steam generators and two (2) turbine generators. The net electric power production capacity will be 72.5 megawatts. The primary energy source will be biomass in the form of municipal solid waste. Natural gas will be used for flame stabilization, start-up and shut-down purposes. Such fossil fuel uses, however, will not exceed 25% of the total energy input to the facility during any calendar year period. Construction of the facility is expected to begin in November 1987.

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. 87-20314 Filed 9-2-87; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[Region VII; FRL-3256-5]

Announcement of Actions Taken Under the NSPS/NESHAPS/PSD Regulations; Iowa and Missouri

Notice is hereby given that the Environmental Protection Agency (EPA), Region VII, has taken the following actions under the federal Standards of Performance for New Stationary Sources (a.k.a., New Source Performance Standards, NSPS) regulation, 40 CFR Part 60; the federal National Emission Standards for Hazardous Air Pollutants (NESHAPS) regulation, 40 CFR Part 61; and, the Federal prevention of significant deterioration of air quality (PSD) regulation, 40 CFR Part 52 (specifically, 40 CFR 52.21):

(A) The following PSD permits were issued:

Archer Daniels Midland Company, Cedar Rapids, Iowa: For the installation of two coal-fired boilers (each a circulating fluidized bed combustion (FBC) boiler with a maximum heat input of 551.5 million British Thermal Units per hour (MMBTUs/hr)) and related equipment. The proposed project qualified as a "major modification" of an existing major stationary source. The projected impact of emissions on air quality was a major review consideration. The existing source is a corn wet milling plant (SIC: 2046). Pollutants reviewed: nitrogen oxides (NO_x), sulfur dioxide (SO_2), carbon monoxide (CO), and fluorides (F). *Date of Permit Issuance:* October 21, 1986.

Iowa State University, Ames, Iowa: For the installation of two coal-fired boilers (each a circulating FBC boiler with a maximum heat input of 235 MMBTUs/hr) and related equipment. The proposed project qualified as a "major modification" of an existing major stationary source. The existing source is a university (SIC: 8221). Pollutants review: NO_x, SO_2, CO, F, lead (Pb), and beryllium (Be). *Date of Permit Issuance:* December 15, 1986.

Archer Daniels Midland Company, Des Moines, Iowa: For the installation of a coal-fired boiler (a multi-bed FBC boiler with a maximum heat input of 192 MMBTUs/hr) and related equipment. The proposed project qualified as a "major modification" of an existing major stationary source. The existing source is a soybean processing plant and a vegetable oil refinery (SIC: 2075). Pollutants reviewed: NO_x, SO_2, and Be. *Date of Permit Issuance:* January 13, 1987.

The University of Iowa, Iowa City, Iowa: For the installation of a new coal-fired boiler (a multi-solid circulating FBC boiler with a maximum heat input of 223 MMBTUs per hour) and related equipment. The proposed project qualified as a "major modification" of an existing major stationary source. The projected impact of emissions on air quality was a major review consideration. The existing source is a university (SIC: 8221). Pollutants reviewed: NO_x, SO_2, CO, F, Be, and particulate matter (PM). *Date of Permit Issuance:* June 9, 1987.

(B) The following PSD nonapplicability determination was issued:

Iowa Methodist Medical Center, Des Moines, Iowa: The regional office determined that the anticipated air

emissions to be generated by a proposed internal combustion engine (a 1500 kilowatt engine-generator set) do not qualify the proposed engine as a "major modification" as interpreted under the regulation. As such, the proposed project was not subject to the review/approval requirements of the regulation. *Decision Issued: September 8, 1986.*

(C) The following PSD permit was revised:

Meredith/Burda, Des Moines, Iowa: The PSD permit that was issued to the company on April 15, 1982, for a publication rotogrvure printing press, was revised to allow for the tie-in of a non-PSD printing press (Press 81) to the volatile organic compounds (VOC) emission control unit (a carbon adsorber) which currently serves the PSD-affected press (Press 83) approved by the regional office on April 15, 1982. The carbon adsorber also controls the VOC emission from another printing press (Press 82) that was approved by the regional office under the PSD regulation on April 2, 1980. The VOC percent recovery requirements that were established by the regional office for the PSD-affected presses (i.e., Press 82 and 83) remain in effect. *Revision Issued:* June 18, 1987.

(D) The following decisions relating to NESHAPS approval requests were issued:

Sigma Chemical Company, St. Louis, Missouri: The company was granted an approval to construct and operate a radionuclide installation at its plant in St. Louis, Missouri. The installation is affected by the requirements of Subpart I of the NESHAPS regulation. The approval limited the usage of Iodine-125 at the facility to no more than 100 millicuries per calendar month. *Approval Issued:* May 29, 1987.

Washington University School of Medicine, St. Louis, Missouri: The University's request for a variance from the requirements of 40 CFR Part 61, Subpart I, was denied by the regional office because the regulation does not have provisions for the granting of either a variance or an exemption from the owner/operator's obligation to obtain an "approval" for activities/facilities affected by said Subpart I. *Decision Issued:* June 16, 1987.

Under section 307(b)(1) of the Clean Air Act (the Act), judicial review of any of the above actions is available only by the filing of a petition for review in the appropriate U.S. Circuit Court of Appeals within (60) days from the date of publication of today's notice. Under section 307(b)(2) of the Act, any requirements associated with the above actions may not be challenged later in civil or criminal proceedings that may be brought by the EPA to enforce the requirements.

For the above actions, the appropriate court is the U.S. Court of Appeals for the Eighth Circuit. A petition for review must be filed on or before November 2, 1987.

Copies of the above actions and related information are available for public inspection at the following location: U.S. Environmental Protection Agency, Region VII, Air and Toxics Division (ARTX), Air Branch, 726 Minnesota Avenue, Kansas City, Kansas 66101. Interested individuals may also contact Mr. Charles W. Whitmore, Chief, Air Compliance Section, Air Branch, ARTX, or Dan Rodriguez at 913/236-2896 (FTS: 757-2896).

William Rice,

Acting Regional Administrator.

[FR Doc. 87-20298 Filed 9-2-87; 8:45am]

BILLING CODE 6560-50-M

[OPTS-00086; FRL-3257-4]

Asbestos-Containing Materials in Schools; Announcement of Interim Laboratory Quality Assurance Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Announcement of Interim Laboratory Quality Assurance Program.

SUMMARY: EPA has established an "Interim Asbestos Bulk Sample Analysis Quality Assurance Program." Laboratories currently not participating in the existing voluntary EPA Bulk Sample Analysis Quality Assurance Program but who wish to be included in the laboratory listing of accredited laboratories and plan to perform analyses of bulk samples for schools should apply to the following address: Research Triangle Institute, Box 12194, Research Triangle Park, North Carolina 27709, Attention: Steve Westbrook. Letters of application will be accepted from laboratories for the November 1987 round of samples until September 30, 1987.

FOR FURTHER INFORMATION CONTACT:

Betsy Dutrow, Office of Toxic Substances (TS-798), Environmental Protection Agency, Rm. NE-G012, 401 M Street SW., Washington, DC 20460, (202-382-3569).

or

Mike Beard, Environmental Monitoring Systems Laboratory (MD-77), Environmental Protection Agency, Research Triangle Park, NC 27711, (919-541-2623).

SUPPLEMENTARY INFORMATION:

I. Background

On October 22, 1986, President Reagan signed the Asbestos Hazard Emergency Response Act (AHERA). AHERA states that EPA must provide for the development of an accreditation program through the National Bureau of Standards (NBS) for laboratories conducting analyses of bulk samples of asbestos-containing materials by October 17, 1987. Due to a delay in funding, NBS has stated that the program will not be operational until fiscal year 1989. In order to provide schools with a listing of accredited laboratories, EPA has established the "Interim Asbestos Bulk Sample Quality Assurance Program." EPA announced the interim program in the **Federal Register** of April 30, 1987 (52 FR 15824). Laboratories which intend to conduct analyses of bulk samples of asbestos-containing materials for schools must first be accredited under the interim EPA program and, subsequently, the NBS program. When the NBS program is operational, the EPA program will be discontinued.

II. Enrollment in EPA Program

Laboratories currently participating in the voluntary EPA Bulk Sample Analysis Quality Assurance Program will be automatically enrolled in the interim accreditation program. Laboratories not participating in the existing EPA program must submit a letter requesting enrollment in September 30, 1987, to Research Triangle Institute, Box 12194, Research Triangle Park, NC 27709, Attention: Steve Westbrook. Laboratories submitting letters of application after September 30, 1987, will be included in the second round of participation which will be held in April 1988. The EPA program will be of no cost to the laboratories. Laboratories enrolled in the EPA program by September 30, 1987, will be issued four samples of bulk materials in October 1987. Laboratories will be expected to analyze the samples and return the results of the analyses by November 1987. Laboratories meeting the criteria for successful analytical performance for the program will receive formal notification from EPA, and the laboratory's name and address will be included in an EPA listing of accredited laboratories. Laboratories will be notified of their performance in December 1987. The formal listing of accredited laboratories will be available in January 1988.

III. Evaluation of Laboratories

Four samples will be submitted to each laboratory for analysis. Bulk

samples of asbestos-containing materials will be selected from a repostitory of actual construction materials. Nonasbestos-containing materials will be selected from commonly used construction materials, e.g., fiberglass. These materials are inspected for uniformity and integrity by macroscopic and microscopic examination. Reference characterization for each material will be established by internal and external analysis. The reference values will serve as the standards upon which program participants will be evaluated.

The EPA program will accredit laboratories based on their correct classification of the bulk materials as either asbestos-containing or nonasbestors-containing. To be accredited by EPA, laboratories must correctly classify the samples. It is EPA's intent that in order for a laboratory to be considered capable of analyzing bulk samples for asbestos, a laboratory must demonstrate the ability to correctly analyze four samples on the simple basis of classifying the individual samples as asbestos-containing or nonasbestos-containing. Laboratories will be requested to identify the types of asbestos (identification) and to quantify the amount of asbestos in the sample (quantification) for each asbestos-containing sample. The identification and quantification results will be used to further evaluate the performance of the laboratories meeting the minimal classification criterion. The listing of accredited laboratories will be ranked based on performance in the identification and quantification analyses.

Laboratories which do not correctly classify each of the four samples as asbestos-containing or nonasbestos-containing will be notified of their performance. These laboratories will not be included in the laboratory listing. Laboratories which did not meet the performance criteria of the program may re-enroll in March 1988 to participate in the April 1988 round of samples. Prior to formal enrollment in the program, laboratories must return to Research Triangle Institute a signed statement that the laboratory accepts the conditions of the program for accreditation and understands that failure to classify the samples as asbestos-containing or nonasbestos-containing will prohibit them from receiving accreditation in the program until the subsequent round.

IV. Method of Analysis

Laboratories must employ the EPA *Interim Method for the Determination of Asbestos in Bulk Insulation Samples.* (EPA-600/M4-82-020) for analysis of the samples. (See also 47 FR 38535, September 1, 1982.) The interim method requires the use of a polarizing light microscope (PLM). Copies of this method may be obtained by calling 1-800-334-8571.

Dated: August 27, 1987.

John A. Moore,

Assistant Administrator for Pesticides and Toxic Substances.

[FR Doc. 87-20416 Filed 9-2-87; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA-798-DR]

Amendment to Notice of Major-Disaster Declaration; Illinois

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Illinois (FEMA-798-DR), dated August 21, 1987, and related determinations.

DATED: August 28, 1987.

FOR FURTHER INFORMATION CONTACT: Neva E. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, D.C. 20472, (202) 646-3614.

NOTICE: The notice of a major disaster for the State of Illinois, dated August 21, 1987, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of August 21, 1987:

Elk Grove, Leyden, Maine and Schaumburg Townships in Cook County; and Addison, Bloomingdale, and York Townships in DuPage County for Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Joe D. Winkle,

Acting Deputy Associate Director State and Local Programs, and Support, Federal Emergency Management Agency.

[FR Doc. 87-20271 Filed 9-2-87; 8:45 am]

BILLING CODE 6718-02-M

[FEMA-798-DR]

Amendment to Notice of Major-Disaster Declaration; Illinois

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Illinois (FEMA-798-DR), dated August 21, 1987, and related determinations.

DATED: August 27, 1987.

FOR FURTHER INFORMATION CONTACT: Sewall H.E. Johnson, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, D.C. 20472, (202) 646-3616.

NOTICE: The notice of a major disaster for the State of Illinois, dated August 21, 1987, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of August 21, 1987:

Barrington, Berwyn, Cicero, Evanston, Jefferson, Lake View, New Trier, Niles, Northfield, Oak Park, and Rogers Park Townships, and that portion of the City of Chicago north of Roosevelt Road, in Cook County; and all areas of DuPage County for Individual Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Joseph A. Moreland,

Acting Deputy Associate Director, State and Local Programs, and Support, Federal Emergency Management Agency.

[FR Doc. 87-20272 Filed 9-2-87; 8:45 am]

BILLING CODE 6718-02-M

Senior Performance Review Board Members

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Listing names of the members of the Senior Executive Service Performance Review Board.

DATE: August 5, 1987.

FOR FURTHER INFORMATION CONTACT: Mary J. Stafford, Chief, Staffing Division, Office of Personnel, 500 C Street, SW., Washington, DC 20472, 202-646-4010.

The names of the members of the FEMA Senior Executive Service Performance Review Board established pursuant to 5 U.S.C. 4314(c) are:

Members: Frank H. Thomas, William K. Chipman, John D. Hwang, Edward W. Kernan, Joe D. Winkle, George H. Orrell, John R. Curran, Sr.

Spence W. Perry,

General Counsel.

[FR Doc. 87-20273 Filed 9-2-87; 8:45 am]

BILLING CODE 6817-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 87F-0257]

Filing of Food Additive Petition; Ferro Corp.

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Ferro Corp. has filed a petition proposing that the food additive regulations be amended to provide for the additional safe use of 2,4-di-*tert*-butylphenyl 3,5-di-*tert*-butyl-4-hydroxybenzoate as a light stabilizer for olefin copolymers in contact with food.

FOR FURTHER INFORMATION CONTACT: Julius Smith, Center for Food Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C Street SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 7B4011) has been filed by Ferro Corp., 7050 Krick Rd., Bedford, OH 44146, proposing that § 728.2010 *Antioxidants and/or stabilizers for polymers* (21 CFR 178.2010) be amended to provide for the additional safe use of 2,-di-*tert*=butylphenyl 3, 5-di-*tert*-butyl-4-hydroxybenzoate as a light stabilizer for olefin copolymers complying with § 177.152(c)3.1 and 3.2.

The potential environmental impact of this action is being reviewed. If the agency finds that an evironmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting the finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: August 26, 1987.

Fred R. Shank,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 87-20267 Filed 9-2-87; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 87N-0295]

Drug Export; Rimantadine Hydrochloride (Bulk)

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Hoffmann-LaRoche Inc. has filed an application requesting approval for the export of the human drug Rimantadine Hydrochloride (Bulk) to France and to Switzerland solely for the purpose of further export to France.

ADDRESS: Relevant information on this application may be directed to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, and to the contact person identified below. Any future inquiries concerning the export of human drugs under the Drug Export Amendments Act of 1986 should also be directed to the contact person.

FOR FURTHER INFORMATION CONTACT: Rudolf Apodaca, Center for Drugs and Biologics (HFN-310), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8063.

SUPPLEMENTARY INFORMATION: The Drug Export Amendments Act of 1986 (Pub. L. 99-660) (section 802 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 382)) provides that FDA may approve applications for the export of drugs that are not currently approved in the United States. The approval process is governed by section 802(b) of the act. Section 802(b)(3)(B) of the act sets forth the requirements that must be met in an application for approval. Section 802(b)(3)(C) of the act requires that the agency review the application within 30 days of its filing to determine whether the requirements of section 802(b)(3)(B) have been satisfied. Section 802(b)(3)(A) of the act requires that the agency publish a notice in the **Federal Register** within 10 days of the filing of an application for export to facilitate public participation in its review of the application. To meet this requirement, the agency is providing notice that Hoffmann-LaRoche Inc., 340 Kingsland Street, Nutley, New Jersey 07110, has filed an application requesting approval for the export of the drug Rimantadine Hydrochloride (Bulk) to France and to Switzerland solely for the purpose of further export to France. Rimantadine Hydrochloride (Bulk) is indicated for use as an antiviral agent that is active mainly against influenza type A virus. The application was received and filed in the Center for Drugs and Biologics on August 20, 1987, which shall be considered the filing date for purposes of the act.

Interested persons may submit relevant information on the application to the Dockets Management Branch (address above) in two copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. These submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

The agency encourages any person who submits relevant information on the application to do so by September 14, 1987, and to provide an additional copy of the submission directly to the contact person identified above, to facilitate consideration of the information during the 30-day review period.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 802, Pub. L. 99-660 (21 U.S.C. 382)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Drugs and Biologics (21 CFR 5.44).

Dated: August 25, 1987.

Sammie R. Young

Office of Compliance, Center for Drugs and Biologics.

[FR Doc. 87-20266 Filed 9-2-87; 8:45 am]

BILLING CODE 4160-01-M

[FDA 225-75-3003]

Memorandum of Understanding Between the Department of Defense and the Food and Drug Administration

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is providing notice of a memorandum of understanding (MOU) between the Department of Defense (DOD) and FDA which replaces the previous MOU on this subject signed in 1974. The MOU establishes the procedures to be followed by DOD regarding the investigational use of drugs, including antibiotics and biologics, and medical devices.

DATE: The agreement became effective May 21, 1987.

FOR FURTHER INFORMATION CONTACT: Walter J. Kustka Intergovernmental and Industry Affairs Staff (HFC-50), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-1583..

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 20.108(c), which states that all agreements and memoranda of understanding between FDA and others shall be published in the **Federal Register**, the agency is publishing this memorandum of understanding.

Dated: August 27, 1987.

Ronald G. Chesemore,

Acting Associate Commissioner for Regulatory Affairs.

Memorandum of Understanding Between the Food and Drug Administration and the Department of Defense, Concerning Investigational Use of Drugs, Antibiotics, Biologics, and Medical Devices by the Department of Defense

I. Purpose

This agreement between the Department of Defense (DoD) and the Food and Drug Administration (FDA) establishes the procedures to be followed regarding the investigational use of drugs, including antibiotics and biologics, and medical devices by DoD. This Memorandum of Understanding (MOU), when signed by the representatives of the agencies, replaces the previous MOU on this subject signed in 1974.

II. Backgroung

Sections 505(a) and 507 of the Federal Food, Drug, and Cosmetic Act ("the Act") establish procedures for the approval required before a new drug or antibiotic can be introduced into interstate commerce. Sections 505(i) and 507(d) of the Act (21 U.S.C. 355(i), 357(d)) provide authoirty for the Secretary to exempt from the drug approval procedures new drugs and antibiotics which will be used for investigational purposes. Section 520(g) of the Act (21 U.S.C. 360(g)) provides authority for the Secretary to exempt from the device approval procedures devices which will be used for investigational purposes. Section 351 of the Public Health Service Act establishes procedures for the approval required before a biological product can be introduced into interstate commerce.

Regulations governing investigational new drugs, investigational antibiotics, and investigational biologics are published at 21 CFR Part 312; for investigational medical devices at 21 CFR Parts 812 and 813; for protection of human subjects at 21 CFR Part 50; and for institutional review boards at 21 CFR Part 56. These regulations establish the procedure and prescribe the necessary forms to be filed in order to exempt drugs and devices to be used for investigational purposes from, inter alia, the approval procedures of the Federal Food, Drug, and Cosmetic Act and the biologic licensing provisions of the Public Health Service Act.

Pursuant to Title 5, Section 301, of the United States Code, DoD regulations on protection of human subjects in DoD-supported research in 32 CFR Part 219 and DoD Directive 3216.2 generally adopt the system of Institutional Review Boards (IRBs) established under 21 CFR Part 56. However, the functions of research protocol review and approval are separate in the Department of Defense. The function of protocol review remains with the IRB which recommends approval. The function of approval is held by the commander to whom the review committee reports. In addition, the Surgeon General of each Service may require that the final review and approval for use of investigational drugs, biologics, or medical devices, remain within his or her office. The Surgeons General have the authority to delegate this final review and approval authority to a "Headquarters Review Board" (HRB), or the medical department component holding the IND or IDE. In no case can an approving authority or HRB give final approval to a protocol which has been disapproved by a local IRB, nor can an approving authority or HRB reduce safeguards or special conditions imposed by the local IRB.

A Memorandum of Understanding (MOU) on this subject was first executed by the Departments of Defense and Health, Education, and Welfare in 1964. It was revised in 1974 to state the procedures that would be followed to ensure that the requirements of the Federal Food, Drug, and Cosmetic Act and its implementing regulations are fully met without jeopardizing or impeding the requirements of national security. Experience in operating under these MOUs from 1964 to 1987 indicates that the DoD and FDA have a record of cooperation; that human subject concerns have been adequately addressed in DoD-sponsored studies; that the DoD has been able to carry out effectively its responsibilities for national security without compromising the intent of the above-cited statutes and regulations; and that certain exemptions, relieving the DoD from the need to meet the ordinary requirements of the Investigation New Drug (IND) and Investigational Device Exemption (IDE) regulations are no longer necessary. Accordingly, the DoD and the FDA agree to the following new procedures concerning investigational use of drugs and devices by the DoD.

III. Substance of Agreement

The FDA and the DoD agree that:

A. Clinical testing of investigational drugs, biologics, or medical devices under programs sponsored by the DoD and conducted either by the DoD within its own research facilities, or for the DoD by a contractor or grantee will folllow the provisions of 21 CFR Part 312 or 21 CFR Part 812 governing the investigational use of new drugs and medical devices in human beings, and FDA's informed consent and Institutional Review Board regulations (21 CFR Part 50 and 21 CFR Part 56).

B. They will continue to cooperate in meeting the requirements of the Federal Food, Drug, and Cosmetic Act and its implementing regulations without jeopardizing the mission of the DoD. To accomplish this goal, they agree that an expeditious review of special DoD requirements to meet national defense considerations will be carried out by FDA. This review would consist of an FDA review of available data on a drug, biological, or device under IND or IDE to detemine if stockpiling for future use, or use in an expanded military population is appropriate. When necessary, special reporting requirements would also be established by FDA.

C. It is the general policy of the DoD not to classify medical research and development. However, should it become necessary to classify for reasons of national security the clinical testing of a drug, biologic, or medical device that would normally fall under the provisions of 21 CFR Parts 312 or 812, these studies will be handled under the special provisions of this MOU. The DoD will be solely responsible for determining the security classification of such research projects. If classified studies are required DoD will submit a classified IND or IDE application to be reviewed by appropriate FDA personnel who hold the required security clearances. It will be the responsibility of the FDA to maintain an appropriate cadre of personnel who have security clearances. In the event that a request is made under the Freedom of Information Act for records concerning the research DoD has classified, FDA will refer such requests to DoD for processing and response under DoD regulations.

IV. Name and Address of Participating Agencies

A. Department of Defense, Washington, DC 20301

B. Food and Drug Administration, 5600 Fishers Lane, Rockville, Maryland 20857

V. Liaison Officers

A. Senior Program Specialist for Medical Research Office of the Assistant Secretary of Defense (Health Affairs), Washington, DC 20301, Telephone: (202) 695-6800

B. Military Assistant for Medical and Life Sciences Office of Under Secretary of Defense (Acquisition),

Washington, DC 20301, Telephone: (202) 697-8535

C. Associate Commissioner for Health Affairs, HFY-1 (Currently Stuart L. Nightingale, M.D.), Food and Drug Administration, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone: (301) 443-6143.

VI. Period of Agreement

This agreement becomes effective upon acceptance by both parties, and will remain in effect indefinitely. It may be amended by mutual written consent or terminated by either party upon a 30-day advance written notice.

Approved and Accepted for the Department of Defense:

William Mayer,

Assistant Secretary of Defense (Health Affairs).

Date: May 21, 1987.

Approved and Accepted for the Food and Drug Administration:

Frank E. Young,

Commissioner, Food and Drug Administration.

Date: May 1, 1987.

[FR Doc. 87-20265 Filed 9-2-87; 8:45 am]

BILLING CODE 4160-01-M

National Institutes of Health

National Cancer Institute; Meetings

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the National Cancer Advisory Board, National Cancer Institute, September 28-30, 1987, Building 31C, Conference Room 6, 6th Floor, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892. Meetings of the Subcommittees of the Board will be held at the times and places listed below. Portions of the Board meeting and its Subcommittees will be open to the public to discuss issues relating to committee business as indicated in the notice. Attendance by the public will be limited to space available.

Portions of the meeting will be closed to the public as indicated below in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and section 10(d) of Pub. L. 92-463, for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mrs. Winifred J. Lumsden, Committee Management Officer, Division of Extramural Activities, National Cancer Institute, 9000 Rockville Pike, Building 31, Room 10A06, National Institutes of Health, Bethesda, Maryland 20892 (301/496-5708), will provide a summary of the minutes and rosters of the Board members upon request.

Name of Committee: Subcommittee on Cancer Centers
Executive Secretary: Ms. Judith Whalen, Building 31, Room 11A19 Bethesda, MD 20892 (301/496-5515)
Date of Meeting: September 27
Place of Meeting: Building 31C, Conference Room 7
Open: 6 p.m. to adjournment
Agenda: Discussion of programmatic issues regarding the Cancer Centers.

Name of Committee: Subcommittee on Organ Systems Program
Executive Secretary: Dr. Andrew Chiarodo, Blair Building, Room 722A Bethesda, MD 20892 (301/427-8818)
Date of Meeting: September 27
Place of Meeting: Building 31C, Conference Room 8
Open: 7:30 p.m. to adjournment
Agenda: Discussion of programmatic issues of the Organ Systems Program.

Name of Committee: Subcommittee on Planning and Budget
Executive Secretary: Ms. Judith Whalen, Building 31, Room 11A19 Bethesda, MD 20892 (301/496-5515)
Date of Meeting: September 28
Place of Meeting: Building 31C, Conference Room 7
Open: Following adjournment of NCAB meeting.
Agenda: Discussion of plans for NCAB portion of the 1988 biennial budget report.

Name of Committee: Subcommittee on Cancer Control for the Year 2000
Executive Secretary: Dr. Peter Greenwald, Building 31, Room 10A52 Bethesda, MD 20892 (301/496-6616)
Date of Meeting: September 28
Place of Meeting: Building 31C, Conference Room 4
Open: 7:30 p.m. to adjournment
Agenda: To discuss NCAB participation and other issues of cancer control.

Name of Committee: Subcommittee on Special Actions for Grants
Executive Secretary: Mrs. Barbara S. Bynum, Building 31, Room 10A03 Bethesda, MD 20892 (301/496-5147)
Date of Meeting: September 29
Place of Meeting: Building 31C, Conference Room 6
Open: 8:30 a.m. to adjournment
Agenda: Review and discussion of individual grant applications.

Name of Committee: Review of Contracts and Budget for the Office of the Director, National Cancer Institute
Executive Secretary: Mr. James Prather, Building 31, Room 11A29 Bethesda, MD 20892 (301/496-5801)
Date of Meeting: September 29
Place of Meeting: Building 31C, Conference Room 7
Open: Following adjournment of the Subcommittee on Special Actions for Grants.
Agenda: Review of contracts and budget for the Office of the Director, National Cancer Institute.

Name of Committee: AIDS Subcommittee
Executive Secretary: Dr. Maryann Roper, Building 31, Room 11A19 Bethesda, MD 20892 (301/496-3505)
Date of Meeting: September 29
Place of Meeting: Building 31C, Conference Room 7
Open: 7:30 p.m. to adjournment
Agenda: The Subcommittee will discuss the National Cancer Institute's involvement in AIDS research.

Name of Committee: National Cancer Advisory Board
Executive Secretary: Mrs. Barbara S. Bynum, Building 31, Room 10A03 Bethesda, MD 20892 (301/496-5147)
Date of Meeting: September 28 and 30, 1987
Place of Meeting: Building 31C, Conference Room 6
Open: September 28, 8:30 a.m. to recess September 30, 8 a.m. to adjournment
Agenda: Reports on activities of the President's Cancer Panel and the Director's Report on the National Cancer Institute; Subcommittee Reports and New Business.

(Catalog of Federal Domestic Assistant Program Nos. 13.392, Project grants in cancer construction; 13.393, Project grants in cancer cause and prevention; 13.394, Project grants in cancer detection and diagnosis; 13.395, Project grants in cancer treatment; 13.396, Project grants in cancer biology; 13.397, Project grants in cancer centers support; 13.398, Project grants in cancer research manpower and 13.399; Project grants and contracts in cancer control.)

Dated: August 19, 1987.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 87-20345 Filed 9-2-87; 8:45 am]

BILLING CODE 4140-01-M

Meeting; Cancer Biology-Immunology Contract Review Committee

Pursuant to Pub. L. 94-463, notice is hereby given of the meeting of the Cancer Biology-Immunology Contract Review Committee, National Cancer Institute, National Institutes of Health, October 9, 1987, 9000 Rockville Pike, Building 31C, Conference Room 9, Bethesda, Maryland 20892.

This meeting will be open to the public on October 9 from 9 a.m. to 9:30 a.m. to discuss administrative details. Attendance by the public will be limited to space available.

In accordance with provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and section 10(d) of Pub. L. 92-463, the meeting will be closed to the public on October 9 from 9:30 a.m. to adjournment for the review, discussion and evaluation of individual contract proposals. These proposals and the discussion could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the proposals, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mrs. Winifred Lumsden, the Committee Management Officer, National Cancer Institute, Building 31, Room 10A06, National Institutes of Health, Bethesda, Maryland 20892 (301/496-5708) will provide summaries of the meeting and rosters of committee members upon request.

Dr. Wilna A. Woods, Executive Secretary, Cancer Biology-Immunology Contract Review Committee, 5333 Westbard Avenue, Room 807, Bethesda, Maryland 20892 (301/496-7153) will furnish substantive program information.

Dated: August 26, 1987.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 87-20346 Filed 9-2-87; 8:45 am]

BILLING CODE 4140-01-M

Meeting, National Cancer Institute

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Board of Scientific Counselors, Division of Cancer Etiology on October 22-23, 1987, Building 31, C Wing, Conference Room 10, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892.

This meeting will be open to the public from 1 p.m. to recess on October 22 and from 9 a.m. to adjournment on October 23 for discussion and review of the Division budget and review of concepts for grants and contracts. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in section 552b(c)(6), Title 5, U.S.C. and section 10(d) of Pub.L. 92-463, the meeting will be closed to the public from 9 a.m. to approximately 12 p.m. on October 22 for the review, discussion and evaluation of individual programs and projects conducted by the Division of Cancer Etiology. These programs, projects, and discussions could reveal personal information concerning individuals associated with the programs and projects, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mrs. Winifred Lumsden, Committee Management Officer, National Cancer Institute, Building 31, Room 10A06, National Institutes of Health, Bethesda, Maryland 20892 (301/496-5708) will provide summaries of the meeting and rosters of committee members, upon request.

Dr. David McB. Howell, Executive Secretary of the Board of Scientific Counselors, Division of Cancer Etiology, National Cancer Institute, Building 31, Room 11A06, National Institutes of Health, Bethesda, Maryland 20891 (301/496-6927) will furnish substantive program information.

Dated: August 27, 1987.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 87-20347 Filed 9-2-87; 8:45 am]

BILLING CODE 4140-01-M

Cancer Research Manpower Review Committee; Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Cancer Research Manpower Review Committee, National Cancer Institute, National Institutes of Health, November 5-6, 1987, Bethesda Ramada, 8400 Wisconsin Avenue, Bethesda, Maryland 20814.

This meeting will be open to the public on November 5 at 8:30 a.m. to 9 a.m. to discuss administrative details. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and section 10(d) of Publ L. 92-463, the meeting will be closed to the public on November 5 at 9 a.m. to recess and on November 6 at 8:30 a.m. to adjournment for the review, discussion and evaluation of individual grant applications. The applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mrs. Winifred Lumsden, Committee Management Officer, NCI, Building 31, Room 10A06, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892 (301/496-5708) will provide a summary of the meeting and a roster of the Committee members.

Ms. Cynthia Sewell, Executive Secretary, Westwood Building, 5333 Westbard Avenue, Room 838, Bethesda, Maryland 20892 (301/496-7721) will provide substantive program information upon request.

Dated: August 26, 1987.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 87-20348 Filed 9-2-87; 8:45 am]

BILLING CODE 4140-01-M

Meeting; Developmental Therapeutics Contracts Review Committee

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Developmental Therapeutics Contracts Review Committee, National Cancer Institute, National Institutes of Health, September 23-24, 1987, Holiday Inn-Bethesda, Montgomery Conference Room, 8120 Wisconsin Avenue, Bethesda, Maryland 20814.

This meeting will be open to the public on September 23 from 8 a.m. to 8:30 a.m. to discuss administrative details. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and section 10(d) of Pub. L. 92-463, the meeting will be closed to the public on September 23, 8:30 a.m. to recess; September 24, 8:30 a.m. to recess; and September 25, 8:30 a.m. to adjournment for the review, discussion and evaluation of individual contract proposals. The proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mrs. Winifred Lumsden, Committee Management Officer, National Cancer Institute, Building 31, Room 10A06, National Institutes of Health, Bethesda, Maryland 20892 (301/496-5708) will provide a summary of the meeting and a

roster of committee members upon request.

Dr. Kendall G. Powers, Executive Secretary, Developmental Therapeutics Contracts Review Committee, National Cancer Institute, Westwood Building, Room 805, National Institutes of Health, Bethesda, Maryland 20892 (301/496-7575) will provide substantive program information, upon request.

Dated: August 26, 1987.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 87-20349 Filed 9-2-87; 8:45 am]

BILLING CODE 4140-01-M

Research Manpower Review Committee

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Research Manpower Review Committee, National Heart, Lung, and Blood Institute, National Institutes of Health, on September 27-29, 1987, at the Bethesda Holiday Inn, 8120 Wisconsin Avenue, Bethesda, Maryland 20814.

This meeting will be open to the public on September 27, from 7 p.m. to approximately 11 p.m. to discuss administrative details and to hear reports concerning the current status of the National Heart, Lung, and Blood Institute. Attendance by the public is limited to space available.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C., and section 10(d) of Pub. L. 92-463, the meeting will be closed to the public on September 28 from approximately 8 a.m. until adjournment on September 29, for the review, discussion, and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Terry Bellicha, Chief, Communications and Public Information Branch, National Heart, Lung, and Blood Institute, Building 31, Room 4A21, National Institutes of Health, Bethesda, Maryland 20892, (301) 496-4236, will provide a summary of the meeting and a roster of the Committee members.

Dr. Kathryn Ballard, Executive Secretary, NHLBI, Westwood Building, Room 550, Bethesda, Maryland 20892, (301) 496-7361, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program Nos. 13.837, Heart and Vascular Diseases Research; 13.838, Lung Diseases Research; and 13.839, Blood Diseases and Resources Research, National Institutes of Health.)

Dated: August 19, 1987.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 87-20352 Filed 9-2-87; 8:45 am]

BILLING CODE 4140-01-M

Meeting; National Institute of Neurological and Communicative Disorders and Stroke

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Board of Scientific Counselors, National Institute of Neurological and Communicative Disorders and Stroke, Intramural Research, Program, on November 11-13, 1987, Conference Room 5C-101, Building 10, Bethesda, Maryland.

This meeting will be open to the public from 9 a.m. to 5 p.m. on November 12 to discuss program planning and program accomplishments. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in section 552b(c)(6), Title 5, U.S.C. and section 10(d) of Pub. L. 92-463, the meeting will be closed to the public from 8 p.m. to 10 p.m. on November 11 and from 9 a.m. until adjournment on November 13 for the review, discussion and evaluation of individual programs and projects conducted by the National Institute of Health, NINCDS, including consideration of personnel qualifications and performances, the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

The Freedom of Information Coordinator, Mr. Edward M. Donohue, Federal Building, Room 1016, 7550 Wisconsin Avenue, Bethesda, Maryland 20892, telephone (301) 496-4188, will furnish a summary of the meeting and a roster of committee members upon request. The Executive Secretary from whom substantive program information may be obtained is Dr. Irwin J. Kopin, Director, Intramural Research Program, NINCDS, Building 10, Room 5N214, NIH, Bethesda, Maryland 20892, telephone (301) 496-4297.

(Catalog of Federal Domestic Assistance Program No. 13.853, Clinical Basis Research; No. 13.854, Biological Basis Research)

Dated: August 27, 1987.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 87-20350 Filed 9-2-87; 8:45 am]

BILLING CODE 4140-01-M

Meeting; National Institute on Aging

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Board of Scientific Counselors, National Institute on Aging, October 26-28, 1987, to be held at the Gerontology Research Center, Baltimore, Maryland. The meeting will be open to the public from 9:00 a.m. on Monday, October 26 until approximately 4:00 p.m. and will again be open to the public from 9:00 a.m. on Tuesday, October 27, until 4:00 p.m. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in Section 552b(c)(6), Title 5, U.S.C. and section 10(d) of Pub. L. 92-463, the meeting will be closed to the public on October 26 from 4:00 p.m. until recess, and again on October 27 from 4:00 p.m. until adjournment on October 28 for the review, discussion, and evaluation of individual programs and projects conducted by the National Institutes of Health, NIA, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. June C. McCann, Committee Management Officer, NIA, Building 31, Room 2C05, National Institutes of Health, Bethesda, Maryland 20892, (telephone: 301/496-9322) will provide a summary of the meeting and a roster of committee members. Dr. Richard C. Greulich, Scientific Director, NIA, Gerontology Research Center, Baltimore City Hospitals, Baltimore, Maryland 21224, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program No. 13.886, Aging Research, National Institutes of Health)

Dated: August 27, 1987.

Betty J. Beveridge,

NIH Committee Management Officer.

[FR Doc. 87-20351 Filed 9-2-87; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Application for Natural Gas Pipeline Right-of-Way, Louisiana

ACTION: Notice of intent.

SUMMARY: Notice is hereby given that under section 28 of the Mineral Leasing Act of 1920 (41 Stat. 449; 30 U.S.C. 185), as amended by Pub. L. 93-153, Lear Petroleum Corporation, has applied for a right-of-way to construct approximately

3.84 miles of 12¾" O.D. natural gas pipeline across a portion of D'Arbonne National Wildlife Refuge, Louisiana, described as follows:

A right-of-way with a beginning width of thirty (30) feet and centerline point of beginning lying on the Northeast Boundary of the D'Arbonne National Wildlife Refuge, said point of beginning being also on the Southwesterly Right-of-Way Line of State Route No. 143 and the same point of beginning being located fifteen (15) feet East of the Easterly Right-of-Way Line of Louisiana Power and Light Company's 115 KV Sterlington-Drew Electric Transmission Line, all in the SE¼ of the NW¼ of Section 17, T. 19 N., R. 3 E., Union Parish, Louisiana; thence, South 08°05' West, approximately thirty-five (35) feet; thence, South 53°05' West, approximately fifteen (15) feet to a point five (5) feet East of the Easterly Right-of-Way Line of LP & L Company's Transmission Line, with the proposed right-of-way narrowing at this point to ten (10) feet in width; thence, South 08°05' West and parallel to said LP & L Company's Easterly Right-of-Way Line in Section 17, crossing the Union Parish—Quachita Parish Line and continuing South 08°05' West, parallel to LP & L Company's Power Line in Quachita Parish crossing Sections 20, 29, 32, and a portion of Section 31, T. 19 N., R. 3 E., and a portion of the NE¼ of the NE¼ of Section 6, T. 18 N., R. 3 E., a total distance from the point of beginning of approximately 19,480 lineal feet (3.69 miles), and located approximately 580' South of the North Line of said Section 6, T. 18 N., R. 3 E.

The right-of-way then widens at this point to fifty (50) feet in width, continuing South 36°55' East approximately 840 lineal feet (.15 mile) to the Southern Boundary of the D'Arbonne National Wildlife Refuge, said point of ending being located on the South Line of the NW¼ of the NW¼ of Section 5, T. 18 N., R. 3 E. and approximately one hundred fifty (150) feet east of the West Line of said Section 5.

Total approximate acreage of proposed right-of-way is 5.45 acres.

The purpose of this notice is to inform the public that the United States Fish and Wildlife Service is currently considering the merits of approving this application.

DATE: Interested persons desiring to comment on this application should do so on or before October 5, 1987.

ADDRESS: Comments should be addressed to the Regional Director, U.S. Fish and Wildlife Service, 75 Spring Street, SW., Room 1200, Atlanta, Georgia 30303.

August 27, 1987.

David B. Allen,

Acting Regional Director.

[FR Doc. 87-20242 Filed 9-2-87; 8:45 am]

BILLING CODE 4310-55

Bureau of Indian Affairs

Irrigation Projects; San Carlos Irrigation Project

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice is published in exercise of authority delegated to the Assistant Secretary for Indian Affairs by the Secretary of the Interior in 209 DM 8 and redelegated by the Assistant Secretary for Indian Affairs to the Area Director in 10 BIAM 3.

Pursuant to Part 173, Title 25, Code of Federal Regulations, certain lands comprising the San Carlos Reservoir site near Globe, Arizona will be subject to granting of concessions after March 23, 1988. The San Carlos Apache Tribe has submitted a reapplication. Any person or party interested in commenting on the concession permit must submit a letter to the Project Engineer, San Carlos Irrigation Project, P.O. Box 250, Coolidge, Arizona 85228. Letters will be accepted until October 1, 1987. If transmitted through the United States mail service, letters must be post marked on or before October 1, 1987.

There is no current form for new applicants for the concession permit; therefore, based on responses to this notice, the Project Engineer may require detailed proposals from new applicants in order to give further consideration to a grant of concession.

In lieu of an application form, a new applicant will be required to prepare an Environmental document as defined in 40 CFR 1508.10.

SUPPLEMENTARY INFORMATION: Concession for San Carlos Reservoir site shall be granted by the Secretary of the Interior only with the concurrence of the San Carlos Apache Tribe.

FOR FURTHER INFORMATION CONTACT: Further information about concessions on San Carlos Reservoir site may be obtained from Mr. Ralph Esquerra, Project Engineer, San Carlos Irrigation Project, telephone (602) 723-5439.

Date: August 19, 1987.

James H. Stevens,

Phoenix Area Director.

[FR Doc. 87-20279 Filed 9-2-87; 8:45 am]

BILLING CODE 4310-02-M

Bureau of Land Management

[AA-48892-I]

Proposed Reinstatement of Terminated Oil and Gas Lease; Alaska

In accordance with Title IV of the Federal Oil and Gas Royalty Management Act (Pub. L. 97-451), a petition for reinstatement of oil and gas lease AA-48892-I has been received covering the following lands:

Fairbanks Meridian, Alaska

T. 22 S., R. 2 W.,
Sec. 11, NE¼SW¼, W½SW¼.
(120 acres)

The proposed reinstatement of the lease would be under the same terms and conditions of the original lease, except the rental will be increased to $5 per acre per year, and royalty increased to 16⅔ percent. The $500 administrative fee and the cost of publishing this notice have been paid. The required rentals and royalties accruing from December 1, 1986, the date of termination, have been paid.

Having met all the requirements for reinstatement of lease AA-48892-I as set out in section 31 (d) and (e) of the Mineral Leasing Act of 1920 (30 U.S.C. 188), the Bureau of Land Management is proposing to reinstate the lease, effective December 1, 1986, subject to the terms and conditions cited above.

Dated: August 28, 1987.

Kay F. Kletka,

Chief, Branch of Mineral Adjudication.

[FR Doc. 87-20328 Filed 9-2-87; 8:45 am]

BILLING CODE 4310-JA-M

[WY-920-07-4111-15; W-89871]

Proposed Reinstatement of Terminated Oil and Gas Lease; Wyoming

Pursuant to the provisions of Public Law 97-451, 96 Stat. 2462-2466, and regulation 43 CFR 3108.2-3(a) and (b)(1), a petition for reinstatement of oil and gas lease W-89871 for lands in Crook County, Wyoming, was timely filed and was accompanied by all the required rentals accruing from the date of termination.

The lessee has agreed to the amended lease terms for rentals and royalties at rates of $5 per acre, or fraction thereof, per year, and 16-2/3 percent, respectively.

The lessee has paid the required $500 administrative fee and $125 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for

reinstatement of the lease as set out in section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease W-89871 effective September 1, 1986, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Fred O'Ferrall,

Acting Chief, Leasing Section.

[FR Doc. 87-20329 Filed 9-2-87; 8:45 am]

BILLING CODE 4310-22-M

[WY-920-07-4111-15; W-99014]

Proposed Reinstatement of Terminated Oil and Gas Lease; Wyoming

Pursuant to the provisions of Public Law 97-451, 96 Stat. 2462-2466, and regulation 43 CFR 3108.2-3 (a) and (b)(1), a petition for reinstatement of oil and gas lease W-99014 for lands in Campbell County, Wyoming, was timely filed and was accompanied by all the required rentals accruing from the date of termination.

The lessees have agreed to the amended lease terms for rentals and royalties at rates of $5 per acre, or fraction thereof, per year, and 16⅔ percent, respectively.

The lessees have paid the required $500 administrative fee and $125 to reimburse the Department for the cost of this **Federal Register** notice. The lessees have met all the requirements for reinstatement of the lease as set out in section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188) and the Bureau of Land Management is proposing to reinstate lease W-99014 effective May 1, 1987, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Fred O'Ferrall,

Acting Chief, Leasing Section.

[FR Doc. 87-20330 Filed 9-2-87; 8:45 am]

BILLING CODE 4310-22-M

[AZ-940-07-4132-04]

Arizona State Office; Temporary Closure

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of office closure.

SUMMARY: On Monday, September 14, 1987, the Bureau of Land Management Arizona State Office, 3707 North 7th Street, Phoenix, Arizona, will be closed. Limited access to the office due to street closures will occur as a result of the visit of Pope John Paul II to the City. Applications and other documents will be accepted for filing on the next business day, September 15, 1987.

The Arizona State Office closure will have no effect on the District and Resource Area Offices or the Phoenix Training Center. Those offices will remain open to the public.

EFFECTIVE DATE: September 14, 1987.

FOR FURTHER INFORMATION CONTACT: Joy Ayers, Arizona State Office, Bureau of Land Management, P.O. Box 16563, Phoenix, Arizona 85011, (602) 241-5547.

Beaumont C. McClure,

Acting State Director.

[FR Doc. 87-20243 Filed 9-2-87; 8:45 am]

BILLING CODE 4310-32-M

[NM-010-4212-14; NM NM 68429]

Realty Action on Proposed Land Disposal in Santa Fe County, NM

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This notice is to advise the public that the Albuquerque District, of the Bureau of Land Management (BLM), is proposing to dispose of 10 acres of public land near the Village of La Cienega within Santa Fe County, State of New Mexico. The BLM has determined that the acres of public land described below are suitable for disposal under section 203 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. 1713 (1976).

New Mexico Principal Meridian, New Mexico

T. 16 N., R. 8 E.,
Sec. 31, S½SE¼NE¼SE¼, N½NE¼ SE¼SE¼

These lands are presently used for landfill purposes and were C&MU classified on September 9, 1970. The classification effectively segregates against sales under R.S. 2455.

Currently the injunction filed in the National Wildlife Federation lawsuit prohibits the modification or termination under FLPMA of any C&MU classification in effect on January 1, 1981, unless they are not isolated, too rough for cultivation or too mountainous.

The subject parcel has been determined to be suitable for disposal under the above criteria. The lands are also suitable for disposal as outlined in 43 CFR 2710.0-3(a)2 whereby it shall serve important public objectives in providing Santa Fe County residents a facility to aid in community expansion and economic development.

This Notice of Realty Action will be published once a week for three weeks in a newspaper of general circulation and will be sent to the New Mexico Congressional Delegation and the relevant congressional committees by BLM.

The terms and conditions applicable to the disposal are:

1. The patent will contain a reservation to the United States for ditches and canals.

2. Disposal is for surface estate only. The patent will contain a reservation to the United States for all minerals.

3. Disposal will be made subject to prior existing rights.

Additional information pertaining to this disposal including the environmental documents are available for review at the Taos Resource Area Office, Plaza Montevideo, Cruz Alta Road, Taos, New Mexico 87571, or telephone (505) 758-8851. For a period of 45 days from the date of this notice, interested parties may submit written comments to the Taos Resource Area Manager. Any adverse comments will be evaluated by the New Mexico State Director, Bureau of Land Management, who may vacate or modify this realty action and issue a final determination.

In the absence of any action by the State Director, this realty action will become the final determination of the Department of the Interior.

Richard Fagan,

Acting District Manager.

Dated: August 24, 1987.

[FR Doc. 87-20244 Filed 9-2-87; 8:45 am]

BILLING CODE 4310-FB-M

Realty Action; Direct Sale of O&C Land in Jackson County, OR

The following land has been found suitable for direct sale under sections 203 and 209 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1713 and 1719, at no less than the appraised fair market value of $6,000.00:

Willamette Meridian, Oregon

T. 38 S., R. 3 E.,
Sec. 31, a portion of the NE¼SE¼

containing 23.4 acres.

The above described federal land is hereby segregated from apropriation under the public land laws, including the mining laws, but not from sale under the above cited statutes pending disposition of this action or 270 days from the date of this publication of this notice, whichever occurs first.

The land will not be offered for sale until at least sixty (60) days after publication of this notice. The land is being offered by direct sale procedures to Mr. James C. Miller of Ashland, Oregon under 43 CFR 2711.3-3 sections (a) (3) and (4). To do otherwise could cause Mr. Miller to suffer substantial economic loss to his ranching business. The ownership pattern and access of this area also indicates that a direct sale is appropriate.

This parcel was acquired for a specific purpose and is no longer required for that or any other Federal purpose. No significant resource values will be affected by the disposal. The consistency of this area's resource values will be maintained even though the sale is to occur.

This notice replaces the Notice of Realty Action; Direct Sale of O&C Status Federal Land in Jackson County, Oregon, published in the **Federal Register**, Volume 52, No. 142, on July 24, 1987, on pages 27861 and 27862, which is hereby canceled in its entirety.

For Further Information Contact: Don Kreitner, Klamath Area Realty Specialist of the Medford District Office, 3040 Biddle Road, Medford, Oregon 97504, (503) 776-3923.

Conditions, reservations and terms of the sale are as follows:

1. Acceptance of the sale will also constitute an application for conveyance of the mineral estate, with the exception of the oil and gas resources which will be reserved to the United States, in accordance with section 209 of the Federal Land Policy and Management Act U.S.C. 1719. The sale proponent must include with his bid deposit a nonrefundable $50.00 filing fee for the conveyance of the mineral estate.

2. Mr. Miller shall, at the same time the patent is issued, grant to the United States an exclusive easement for the Bureau of Land Management's Burnt Creek Road #39-3E-21 as described within Medford District's original fee acquisition RE-M-487 (50' C/L by 2100' for 4.2 acres more or less).

3. Rights-of-way for ditches and canals will be reserved to the United States under 43 U.S.C. 945.

4. Patents will be issued subject to all valid existing rights and reservations of records.

If the offer is not accepted by Mr. Miller, the land will be offered to the public on a continuing basis until sold or withdrawn from sale.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the District Manager, Bureau of Land Management, Medford District Office, 3040 Biddle Road, Medford, Oregon 97504. Objections will be reviewed by the State Director who may sustain, vacate or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of the Interior.

Date of issue August 26, 1987.

David A. Jones,

District Manager.

[FR Doc. 87-20245 Filed 9-2-87; 8:45 am]

BILLING CODE 4310-84-M

Minerals Management Service

Information Collection Submitted for Review

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting Jeane Kalas at 303-231-3046. Comments and suggestions on the requirement should be made directly to the Bureau Clearance Officer at the telephone number listed below and to the Office of Management and Budget Interior Department Desk Officer, Washington D.C. 20503, telephone 202-395-7340.

Title: Auditing and Financial Systems Reports on Solid Minerals.

Abstract: The information used in the Auditing and Financial System (AFS) is collected from lessees and lease operators producing minerals from leased Indian lands or from leased Federal lands. The information provides comprehensive data on solid mineral sales and royalties and is necessary to document payments, maintain royalty accounts, and audit. The AFS, a revenue accounting system, is used as a cross-check with the Production Accounting and Auditing System (PAAS), which tracks mineral production. The data comparison also aids in tracking losses caused by carelessness, fraud, and theft.

Bureau Form Number: MMS-4014, MMS-4030.

Frequency: Monthly, quarterly, annually, or on occasion.

Description of Respondents: Solid mineral companies and leases operators producing minerals from leased Federal and Indian lands.

Annual Responses: 846

Annual Burden Hours: 1242

Bureau Clearance Officer: Dorothy Christopher, 703-435-6213.

Date: August 11, 1987.

Jerry D. Hill,

Associate Director for Royalty Management.

[FR Doc. 87-20246 Filed 9-2-87; 8:45 am]

BILLING CODE 4310-MR-M

Information Collection Submitted for Review

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting Jeane Kalas at 303-231-3046. Comments and suggestions on the requirement should be made directly to the Bureau Clearance Officer at the telephone number listed below and to the Office of Management and Budget Interior Department Desk Officer, Washington, DC 20503, telephone 202-395-7340.

Title: Application For and Disposition Of Royalty Oil Taken In Kind.

Abstract: The Government has the option to accept oil rather than money in payment of royalties owed by companies producing minerals from leased Federal onshore and offshore lands. Title to such royalty oil is transferred to the Government, and when the Secretary determines that small refiners do not have access to adequate supplies of oil, the Secretary conducts a sale of royalty oil to eligible refiners. Form MMS-4070, Application for the Purchase of Royalty Oil, is submitted by refiners interested in purchasing royalty oil. The information collected is used by MMS to determine if the applicant meets eligibility requirements, and provides a basis for the allocation of available royalty oil among eligible refiners. Form MMS-4071, Semiannual Report of Royalty-In-Kind Oil Entitlements and Deliveries, documents monthly entitlements and deliveries of royalty oil from lease operators to eligible refiners.

Bureau Form Number: MMS-4070, MMS-4071.

Frequency: On occasion, semiannually, annually.

Description of Respondents: Operators of Federal offshore and onshore leases, oil refiners.

Annual Responses: 1,770

Annual Burden Hours: 833.

Bureau of Clearance Officer: Dorothy Christopher, 703-435-6213.

Dated: July 24, 1987.

Jerry D. Hill,

Associate Director for Royalty Management.

[FR Doc. 87-2024 Filed 9-2-87; 8:45 am]

BILLING CODE 4310-MR-M

DEPARTMENT OF JUSTICE

Lodging of Consent Decree; Alexander et al.

In accordance with the policy of the Department of Justice, 28 CFR 50.7, notice is hereby given that on August 19, 1987, a proposed partial consent decree in *United States v. Alexander et al.*, Civil Action No. G-86-267, was lodged with the United States District Court for the Southern District of Texas. This partial consent decree settles a potion of a lawsuit filed on July 18, 1986, pursuant to section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9607, for the recovery of response costs incurred by the United States with respect to a hazardous waste site located in LaMarque, Texas, and known as the "Motco Site." The complaint alleged, among other things, that the defendants generated hazardous substances that are located at the Site and that the United States has incurred and will continue to incur response costs in response to the release or threat of release of hazardous substances.

Under the terms of the proposed partial consent decree, the settling defendants agree to fund and perform onsite remedial work at the Site. The partial consent decree does not address offsite and groundwater remedial work, nor does it resolve the claims of the United States relative to such work. The partial consent decree includes the preauthorization by the Environmental Protection Agency of a claim by the settling defendants against the Hazardous Substance Response Trust Fund for 21% of the cost of the remedial work undertaken by the settling defendants, subject to a cap of $9.324 million. The partial consent decree also calls for the settling defendants to reimburse the United States for $2,586,034.11 in past government response costs incurred through March 31, 1986, and to reimburse the United States for all of its response and oversight costs related to the onsite remedial work incurred after March 31, 1986.

The Department of Justice will receive comments relating to the proposed partial consent decree for a period of 30 days from the date of this publication. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, 10th and Pennsylvania Avenue, NW., Washington, DC 20530. All comments should refer to *United States v. Alexander et al.*, D.J. Ref. 90-11-3-74.

The proposed partial consent decree may be examined at the following offices of the United States Attorney and the Environmental Protection Agency ("EPA"):

EPA Region VI

Contact: Pamela Phillips, Office of Regional Counsel, U.S. Environmental Protection Aency, Region VI, 1445 Ross Avenue, Dallas, Texas 75202-2733, (214) 655-2120

United States Attorney's Office

Contact: Robert Darden, Assistant United States Attorney, U.S. Courthouse and Federal Building, 515 Rusk, Houston, Texas 77002, (713) 229-2691

Copies of the proposed partial consent decree may also be examined at the Environmental Enforcement Section, Land and Natural Resources Division, United States Department of Justice, Room 1515, 10th and Pennsylania Avenue, NW., Washington, DC 20530. A copy of the proposed partial consent decree may be obtained by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy of the decree, please enclose a check for copying costs in the amount of $20.30 payable to Treasurer of the United States.

Roger J. Marzulla,

Acting Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 87-20354 Filed 9-2-87; 8:45 am]

BILLNG CODE 4410-01-M

Lodging of Consent Decree; Koppers Co., Inc., et al.

In accordance with the policy of the Department of Justice, 28 CFR 50.7, notice is hereby given that on August 7, 1987, a proposed Consent Decree in *United States v. Koppers Co., Inc., et al.*, was lodged with the United States District Court for the District of Massachusetts. The Consent Decree concerns releases of hazardous substances and remedial measures to be taken in response thereto at the Hocomonco Pond Site in Westborough, Massachusetts, as well as recovery of Environmental Protection Agency's ("EPA") past costs for response action, pursuant to sections 104, 106 and 107 of the Comprehensive Environmental Response, Compensation and Liability Act, as amended by the Superfund Amendments and Reauthorization Act, 42 U.S.C. 9604, 9606 and 9607, and section 7003 of the Resource Conservation and Recovery Act, 42 U.S.C. 6973.

Under the terms of the Consent Decree, Koppers will implement a remedy at the site and pay $400,000 to EPA for reimbursement of EPA's past costs. Koppers will also pay EPA's oversight costs as they are incurred up to the amount of $230,000. Koppers will also pay the State's oversight costs up to the amount of $15,000.

The Department of Justice will receive comments relating to the proposed Consent Decree for a period of 30 days from the date of this publication. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, Department of Justice, Washington, DC 20530. All comments should refer to *United States v. Koppers Co., Inc., et al.*, D.J. Ref. 90-11-2-165.

The proposed Consent Decree may be examined at the office of the United States Attorney, 1107 John W. McCormack Federal Building, USPO and Courthouse, Boston, Massachusetts 02109 and at the Region I office of the Environmental Protection Agency, John F. Kennedy Federal Building, Boston, Massachusetts 02203. Copies of the proposed Consent Decree may also be examined at the Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice, Room 1515, Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the proposed Consent Decree may be obtained by mail from the Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice. Any request for a copy of the Consent Decree should be accompanied by a check in the amount of $1.50 for copying costs ($0.10 per page) payable to "United States Treasurer."

Roger J. Marzulla,

Acting Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 87-20355 Filed 9-2-87; 8:45 am]

BILILING CODE 4410-01-M

Office of the Attorney General

Pollution Control; Lodging of Consent Judgment Pursuant to Clean Air Act; Esselte Pendaflex Corp.

In accordance with Departmental

policy, 28 CFR 50.7, notice is hereby given that a proposed Consent Judgment ("Judgment") in *United States v. Esselte Pendaflex Corporation*, C.A. 85-5511, has been lodged in the United States District Court for the District of New Jersey on August 18, 1987.

The proposed Judgment concerns alleged violations of the Clean Air Act ("Act"), 42 U.S.C. 7401 *et seq.*, and provisions of the New Jersey State Implementation Plan ("SIP") established pursuant to Section 110 of the Act, 42 U.S.C. 7410. The alleged violations occurred during the defendant's manufacture of metal office furniture in Moonachie, New Jersey. During the manufacturing process, coatings containing volatile organic substances ("VOS") were applied in excess of the amounts permitted by the New Jersey SIP. The proposed Judgment requires the company to comply with the New Jersey SIP. Stipulated penalties for future violations are also provided. Finally, the proposed Judgment requires the defendant to pay a $110,000 civil penalty for past violations.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Judgment. Comments should be addressed to the Assistant Attorney General for the Land and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States v. Esselte Pendaflex Corporation*, D.J. Ref. No. 90-5-2-1-873.

The proposed Judgment may be examined at the Office of the United States Attorney, 970 Broad Street, Room 502, Newark, New Jersey 07102, the Region II Office of the Environmental Protection Agency, 26 Federal Plaza, New York, New York 10278, and the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1515, Ninth Street and Pennsylvania Avenue NW., Washington, D.C. 20530. A copy of the proposed Judgment may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice.

Dated: August 6, 1987.

Roger J. Marzulla,

Acting Assistant Attorney General, Land and Natural Resources Division, Department of Justice.

[FR Doc. 87-20248 Filed 9-2-87; 8:45 am]

BILLING CODE 4410-01-M

Antitrust Division

Proposed Termination of Judgment and Decree

Notice is hereby given that Manville Sales Corporation ("Manville"), as successor to Holophane Company, Inc. ("Holophane"), has filed with the United States District Court for the Southern District of Ohio a motion to terminate the judgment and decree ("judgment") in *United States v. Holophane Company, Inc.*, Civil No. 2659; and the Department of Justice ("Department"), in a stipulation also filed with the court, has consented to termination of the judgment, but has reserved the right to withdraw its consent pending receipt of public comments. The complaint in this case (filed on November 10, 1949) alleged that Holophane, along with two foreign firms named as co-conspirators but not defendants, conspired to divide international markets for the production, distribution and sale of prismatic glassware and lighting fixtures containing prismatic glassware ("prismatic products"). The judgment (entered on February 8, 1954) enjoins Holophane, among other things, from continuing to carry out any of the agreements which constituted the alleged conspiracy. The judgment further enjoins Holophane from granting any technological information or know-how to any foreign person on an exclusive basis and from granting any person rights under trademarks or trade names in any foreign country where the purpose of effect of such grant is to interfere with the exportation from the United States to such foreign country of goods manufactured by Holophane.

The Department has filed with the court a memorandum setting forth the reasons why the Department believes that termination of the judgment would serve the public interest. Copies of the complaint and judgment, Manville's motion papers, the stipulation containing the Government's consent, the Department's memorandum and all further papers filed with the court in connection with this motion will be available for inspection at Room 3233, Antitrust Division, Department of Justice, 10th Street and Pennsylvania Avenue, NW., Washington, DC 20530 (telephone 202-633-2481), and at the Office of the Clerk of the United States District Court for the Southern District of Ohio, Eastern Division, Federal Building and U.S. Courthouse, 85 Marconi Boulevard, Columbus, Ohio 43215. Copies of any of these materials may be obtained from the Antitrust Division upon request and payment of the copying fee set by Department of Justice regulations.

Interested persons may submit comments regarding the proposed termination of the judgment to the Department. Such comments must be received within the 30-day period established by court order, and will be filed with the court.

Comments should be addressed to John A. Weedon, Chief, Cleveland Field Office, Antitrust Division, United States Department of Justice, 995 Celebrezze Federal Building, Cleveland, Ohio 44199 (telephone 216-522-4070).

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 87-20300 Filed 9-2-87; 8:45 am]

BILLING CODE 4410-01-M

Office of Juvenile Justice and Delinquency Prevention

Grants and Cooperative Agreements; Missing Children's Assistance Act Final Program Priorities

AGENCY: Office of Juvenile Justice and Delinquency Prevention, Justice.

ACTION: Notice of final program for third year program under Missing Children's Act.

SUMMARY: The Office of Juvenile Justice and Delinquency Prevention is publishing its final program priorities for making grants and contracts under the Missing Children's Assistance Act, Title IV of the Juvenile Justice and Delinquency Prevention Act of 1974, for the third year of the Missing Children's Program.

FOR FURTHER INFORMATION CONTACT: Michelle Easton, Coordinator, Missing Children's Program, Office of Juvenile Justice and Delinquency Prevention, 633 Indiana Avenue, NW., Washington, DC 20531, (202) 724-7655.

SUPPLEMENTARY INFORMATION: Responsibility for establishing annual research, demonstration, and service program priorities for making grants and contracts pursuant to Section 406 of the Missing Children's Assistance Act rests with the Administrator of the Office of Juvenile Justice and Delinquency Prevention. As required by the Act, the Administrator announced his proposed program priorities on May 22, 1987, and invited public comment on these priorities for 60 days. Several comments were received on this notice. The comments were generally supportive of the new proposed program priorities. The Administrator is now announcing the establishment of the final funding priorities.

The final funding priorities follow:

1. Prevention. A variety of programs are currently used to educate parents, children, and community agencies and organizations in ways to prevent the abduction and sexual exploitation of children. As few programs target the broad range of children's ages, standards for curricula need to be developed for pro-active prevention education programs that would apply to children of all ages.

2. Training for Local Officials on Exploitation of Children. Current emphasis on training in this area has been primarily at the state and Federal levels. It is important that local officials become better informed on issues relating to child exploitation, including how best to deal with those who exploit children and the children harmed by the exploitation.

3. Training and Policy Development for Law Enforcement Administrators on Missing and Exploited Children Policies and Procedures. Expansion of current training programs in this area is needed to further educate elected officials, appointed managers, judges and district attorneys, in addition to law enforcement officials.

4. Comparative Systems Responses to the Return of Missing Children to Their Familes. The project would examine the processes, and improvements that could be made in the processes, for returning missing children to their families.

5. The Child Victim as Witness Research and Development Program. This study will design, implement and test new strategies to be used to improve court policies and practices for handling child victim witnesses.

6. Families of Missing Children: Psychological Consequences and Promising Interventions. This research will increase our knowledge of and develop effective treatment of alternatives for the psychological consequences of families with missing exploited children.

7. Assistance to Private Voluntary Organizations. The Administrator has added this program to the 1987 Final Funding Priorities. This is a continuation of a 1986 Funding Priority. The grants are intended to expand the capacity of private voluntary organizations serving missing and exploited children.

Deletion from Proposed Funding Priorities. Deleted from the Proposed Funding Priorities published on May 22, 1987 is the Public Awareness Campaign. Instead we will fund additional assistance to Private Voluntary Organizations. We will consider the Public Awareness Campaign again in FY 1988. Pursuant to section 404(a) and (b), the following programs were awarded or will be awarded with FY 1987 Missing Children's Funds:

1. The National Center for Missing and Exploited Children to: (a) Provide the information derived from the National Toll-Free telephone line to appropriate law enforcement entities and to enable individuals to report information regarding the location on any missing child, or a child 13 years of age or younger, whose whereabouts are unknown to such child's legal custodian, and request information pertaining to procedures necessary to reunite such children with such child's legal custodian. (Section 404(a)(3), 404(b)(1))

(b) Serve as a national resource center and clearinghouse. (Section 404(b)(2))

2. Institute for Non-profit Organization Management (INPOM) to: Serve as a national resource center and clearinghouse that focus on providing technical assistance to private voluntary organizations working on the issue of missing and exploited children. (Section 404(b)(2))

3. National Incidence Study: Having completed several pilot studies, funding of the first national incidence study will begin in 1987. Results of the study are anticipated in 1988. (Section 404(b)(3))

Dated: August 28, 1987.

Approved:

Verne L. Speirs,

Administrator, Office of Juvenile Justice and Delinquency Prevention.

[FR Doc. 87-20274 Filed 9-2-87; 8:45 am]

BILLING CODE 4410-18-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Meeting; Inter-Arts Advisory Panel

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Inter-Arts Advisory Panel (Dance, Inter-Arts and State Programs Presenting Touring Initiative) to the National Council on the Arts will be held on September 19, 1987 from 10:00 a.m.-5:00 p.m. in room M0-7 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting will be open to the public on September 19, 1987 from 3:30 p.m.-5:00 p.m. The topics for discussion will include guidelines and policy issues.

The remaining sessions of this meeting on September 19, 1987 from 10:00 a.m.-3:30 p.m. are for the purpose of application review. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

If you need special accommodations due to a disability, please contact the Office for Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682-5532, TTY 202/682-5496 at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682-5433.

Dated: August 28, 1987.

Yvonne M. Sabine,

Acting Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 87-20249 Filed 9-2-87; 8:45 am]

BILLING CODE 7537-01-M

Meeting; Inter-Arts Advisory Panel

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Inter-Arts Advisory Panel (Folk Arts Advancement) to the National Council on the Arts will be held on September 21, 1987, from 9:00 a.m.-4 p.m. in room 716 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the Agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682-5433.

Dated: August 28, 1987.

Yvonne M. Sabine,

Acting Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 87-20250 Filed 9-2-87; 8:45 am]

BILLING CODE 7537-01-M

NATIONAL SCIENCE FOUNDATION

United States Antarctic Program Safety Review Panel; Meeting

The National Science Foundation announces the following meeting:

Name: United States Antarctic Program (USAP) Safety Review Panel (USRP).

Date and Time: September 17, 18, 1987: 9:00 a.m. to 5:00 p.m. each day.

Place: Sheraton Washington, 2660 Woodley Road NW., Washington, DC.

Type of Meeting: Open.

Contact Person: Mr. Russell L. Schweickart, Chairman, USAP Safety Review Panel, Room 510, National Science Foundation, Washington, DC 20550, Telephone (202) 357-7673.

Minutes: May be obtained from contact person listed above.

Purpose of Meeting: Initial meeting of the USAP Safety Review Panel, to discuss organizational matters and to provide background information to the panel.

Agenda: A general meeting to introduce the panel to the nature and scope of the U.S. Antarctic Program, and to acquaint the panel with safety issues in several areas, including aviation, fire, and industrial.

Reason for Late Notice: Unable to confirm meeting location.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 87-20275 Filed 9-2-87; 8:45 am]

BILLING CODE 7555-01-M

Advisory Committee on Chemical, Biochemical, and Thermal Engineering; Meeting

The National Science Foundation announces the following meeting:

Name: Advisory Committee on Chemical, Biochemical, and Thermal Engineering.

Type of Meeting: Spetember 22, 1987—Open; September 23, 1987—Open.

Date: September 22 and 23, 1987.

Place: 1800 G Street NW., Washington, D.C. 20550, Room 643.

Contact Person: Dr. E.M. Sparrow Division Director for Chemical, Biochemical, and Thermal Engineering, Room 1126, National Science Foundation, Washington, DC 20550. Telephone: 202-357-9606.

Summary Minutes: May to obained from Dr. E.M. Sparrow, Director, Division of Chemical, Biochemical, and Thermal Engineering, Room 1126, National Science Foundation, Washington, DC 20550. Telephone: 202-357-9606.

Purpose of Committee: To provide directions to Chemical, Biochemical, and Thermal Engineering research.

Agenda:

Tuesday, September 22, 1987—Open

9:00 a.m.—Report on the Chemical, Biochemical, and Thermal Engineering Program and Divisional Activities, and on Engineering Directorate activities.
11:45 a.m.—Recess.
1:15 p.m.—The National Science Foundation/Engineering vision and community responses to it.
4:00 p.m.—Committee recommendations relevant to the National Science Foundation/Engineering vision.
5:00 p.m. Adjournment for the day.

Wednesday, September 23, 1987—Open

8:30 a.m.—New directions in chemical, biochemical, and thermal engineering
10:00 a.m.—Drafting of Committee report
11:45 a.m.—Recess
1:15 p.m.—Continuation of report drafting
2:00 p.m.—Presentation and discussion of the report
4:00 p.m.—Adjourn.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 87-20276 Filed 9-2-87; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50-325 and 50-324]

Exemption Determinations; Carolina Power & Light Company, et al. (Brunswick Steam Electric Plant, Units 1 and 2)

I.

Carolina Power & Light Company (the licensee) is the holder of Facility Operating License Nos. DPR-71 and DPR-62, which authorize operation of the Brunswick Steam Electric Plant, Units 1 and 2, respectively (Brunswick or the facilities). The licenses provide, among other things, that the facilities are subject to all rules, regulations and Order of the Nuclear Regulatory Commission (the Commission) now or hereafter in effect.

The facilities are boiling water reactors located at the licensee's site in Brunswick County, North Carolina.

II.

Section 50.48 of 10 CFR Part 50 requires that licensed operating reactors be subject to the requirements of Appendix R of 10 CFR Part 50. Appendix R contains the general and specific requirements for fire protection programs at licensed nuclear facilities. On February 17, 1981, the fire protection rule for nuclear power plants, 10 CFR 50.48 and Appendix R, became effective. This rule required all licensees of plants licensed prior to January 1, 1979, to submit by March 19, 1981: (1) Plans and schedules for meeting the applicable requirements of Appendix R, (2) a design description of any modifications proposed to provide alternative safe shutdown capabilities pursuant to paragraph III.G.3 of Appendix R, and (3) exemption requests for which the tolling provisions of § 50.48(c)(6) were to be invoked.

III.

By letter dated December 3, 1986, the licensee requested an exemption from Section III.J. of Appendix R to 10 CFR Part 50 for the lights in the control room common to both Units 1 and 2 of the Brunswick Steam Electric Plant. Section III.J requires emergency lighting units with at least an 8-hour battery power supply to be provided in all areas needed for operation of safe shutdown equipment and in access and egress routes thereto.

The lights in the control room are designed to be powered by the emergency diesel generators in the event of the loss of offsite power and by the station batteries upon the additional loss of the emergency diesel generators. In addition, the power sources from the diesel generators are separated from each other by three-hour rated fire barriers in the diesel generator building and in separate underground ducts to the control building. The licensee notes that a single credible fire, exterior to the control building, will not cause a loss of control room lighting; and, thus, the licensee has requested an exemption. The acceptability of the exemption request is addressed below. More details are contained in the Commission's related Safety Evaluation issued concurrently with this exemption.

The licensee's exemption request involves the need for 8-hour battery-powered lighting units in areas having safe shutdown equipment. The reason for requiring 8-hour battery-powered emergency lighting is to ensure that at least minimum lighting is available for performance of manual actions necessary for safe shutdown after a fire. The licensee requested the exemption to allow the use of:

1. Diesel generators to power lighting in case of loss of offsite power.

2. Station batteries capable of supplying power for a minimum of 120 minutes if the diesel generators fail.

The Control Room area is common to both units and area lighting is provided equally by each unit. Every other light fixture in the area is fed from the opposite unit. The normal AC lighting power sources for the Control Room are physically separated by the length of the Control Building, since the cables enter the building at opposite ends. This arrangement will assure that adequate Control Room lighting will be provided for any fire where safe shutdown is accomplished from the Control Room.

The Control Room area is the only area where both sources of power come

in close proximity. A Control Room fire significant enough to damage both lighting power sources would result in an evacuation of the area. For this condition, egress lighting (eight-hour battery units) from the area has been installed.

For a fire in any area outside the Control Room, adequate Control Room lighting will be provided by either the diesel generators or the station batteries. These provisions will assure that lighting is provided for a duration which would meet and, in fact, exceed the eight-hour requirement in paragraph III.J of Appendix R.

In addition, both trains of the emergency diesel generators are routed underground and separated by a 3-hour barrier in the Diesel Generator Building. Therefore, a single credible fire either in the building or in the yard will not result in a loss of both trains from both units. Therefore, a single credible fire exterior to the Control Building will not cause a loss of AC lighting.

IV.

The licensee provided a determination that special circumstances exist under 10 CFR 50.12(a). As discussed above, the underlying purposes of the requirement of Section III.J of Appendix R to 10 CFR Part 50 are to ensure that at least minimum lighting is available for the performance of actions necessary for safe shutdown after a fire. The application of the regulation in this case is not necessary to achieve its underlying purpose. The purpose can be met with the use of emergency diesel generators and station batteries.

Accordingly, the Commission has determined that pursuant to 10 CFR 50.12(a), the Exemption, as described in Section III, is authorized by law and will not present an undue risk to the public health and safety and is consistent with common defense and security, and special circumstances are present for the Exemption, in that application of the regulation in these particular circumstances is not necessary to achieve the underlying purposes of Appendix R to 10 CFR Part 50. Therefore, the Commission hereby grants the Exemption from paragraph III.J of Appendix R to 10 CFR Part 50 to allow the use of emergency lighting, powered initially by the emergency diesel generators, and then by station batteries.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this Exemption will have no significant impact on the environment (52 FR 29452). This exemption is effective upon issuance.

Dated at Bethesda, Maryland this 27th day of August 1987.

For the Nuclear Regulatory Commission.

Steven A. Varga,

Director, Division of Reactor Projects I/II Office of Nuclear Reactor Regulation.

[FR Doc. 87-20326 Filed 9-2-87; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF PERSONNEL MANAGEMENT

Director's Task Force on the Combined Federal Campaign

AGENCY: Office of Personnel Management.

ACTION: Notice of open meetings.

SUMMARY: OPM is holding open meetings concerning the future of the Combined Federal Campaign. According to the provisions of section 10 of the Federal Advisory Committee Act (Pub. L. 92-463), notice is hereby given that meetings of the Director's Task Force on the Combined Federal Campaign will be held on:

DATES:

September 16, 1987, 10:00 a.m., Federal Building, Room 305C, 26 Federal Plaza, New York, N.Y.

September 23, 1987, 1:00 p.m., Federal Office Building, Room 350, 23 South Dearborn, Chicago, Ill.

September 25, 1987, 9:30 a.m., Federal Office Building, Room 754, 525 Griffin Street, Dallas, TX

September 29, 1987, 9:30 a.m., San Francisco Regional Training Center, 120 Howard Street, San Francisco, CA.

FOR FURTHER INFORMATION CONTACT: Jeremiah J. Barrett, Secretary, Director's Task Force on the Combined Federal Campaign, 1900 E Street NW., Room 7354, Washington, D.C. 20415, (202) 632-5564.

SUPPLEMENTARY INFORMATION: All persons wishing to testify before the Task Force must submit eight copies of their testimony to Mr. Barrett at the above address no later than seven days prior to the meeting at which they wish to testify.

Office of Personnel Management.

Constance Horner,

Director.

[FR Doc. 87-20495 Filed 9-2-87; 10:29 am]

BILLING CODE 6325-01-M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. 301-61]

Unfair Trade Practices; Brazil Patent Protection for Pharmaceuticals; Public Hearing

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of public hearing.

SUMMARY: USTR has schedule a public hearing in this investigation for September 14, 1987, at the Federal Home Loan Bank Board Building, 1700 G Street, NW., Washington, DC in the 6th floor Board Room.

FOR FURTHER INFORMATION CONTACT: Christina Lund, Director for Brazil and Southern Cone Affairs, Office of the U.S. Trade Representative, 600 17th Street, NW., Washington, DC, telephone (202) 395-5190; or Catherine R. Field, Assistant General Counsel, Office of the U.S. Trade Representative (same address), telephone (202) 395-3432.

SUPPLEMENTARY INFORMATION: On July 23, 1987, the U.S. Trade Representative initiated an investigation into the Brazilian Government's denial of patent protection to pharmaceutical products and processes for their manufacture. USTR requests comments regarding: (1) The effect of lack of patent protection in Brazil on investment; (2) other benefits that could accrue to Brazil when they provide patent protection to pharmaceuticals; and (3) the effect of Brazil's policy and practice of denying patent protection on U.S. firms operating in Brazil.

A public hearing is scheduled for September 14, 1987, at 10:00 a.m. at the Federal Home Loan Bank Board Building, 1700 G Street, NW., Washington, DC in the 6th floor Board Room. Interested persons desiring to present oral testimony must submit a request in writing, accompanied by a statement or brief in 20 copies in English by noon, September 7, 1987, to Christina Lund or Catherine Field at the address listed above. Remarks at the hearing should be limited to a 15-minute summary of the written statement to allow for possible questions from the hearing officers.

Persons desiring to make written comments only should provide a written statement in 20 copies in English by September 10, 1987, to the persons specified above.

Judith Hippler Bello,

Chairman, Section 301 Committee.

[FR Doc. 87-20389 Filed 9-2-87; 8:45 am]

BILLING CODE 3190-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-24858; File No. SR-Amex-87-117]

Self-Regulatory Organizations; Filing and Order Granting Accelerated Approval of Proposed Rule Change by American Stock Exchange, Inc. Relating to an Extension of the Rule 126(g) Precedence Based on Size Pilot Program

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on June 18, 1987, the American Stock Exchange, Inc. ("Amex" or "Exchange") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex Proposes to extend the Rule 126(g) precedence based on size pilot program, set forth in File No. SR-Amex-86-14,[1] unit May 1, 1988.

The text of the proposed rule change is available at the Office of the Secretary, Amex, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

It its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

(1) Purpose

In April 1986, the Amex proposed a three-month pilot program under Rule 126(g) during which orders to cross blocks of 50,000 shares or more would be permitted to have precedence over other bids and offers. (*See* File No. SR-Amex-86-14 and the Commission's order approving the pilot, note 1, *supra*, for details of the program.) On February 12, 1987 the Amex requested an extension of the Rule 126(g) precedence based on size pilot program until May 1, 1987 (File No. SR-Amex-86-6). The SEC granted the extension on March 20, 1987.[2] The Amex believes that extension of the pilot program for an additional year will enable the Exchange to study the pilot program for a period of time sufficient to assess adequately the effectiveness of the program.

(2) Basis

The proposed rule change is consistent with section 6(b) of the Act in general and furthers the objectives of section 6(b)5 in particular in that it is intended to remove impediments to and perfect the mechanism of a free and open market and a national market system and to facilitate transactions in securities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will impose no burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR-Amex-87-17 and should be submitted by September 24, 1987.

IV. Commission Findings and Order Granting Accelerated Approval

The Amex's original proposal to establish block size precedence,[3] was based on the Exchange's concern that an increasing number of block transactions in Amex listed securities were being conducted on regional exchanges rather than on the Amex. The Amex believed the reason for routing such block transactions to regional exchanges was not the cost of transactions on the Amex but rather the difficulty of effecting block transactions of large size without losing an excessive number of shares due to priority rules.

In its order originally approving the Rule 126(g) pilot, the Commission stated that it was unclear from the data provided by Amex that the Exchange was losing a significant amount of block order business to regional exchanges because of its inability to provide size precedence to such orders on the floor. In addition, the Commission expressed concern about changing existing Amex rules so that large institutional investors executing block size orders would have precedence over smaller customer orders. Nevertheless, the Commission decided to approve the proposal on a pilot basis in light of the fact that the size precedence would only be permitted in orders to cross blocks of 50,000 shares or more.[4] In addition, Amex indicated that it would carefully monitor the pilot program and provide the Commission with information regarding the operation of the pilot and its impact on the routing of block orders from Amex to regional exchanges.

As we noted in our order extending the pilot program until May 1, 1987,[5] Amex had stated that it did not have sufficient information to enable it to evaluate the effectiveness of the pilot program due to the relatively infrequent

[1] This pilot program was originally approved for a three month period by the Commission in Securities Exchange Act Release No. 23693, October 9, 1986, 51 FR 37358.

[2] Securities Exchange Act release No. 24240, March 20, 1987, 52 FR 10430.

[3] *See* note 1, *supra*.

[4] The Commission noted in its order that it believes that this restriction will serve to limit the application of the pilot program to the more active and liquid Amex issues.

[5] *See* note 2, *supra*.

use of the pilot program procedures. In spite of the most recent extension of the pilot program, the Commission believes there is still insufficient information to assess the effectiveness of the Amex's pilot program.[6] In view of this, the Exchange has requested an extension of the pilot program for one year, until May 1, 1988, to enable the Exchange to study the pilot for a period of time adequate to assess the effectiveness of the program.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and in particular, the requirements of Section 6 and the rules and regulations thereunder. The Commission believes that it is appropriate to extend, until May 1, 1988, the Amex size precedence pilot program in order to allow the Exchange to collect additional information regarding the operation and effectiveness of the pilot, thereby enabling the Exchange to assess adequately the effectiveness of the program.[7]

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof so that the Amex's pilot program under Rule 126(g) may continue on an uninterrupted basis. In addition, the Commission has not received any negative comment on the pilot during its operation.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change be, and hereby is, approved. For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

Dated: August 27, 1987.

[FR Doc. 87-20287 Filed 9-2-87; 8:45 am]

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[6] The Amex provided the Commission with an analysis of the results of the Rule 126(g) pilot program for the period from October 29, 1986, through February 28, 1987. During the approximately four month period covered by the data, the block precedence exemption was used only 29 times in 19 different securities. The Commission does not believe that this data provides sufficient information to enable the Commission to evaluate the effect of such a rule on those bids or offers over which block orders are given size precedence. *See* letter from Jules L. Winters, Senior Vice President, Trading Analysis Division, Amex, to Sharon Lawson, Branch Chief, Division of Market Regulation, SEC, dated April 24, 1987.

[7] Amex has indicated that it will provide us with information on the pilot by February 1, 1988, so that the Commission has time to review the data prior to the pilot's expiration.

[Release No. 34-24853; File No. SR-CBOE-87-24]

Self-Regulatory Organizations; Chicago Board Options Exchange, Inc.; Order Approving Proposed Rule Change

On June 9, 1987, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") submitted to the Securities and Exchange Commission ("Commission"), pursuant to section 19(b) (1) under the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b-4 thereunder,[2] a proposed rule change to permit the CBOE to list long term option series.

The proposed rule change was noticed in Securities Exchange Act Release No. 24662 (June 30, 1987), 52 FR 25678 (July 8, 1987). No comments were received by the Commission on the proposed rule change.

The proposed rule change will allow the Exchange to list long term equity and index option series. Currently, CBOE equity options generally begin trading approximately nine months prior to their expiration and index options begin trading 12 months prior to their expiration. The proposal would allow the CBOE to list option series that expire 12 to 24 months from the time they are listed.

The CBOE may add up to four additional expiration months for such longer term options. When listed, such option series will be opened for trading either when there is buying or selling interest, or 40 minutes prior to the close, whichever occurs first. No quotations will be posted for such long term option series until they are opened for trading. When these option series have less than 12 months to expiration (nine for equity options), they will be treated like any other non long-term option for all trading procedures, including opening procedures.

Strike price interval, bid/ask differential, and continuity rules will not apply to such long term option series until the time to expiration is less than 12 months for index options or less than nine months for equity options. The CBOE believes it is appropriate to waive these rules initially because of the lack of historical pricing data upon which to base such prices.[3] Strike price interval requirements and bid/ask differential rules currently are based on options that expire nine to 12 months from the time they begin trading. There currently is no basis for establishing accurate prices for long-term options that will expire 12 to 24 months from the time they begin trading. Moreover, the price of an option, whether an equity option or an index option, generally is dependent upon a series of factors.

In addition, the Commission notes that the bad/ask differential and continuity rules are part of the general rule that obligates market-makers to maintain a fair and orderly market.[4] The Commission believes that the requirements of this rule are broad enough, even in the absence of bid/ask differential and continuity requirements, to allow the Exchange authority to make a finding of inadequate market-maker performance should a market-maker enter into transactions or make bids or offers in long term options that are inconsistent with the maintenance of a fair and orderly market.

The Commission agrees that it may be impractical for the CBOE to apply the usual strike price interval, bid/ask differential, and continuity rules to the longer term options. However, the CBOE has stated that it will monitor the trading in the longer-term options closely to gain experience with regard to these options, and that it will reexamine the applicability of these rules to the long-term options in one year's time.[5]

The proposed rule change is designed to facilitate transactions in options by providing investors with additional means to hedge equity portfolios from long-term market risk. The proposal responds to requests from institutional customers to list long term options. Currently, institutional customers use options to hedge the risks associated with holding diversified equity portfolios. The proposal would allow institutions to use long term options to protect portfolios from long-term market moves with a known and limited cost. The Commission believes that the proposed rule change will thus better serve the long-term hedging needs of institutional investors.

Long term options also would provide institutions with an alternative to insuring portfolios with futures positions. Many institutional investors now use financially equivalent futures

[1] 15 U.S.C. 78s(b) (1) (1982).

[2] 17 CFR 240.19b-4 (1986).

[3] Telephone conversation between Frederic Krieger, Associate General Counsel, CBOE, and Joseph Furey, Branch Chief, Division of Market Regulation, Commission, August 19, 1987.

[4] *See* CBOE Rule 8.7: Obligations of Market Makers.

[5] Telephone conversation between Nancy Crossman, Associate General Counsel, CBOE, and Mary Revell, Staff Attorney, Division of Market Regulation, Commission, August 27, 1987.

that have terms of 12 months or more to hedge portfolio risk, and then "roll" the futures position forward to the next expiration month when the futures contract expires, to the competitive disadvantage of the Exchange. The Commission believes that the proposed long-term options will provide institutions with a broader range of choice in their use of hedging vehicles, and will place options on a more equal position with futures products.

For the above reasons, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6[6] and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[7] that the proposed rule change is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Jonathan G. Katz,

Secretary.

Dated: August 27, 1987.

[FR Doc. 87-20288 Filed 9-2-87; 8:45 am]

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[Release No. 34-24854; File No. SR-NASD-87-26]

Self-Regulatory Organizations; Amendment No. 1 to Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Prohibition Against Use of the Small Order Execution System ("SOES") by non-SOES Market Makers

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on June 24, 1987, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. On August 11, 1987, the NASD filed Amendment No. 1 to the proposed rule change. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change amends paragraph c(1)B of the Rules of Practice and Procedures governing the NASD's Small Order Execution System ("SOES") to prohibit NASDAQ market makers from using SOES to execute agency orders in securities in which they are not registered as SOES market makers. In addition the proposed rule change reorganizes and divides the existing language of the rule into subsections, such that section (c)(1)(B) will be section (c)(1)B(i)-(iv).

II. Self-Regulatory Organizations Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The proposed rule change to the NASD's SOES operation rules and Amendment No. 1 thereto would prohibit subscribers to the National Association of Securities Dealers Automated Quotation ("NASDAQ") System from utilizing SOES to execute agency orders in securities in which the subscribers are registered as NASDAQ market makers but are not also registered as SOES market makers. The NASD's SOES was designed to provide a cost-effective system for the automated execution of small, public, agency orders in NASDAQ securities. Currently customer transactions for up to 1,000 shares in NASDAQ National Market System securities or up to 500 shares in other NASDAQ securities may be automatically executed through SOES. Because SOES was designed to benefit public customers, only agency orders, including riskless principal transactions, received from public customers may be entered by SOES order-entry firms into SOES for execution.

The proposed rule filing would prohibit NASDAQ market makers from using SOES to execute agency orders in securities in which they are not registered as SOES market makers. For example, if firm X is a registered NASDAQ market maker in Apple Computer but is not a registered SOES market maker in that security it would be prohibited from using SOES to execute agency trades in the security.

Although statistics compiled by the NASD indicate that the number of agency orders entered by non-SOES market makers is minimal in comparison to total SOES transaction volume, the Board of Governors believes that the proposed prohibition will eliminate the possible execution of principal transactions through SOES, and thus ensure the maximum use of SOES for the benefit of public customers. In addition to the above-referenced proposed rule change to section (c)(1)(B), the NASD is proposing to reorganize and divide the existing language of the rule into subsections, such that section (c)(1)(B)(i)-(iv) will be created.

The NASD believes the proposed rule change is consistent with sections 11A(a) and 15A(b)(6) under the Act. In pertinent part, section 15A(b)(6) provides that the rules of a registered securities association be designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest. By prohibiting the use of SOES by non-SOES NASDAQ market makers the proposed rule change eliminates the possible execution of principal transactions through SOES thus protecting public customers. The proposed rule change is also consistent with the provisions of section 11A(a) under the Act in that the rule change will promote the maintenance of a fair and orderly marketplace.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Association believes that the proposed rule change does not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The Association solicited comments on the proposed rule change in Notice to Members 87-6, dated January 30, 1987

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[6] 15 U.S.C. 78f (1982).

[7] 15 U.S.C. 78s(b)(2) (1982).

[8] 17 CFR 200.30-3(a) (12) (1986).

("Notice").[1] Four of the comments received related to the proposed rule change. Of these, three came from NASD member firms and one came from the National Security Traders Association ("NSTA").

Two member firms supported the amendment as proposed. The NSTA found no fault with the proposed amendment but cautioned the NASD against adopting too many rules that may hamper the use of SOES. Finally, one member firm opposed adoption of the proposed amendment, emphasizing that only a minimal amount of orders would be affected by the proposed rule change. This member firm suggested that a rule to prohibit such activity seemed inappropriate.

III. Dates of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reason for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552 will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549. Copies of the filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by September 24, 1987.

For the Commission, by the Division of Market Regulations, pursuant to delegated authority, 200.30-3(a)(12).

Dated: August 27, 1987.

Jonathan G. Katz,

Secretary.

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[1] The Notice also solicited comment on another proposed amendment to section (c)(1)(B). At this time, however, the NASD has determined not to pursue action on the second amendment discussed in the Notice.

[Release No. 34-24855; File No. SR-NASD-87-21]

Self-Regulatory Organizations; Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Proposed Amendments to Schedule E of the NASD By-Laws

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on April 21, 1987 the National Association Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Set forth below is the text of a proposed rule change to Schedule E of the By-Laws ("Schedule E") of the NASD. Additions are italicized; deletions are in brackets.

Schedule E—Distribution of Securities of Members and Affiliates

Section 1—General

(a) No member of person associated with a member shall participate in the distribution of a public offering of *debt or equity* securities [issued or] to be issued by the member, *the parent of the member*, or an affiliate of the member and no member *or parent of a member* shall issue securities except in accordance with this Schedule.

Section 2—Definitions

For purposes of this Schedule, the following words shall have the stated meanings:

(a) Affiliate—

(1) a company which controls, is controlled by or is under common control with a member;

(2) *The term affiliate is presumed to include, but is not limited to, the following* [F] for purposes of subsection 2(a)(1) [hereof,]:

Section 2(a)(2)(i)through Section 2(a)(3)(iv): no change

(v) *a corporation, trust, partnership or other entity issuing financing instrument-backed securities which are rated by nationally recognized statistical rating organization in one of its four highest generic rating categories.*

(*b*) *Beneficial ownership—the right to the economic benefits of a security.*

[(b)] (*c*): no change, except delete "of the class of securities being offered" in (*c*)(3).

[(c)] (*d*) through [(e)] (*f*): no change

[(f)] (*g*) Immediate family—parents, mother-in-law, father-in-law, husband or wife, brother or sister, brother-in-law or sister-in-law, *soon-in-law or daughter-in-law, and* children, or any [relative] *other person* [to whom financial support is contributed directly or indirectly by an employee of, or person associated with, a member] *who is supported, directly or indirectly, to a material extent by an employee of, or person associated with a member.*

[(g)] (*h*) through [(i)] (*j*): no change

[(j)] (*k*) Public offering—any primary or secondary distribution of securities made pursuant to a registration statement or offering circular including exchange offer[ing]s, rights offerings, offerings made pursuant to a merger or acquisition, straight debt offerings and all other securities distributions of any kind whatsoever, except any offering made pursuant to an exemption under Sections 4(1), [or] 4(2), *or 4(6)* of the Securities Act of 1933, *as amended, or pursuant to Rule 504 (unless considered a public offering in the states where offered), Rule 505 or Rule 506 adopted under the Securities Act of 1933, as amended.*

[(k) (*l*) through [(m)] (*n*): no change

Section 3—Participation in Distribution of Securities of Member of Affiliate

(a) No member shall underwrite, participate as a member of the underwriting syndicate or selling group, or otherwise assist in the distribution of a public offering of an issue of debt or equity securities [issued or] to be issued by the member or an affiliate of the member unless the member is in compliance with subsection 3(b) and [either] subsection 3(c) [or 3(d)] below [, depending on the nature of the member's participation].

(b) In the case of a member which is a corporation, the majority of the board of directors, or in the case of a member

which is a partnership, a majority of the general partners or, in the case of a member which is a sole proprietorship, the proprietor as of the date of the filing of the registration statement and as of the effective date of the offering shall have been actively engaged in the investment banking or securities business for the five year period immediately preceding the filing of the registration statement.

(c) If a member proposes to underwrite, participate as a member of the underwriting syndicate or selling group, or otherwise assist in the distribution of a public offering of [debt or equity] *its own or an affiliate's* securities subject to this Section without limitation as to the amount of securities to be distributed by the member, one or more of the following three criteria shall be met:

(1) the price at which an equity issue or the yield at which a debt issue is to be distributed to the public is established at a price no higher or yield no lower than that recommended by a qualified independent underwriter which shall also participate in the preparation of the registration statement and the prospectus, offering circular, or similar document and which shall exercise the usual standards of "due diligence" in respect thereto; provided, however, that an offering of securities by a member which has not been actively engaged in the investment banking or securities business, in its present form or as a predecessor broker/dealer, for at least the five years immediately preceding the filing of the registration statement shall be managed by a qualified independent underwriter; or

(2) the offering is of a class of equity securities for which a bona fide independent market exists as of the date of the filing of the registration statement and as of the effective date thereof; or

(3) the offering is of a class of securities rated Baa or better by Moody's rating service or Bbb or better by Standard & Poor's rating service or rated in a comparable category by another rating service acceptable to the [Association] *Corporation.*

[(d) A member may participate as a member of the underwriting syndicate or selling group in the distribution of a public offering of debt or equity securities subject to this Section without regard to the requirements of subsection (c) if the member restricts its participation to an amount not exceeding ten percent of the total dollar amount of the offering and the offering is underwritten on a firm commitment basis and managed by a qualified independent underwriter.]

Section 4—[Escrow of Proceeds] Disclosure

[(a) All proceeds from an offering by a member of its securities shall be placed in a duly established escrow account and shall not be released therefrom or used by a member in any manner until the member has complied with Section 5 hereof.]

[(b)] *(a)* Any member offering its securities pursuant to this Schedule shall disclose in the registration statement, offering circular or similar document a date by which the offering is reasonably expected to be completed and the terms upon which the proceeds will be released from the escrow account described in subsection *5*(a) [hereof.];

(b) All offerings included within the scope of this Schedule shall disclose in the underwriting section of the registration statement, offering circular or similar document that the offering is being made pursuant to the provisions of this Schedule, that the offering is being made by a member of its own securities or those of an affiliate, the name of the member acting as qualified independent underwriter, if any, and that such member is assuming the responsibilities of acting as a qualified independent underwriter in pricing the offering and conducting due diligence.

Section 5—*Escrow of Proceeds;* Net Capital Computation

(a) All proceeds from an offering by a member of its securities shall be placed in a duly established escrow account and shall not be released therefrom or used by a member in any manner until the member has complied with subsection 5(b)hereof.

(b): no change

Section 6—Audit Committee[s]

Section 6 through Section 8: no change

Section 9—Offerings Resulting in Affiliation or Public Ownership of Member

If an issuer proposes to direct all or part of the proceeds from a public offering to a member or exchange securities by means of a public offering for an interest in a member, and the member is, or as a result of the proposed transaction would be, an affiliate of the issuer, or if an issuer proposes to engage in any offering which results in the public ownership of a member, *or if an issuer proposes to utilize the proceeds from a public offering to register a member, or if a member proposes simultaneously or subsequent to a public offering to enter into a transaction with the issuer or an affiliate of the issuer and as a result of the transaction would be an affiliate of the issuer,* the offering shall be subject to the provisions of this Schedule [E] to the same extent as if the [offering were of securities issued by a member] *transaction had occurred prior to the filing of the offering.*

Section 10 through Section 12: no change

Section 13—Sales to Employees—No Limitations

Notwithstanding the provisions of the Board of Governors' Interpretation With Respect To "Free-Riding and Withholding," a member may sell securities issued by a member [or an affiliate] *a parent* of a member, *or by an issuer treated as a member or parent of a member under* [which is subject to] Section 9 hereof to the member's employees; potential employees resulting from intended mergers, acquisitions, or other business combination of members resulting in one public successor corporation, or persons associated with it; and the immediate family of such employees or associated persons without limitation as to amount and regardless of whether such persons have an investment history with the member as required by that Interpretation; provided, however, that in the case of an offering of equity securities for which a bona fide independent market does not exist, such securities shall not be sold, transferred, assigned, pledged or hypothecated for a period of [six] *five* months following the effective date of the offering.

Section 14—Filing Requirements; Coordination with Corporate Financing Interpretation

(a) Nothwithstanding the provisions of the "Interpretation of the Board of Governors—Review of Corporate Financing" relating to factors to be taken into consideration in determining underwriter's compensation, the value of securities of a new corporate member succeeding to a previously established partnership or sole proprietorship member acquired by such member or person associated therewith, or created as a result of such reorganization, shall not be taken into consideration in determining such compensation.

(b) All offerings of securities included within the scope of this Schedule shall be subject to the provisions of the "Interpretation of the Board of Governors—Review of Corporate Financing" and documents and filing fees relating to such offerings shall be filed with the Corporation pursuant to the provisions of that Interpretation. The responsibility for filing the required documents and fees shall be that of the

member issuing securities, or, in the case of an issue of an affiliate, the managing underwriter or, if there is none, the member affiliated with the issuer.

(c) *All offerings included within the scope of this Schedule are required to be filed with the Corporation, with the appropriate documents and filing fee referred to unde subsection 14(b), notwithstanding the fact that the offering may otherwise be expressly exempted from filing under the provisions of the "Interpretation of the Board of Governors—Review of Corporate Financing."*

Section 15 through Section 17: no change

II. Self-Regulatory Organization's Statement Regarding the Proposed Rule Change

In its filing with the Commission the NASD included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The test of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in sections (A), (B) and (C) below of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Schedule E is intended to address the conflicts of interest which are present when a member performs the traditional underwriting functions of structuring the offering, negotiating the underwriting arrangements, establishing the public offering price, performing due diligence and recommending the purchase of securities to customers at the same time that the member or an affiliate of the member is the issuer. The NASD is proposing a number of amendments to Schedule E that are intended to clarify the scope and application of the Schedule. The majority of the proposals do not contain substantive changes, but merely clarify certain provisions and incorporate interpretations of the Schedule. However, one proposal to exempt investment grade financing instrument-backed securities from compliance with Schedule E represents a substantive change.

Section 1—General

The NASD is proposing to amend this provision to clarify that Schedule E is applicable to offerings by a parent of a member, as defined in current Subsection 2(g) of Schedule E, regardless of whether the member participates in the offering. Further, a technical amendment is proposed to be made to this provision to clarify that Schedule E applies to both debt and equity public offerings of securities.

Section 2—Definitions

Affiliate—Section 2(a) of Schedule E defines when an issuer is considered to be an affiliate of a member firm. The NASD is concerned that members and their counsel may look to the presumptions contained in subsection 2(a)(2) as the sole bases upon which affiliation may be found. Therefore, the NASD is proposing to amend the introductory language of Subsection 2(a)(2) to clarify that the term affiliate "is presumed to include, but is not limited to" those situations described in the enumerated presumptions.

Exemption for Financing Instrument-Backed Securities—The NASD is proposing to amend Subsection 2(a)(3) to exempt from Schedule E distributions by members and associated persons of securities issues by affiliates of members organized solely for the purpose of offering investment grade securities to the public collateralized with a specified portfolio of debt instruments.

Where an offering of financing instrument-backed securities rated investment grade is not issued by a member's affiliate, such offerings are exempt from NASD review pursuant to an exemption incorporated in the Interpretation of the Board of Governors—Review of Corporate Financing, Article III, Section 1 of the NASD Rules of Fair Practice ("Corporate Financing Interpretation"). [1] The exemption reflects the NASD view that competitive market forces that ordinarily affect investment grade debt can be relied upon to assure its fair pricing and the fairness and reasonableness of underwriting compensation. The NASD believes that a member's conflicts of interest addressed by Schedule E, related to the pricing of the offering, the member's due diligence obligation and suitability of investors, are absent in distributions of financing instrument-backed securities that have received an investment grade rating. Such an investment grade rating reflects the confidence of the rating agency regarding the ability of the issuing entity to pay dividends and to redeem the obligation when required to do so. In addition, the investment grade rating of securities routinely results in their sales to investors that are of an institutional or a financially sophisticated nature.

Further, since Subsection 2(a)(3)(iv) of Schedule E contains an exemption for debt and equity securities issued by a direct participation program, as defined in Article III, Section 34 of the Rules of Fair Practice, offerings of financing instrument-backed securities issued by a general or limited partnership or by a trust are exempt from Schedule E. Therefore, it is only offerings by corporate issues of financing instrument-backed securities that are subject to Schedule E. However, members and their counsel do not appear to be generally aware that an exemption is available for offerings of investment grade financing instrument-backed securities issued by a trust. Therefore, to avoid confusion on the part of members and their counsel as to whether offerings of financing instrument-backed securities by non-corporate issuers qualify for an exemption from Schedule E, the NASD is proposing that new Subsection 2(a)(3)(v) to Schedule E provide an exemption from Schedule E for offerings by a "corporation, trust, partnership or other entity issuing financing instrument-backed securities which are rated by a nationally recognized statistical rating organization in one of its four highest generic rating categories."

Beneficial Ownership—For purposes of determining affiliation, Subsection 2(a)(2) of Schedule E bases a presumption of affiliation on the beneficial ownership of 10% or more of the outstanding voting securities of one entity by the other entity. Subsequent to the adoption of amendments to Schedule E in 1983, the Board of Governors approved an interpretation that the concept of beneficial ownership contained in Schedule E, as well as in the Venture Capital Restrictions contained in the Corporate Financing Interpretation, refers to the ownership of the economic benefits of the security, rather than the right to vote the security.[2] Therefore, the NASD is proposing to amend Schedule E to include in new Subsection 2(b) a definition of the term "beneficial ownership" to provide that beneficial ownership is based on the "right to the economic benefits of a security."

Immediate Family—The NASD is proposing to amend the term "immediate family" contained in current Subsection 2(f) of Schedule E to include the son-in-law or daughter-in-law and any other person who is supported,

[1] *See NASD Manual*, ¶2151, p. 2025 (exemptions 1 and 4), May 1986.

[2] *See* SR-NASD-80-29; NASD Notice to Members 83-45 (August 17, 1983).

directly or indirectly, to a material extent by an employee of, or person associated with a member, in order to incorporate language similar to that contained in the Interpretation of the Board of Governors—"Free Riding and Withholding", Article III, Section 1 of the NASD Rules of Fair Practice.[3]

Public Offering—The NASD is proposing that the definition of public offering contained in current Subsection 2(j) of Schedule E be amended to reflect exemptions from Schedule E for offerings pursuant to section 4(6) of the Securities Act of 1933, Rule 504 (unless considered a public offering in the states where offered), Rule 505, and Rule 506 of Regulation D adopted by the Securities and Exchange Commission.

Section 3—Experience, Pricing and Due Diligence

The NASD is proposing to amend this section by deleting Subsection 3(d) and amending Subsection 3(a) in coordination therewith. Prior to the adoption of amendments to Schedule E in 1983, Schedule E required the participation of *two* qualified independent underwriters, except that only one qualified independent underwriter was required under Subsection 3(d) where the offering was underwritten on a "firm commitment" basis, was managed by the qualified independent underwriter and the affiliated member limited its participation to no more than 10% of the total dollar amount of the offering. Subsection 3(d) is now unnecessary as Subsection 3(c) was modified to only require the participation of one qualified independent underwriter and permits the affiliated member to participate to an unlimited extent in the offering.

Subsection 3(c) is proposed to be amended to clarify that compliance with Section 3 is required only when a member is participating in a distribution of its own or an affiliate's securities.

Section 4—Escrow of Proceeds

The NASD is proposing that provisions of Subsection (a) of Section 4 of Schedule E be located in Section 5 as Subsection (a) thereof in order to clarify the interrelation of the escrow requirement and the requirement contained in Section 5 of computing net capital prior to the release of offering proceeds from escrow.

Current Subsection 4(b) requires disclosure in the offering document of the date when a member expects to complete its offering of a security and the terms under which the proceeds will be released from escrow. The NASD is proposing that Subsection (b) be redesignated as Subsection (a) of Section 4. Further, the NASD is proposing that a new Subsection (b) be added to Section 4 to clarify disclosure requirements with respect to all offerings subject to Schedule E. The new provision is intended to codify current NASD policy in this area. Finally, the NASD is proposing that the title of Section 4 be changed to "Disclosure".

Section 5—Net Capital Computation

This section is proposed to be amended to include as new Subsection (a) the provision previously in Subsection 4(a) which requires a member issuing its own securities to place the offering proceeds in an escrow account. Further, the current language of Section 5 is proposed to be retaind in Subsection (b) thereof. Finally, the NASD is proposing to change the title of Section 4 to "Escrow Proceeds; Net Capital Computation". The NASD believes that the interrelationship of the provisions contained in Sections 4 and 5 will be clearer to the membership if combined into one section.

Section 9—Offerings Resulting in Affiliation or Public Ownership of a Member

Section 9 is intended to provide a basis for applying Schedule E to an offering by an issue which is not an affiliate of a member at the time of filing the offering, but as a result of the offering will be a member's affiliate. In addition, Section 9 requires compliance with the Schedule where the offering would result in the public ownership of a member. The provision currently specifically fails to address two situations where the NASD believes Schedule E is applicable. As the NASD has consistently required compliance with Schedule E in the following situations, Section 9 is proposed to be amended to clarify that Schedule E is applicable to situations where the issue proposes to utilize the offering proceeds to register a member and where a member would become an affiliate of the issuer as a result of a transaction with the issuer or its affiliate that occurs simultaneously or subsequent to the public offering. In addition, the NASD is proposing to amend Section 9 to clarify that offering within Section 9 shall be subject to Schedule E "to the same extent as if the transaction had occurred prior to the filing of the offering." Thus, pursuant to the latter proposed amendment, if a transaction should occur simultaneous with the offering that would result in the issuer becoming a parent of a member, the offering would be subject to Schedule E as if the offering were by a parent of a member. In comparison, if the issuer proposes to utilize the proceeds of the offering to register a member, the offering would be subject to Schedule E as if by a member firm.

Section 13—Sales to Employees—No Limitations

Section 13, which provides an exemption from the Free-Riding and Withholding Interpretation for sales to employees of a member, is proposed to be amended to clarify that employees of a member are only permitted to purchase securities of the member or those of the member's parent. In addition, Section 13 is proposed to be amended to reduce the lock-up period on securities acquired by a person associated with a member where an independent market does not exist for such securities, from six to five months following the effective date of the offering.

Section 14—Filing Requirements

Pursuant to Section 15 of Schedule E, the filing requirements of Schedule E contained in Section 14 take precedence over the filing requirements contained in the Corporate Financing Interpretation. The Corporate Financing Interpretation was recently amended to clarify that certain offerings exempt from the Corporate Financing Interpretation filing requirements are nonetheless required to be filed if subject to Schedule E.[4] The NASD is proposing to adopt new Subsection 14(c) of Schedule E to clarify that members are required to file public offerings subject to Schedule E with the NASD for review, notwithstanding the fact that such offerings may not be required to be filed pursuant to an exemption from filing under the Corporate Financing Interpretation.

The proposed rule change to Schedule E is consistent with the provisions of section 15A(b)(2) of the Securities Exchange Act of 1934, as amended, as it is intended to facilitate compliance by members and their associated persons with the provisions of Schedule E to the NASD By-Laws. The proposed amendments to Schedule E are also consistent with the provisions of section 15A(b)(6) of the Securities Exchange Act of 1934, as amended, which requires that the rules of registered securities associations promote just and equitable principles of trade and protect investors and the public interest.

[3] *See* SR-NASD-82-15; NASD Notice to Members 83-68 (December 12, 1983).

[4] See File No. SR-NASD-86-6; Securities Exchange Act Release No. 23094 (April 2, 1986); 51 FR 12010 (April 8, 1986).

B. Self-Regulatory Organization's Statement on Burden on Competition

The Association believes that the proposed rule change will not result in a burden on competition not necessary in furtherance of the purposes of the Securities Exchange Act of 1934, as amended.

C. Self-Regualtory Organization's Staement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The Association published Notice to Members 86–28 dated April 22, 1986, requesting comments from Association members concerning the proposed amendments to Schedule E. Four comment letters were received. All of the comment letters addressed the proposed exemption for financing instrument-backed securities. Only two commented with respect to other proposed amendments. As a result of its consideration of such comments, the NASD determined to make some modifications to the amendments that were originally proposed in Notice to Members 86–28.

To avoid confusion on the part of members and their counsel as to whether offerings of financing instrument backed securities by non-corporate issuers qualify for the proposed new exemptions, the NASD expanded the exemption to be available to a corporation, trust, partnership or other entity issuing financing instrument-backed securities.

The NASD deleted the proposal to clarify in Section 1 that "no member or affiliate of a member" shall issue securities except in accordance with Schedule E. However, in reconsidering the introductory section to Schedule E, the NASD determined to modify that provision to specifically reference offerings by a "parent of a member."

In response to a comment, the NASD modified its proposal in Notice to Members 86–28 to amend the introductory language of Subsection 2(a)(2) to state that "The term affiliate shall include, but is not limited to," those specified situations included in the subprovisions of that subsection, to clarify that "The term affiliate is presumed to include, . . ." In addition, the NASD modified the proposed amendment to the definition of "immediate family" contained in current Subsection 2(f) of Schedule E, in accordance with the Free Riding and Withholding Interpretation, to make it clear that the definition includes "any other person who is supported, directly or indirectly, to a material extent by an employee of or a person associated with, a member."

The NASD received an objection to the proposal to adopt new Subsection 4(b) to require that the offering document disclose that a member has assumed the responsibility of acting as a qualified independent underwriter in pricing the offering and conducting due diligence on the basis that "due diligence" is an affirmative defense, not an affirmative obligation of an underwriter under section 11 of the Securities Act of 1933. The NASD determined that although "due diligence" is an affirmative defense under section 11 of the Securities Act of 1933 for underwriters participating in an offering, it is an affirmative obligation of a "qualified independent underwriter" pursuant to the provisions of Schedule E. It is the NASD's belief that the offering document should disclose the qualified independent underwriter's affirmative obligation under Subsection 3(c)(1) to conduct "due diligence."

Finally, one comment letter expressed opposition to the NASD proposal to adopt new Subsection 14(c) of Schedule E to clarify that members are required to file public offerings subject to Schedule E with the NASD for review, notwithstanding the fact that such offerings may not be required to be filed pursuant to an exemption from filing under the Corporate Financing Interpretation. Exemptions from the Corporate Financing Interpretation filing requirements reflect the view of the Association that certain conditions are present that will independently assure fair compensation and reasonableness of offering terms and arrangements. However, such exemptions were determined to be available only in the absence of conflict of interests regarding pricing and due diligence. The Corporate Financing Interpretation was recently amended to clarify that certain offerings exempt from the Interpretation's filing requirements are nonetheless required to be filed if subject to Schedule E.[5]

III. Date of Effectiveness of Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date or it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and written communications relating to the proposed rule change between the Commission and any persons, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section at the above address. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and be submitted by September 24, 1987.

The Commission specifically notes that section 3(a)(41) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(41)) ("Exchange Act") defines a mortgage related security to be a security rated in one of the *two* highest rating categories by at least one nationally recognized statistical rating organization ("NRSRO"). The Commission also notes that it has issued orders exempting certain issuers of mortgage related securities from all provisions of the Investment Company Act of 1940 ("1940 Act").[6] Those orders require, based on section 3(a)(41) of the Exchange Act, that the securities be rated in one of two highest rating categories by at least one NRSRO. Exempting from Schedule E financing instrument-backed securities that are in one of the top four rating categories, as in proposed section 2(a)(3)(v) of Schedule E, differs from the existing exemptive orders issued under the 1940 Act and from section 3(a)(41) of the Exchange Act. It is consistent, however, with existing Schedule E, which provides (Sections 3(b), (c)) that a member complies with that Schedule where that member has been actively

[5] Id.

[6] *See, e.g.*, Dean Witter CMO, Investment Co. Act Rel. Nos. 15663 (April 3, 1987) (52 FR 11897, April 13, 1987) and 15704 (April 21, 1987).

engaged in the securities or investment banking business for the five-year period immediately preceding the filing of the registration statement and is offering a class of securities rated in one of the top four categories by either Moody's or Standard and Poor's, or in a comparable category by another rating service acceptable to the NASD.

Therefore, the Commission requests specific comments on whether proposed section 2(a)(3)(v) of the NASD's rules should be limited to securities that are rated by a NRSRO in one of its two highest rating categories, to conform the NASD's rules to the Exchange Act, or should extend to securities rated by a NRSRO in one of its four highest rating categories. Further, the Commission requests comment on whether there are any financing instrument-backed securities that would fall within the proposed exemption by virtue of being rated in the *third* or *fourth* rating category.

The Commission retains discretion to exempt from the provisions of the 1940 Act only mortgage related securities rated in one of the top rating categories, irrespective of whether the NASD ultimately extends its exemption from Schedule E to securities rated in one of the top four categories.

For the Commission by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Jonathan G. Katz,
Secretary.

Dated: August 27, 1987.

[FR Doc. 87-20290 Filed 9-2-87; 8:45 am]
BILLING CODE 8010-01-M

[Release No. 34-24859; File Nos. SR-Phlx-87-24, SR-Phlx-87-26]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice and Order Granting Accelerated Approval to Proposed Rule Changes

On August 10 and 14, 1987, respectively, the Philadelphia Stock Exchange, Inc. ("Phlx"), submitted to the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) under the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b-4 thereunder,[2] proposed rule changes to (1) enable the Phlx to offer European style foreign currency option contracts ("FCOs") on all the underlying foreign currencies on which it currently lists and trades American style FCOs; *i.e.*, Australian dollar, British Pound, Canadian Dollar, Deutsche mark, European Currency Unit ("ECU"), French franc, Japanese yen, and the Swiss franc; and (2) change the contract denominations of the proposed FCOs. No comments have been received on the proposed rule changes.

On July 30, 1987, the PHLX and the Chicago Board Options Exchange ("CBOE") entered into an agreement whereby the CBOE agreed to wind down and transfer to the PHLX its rights and interests to European style FCOs presently listed on the CBOE and the outstanding open interest therein. Under this agreement the PHLX covenanted to file with the Commission to list on PHLX, effective on or before August 31, 1987, substantially similar European style FCOs in series with existing open interest on the CBOE as of the close of CBOE European style FCO trading.

The PHLX proposes to differentiate the proposed European style FCOs from the American style contracts it currently trades by retaining use of symbols beginning with the letter (C) to identify them. Retention of these symbols will allow securities information processors, broker-dealers, and the investing public to maintain existent databases intact. At the time the PHLX begins trading these contracts, the terms and specifications of the contracts, including the contract size, will in all respects be the same as they currently are on CBOE. Thus, positions previously opened on the CBOE can be closed out on the Phlx. The one exception to this is options on the ECU. The CBOE currently does not trade ECU options. The PHLX proposes to introduce European style ECU options at the same time it commences trading the other European style FCOs now traded on the CBOE. The Exchange proposes that these ECU options would be of the same denomination as PHLX's existing American style options contract.

The Exchange also proposes to halve the size of each of the European style FCOs except the Australian dollar and the ECU contracts.[3] This would make the size of European style FCOs the same as the American style FCOs.

British pound	12,500
Canadian dollar	50,000
Deutsche mark	62,500
Swiss franc	125,000
Japanese Yen	6,250,000

The PHLX believes that the European exercise feature respecting FCOs will appeal to potential FCO sellers and spread traders, since it restricts exercise until the trading day prior to expiration. The PHLX believes trading in both American and European style FCOs on the same trading floor will increase liquidity and facilitate opportunities for hedging and arbitrage activities leading to a more efficiently priced FCOs market. Except for the proposed restriction on early exercise, trading in the proposed European style FCOs would be conducted in accordance with existing PHLX FCO rules. In addition, the PHLX believes that uniformity of contract denomination will increase liquidity and facilitate opportunties for hedging and arbitrage activities more readily than retention of larger size European style FCO contracts.

Mechanically, halving the size of the European style FCOs will be a very straightforward process. On the effective date of the adjustement, all open positions in the affected European style FCOs will be doubled, with each contract covering half of the former amount of underlying currency. This will work in much the same way as an options contract adjustment following a 2-for-1 stock split. Unlike a stock split adjustment, however, quotations and strike prices will be unaffected by the adjustment. Option premiums will be essentially halved, though, because the quoted premium will only be multiplied by half the former amount of underlying currency. The Exchange will make clear the impact of the split in currency contract size by issuing an educational memorandum to all members before the effectiveness of the split.

The Exchange requests accelerated approval of the proposed rule changes so that the PHLX may provide for an orderly transition of trading in European style FCO contracts from the CBOE. The CBOE has represented that, as of September 1, 1987, it anticipates that the principal market-maker in FCOs on its floor will cease to be active. The loss of this market making capacity would have an adverse impact on the ability of the CBOE and its members to maintain a fair and orderly market in European style FCOs. Thus, particularly in light of existing open interest, transfer of the trading market in these FCOs to the PHLX would facilitate the maintenance of a fair and orderly market in these products. With the Commission's approval, the PHLX and CBOE have agreed that August 27, 1987 would be the last day on which these contracts will trade on CBOE, and on August 28, 1987 they will commence trading on PHLX. Approval by the Commission of the instant proposed rule changes before

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[1] 15 U.S.C. 78s(b)(1)(1982).

[2] 17 CFR 240.19b-4 (1985).

[3] Respective contract denominations are as follows (expressed in foreign currency):

those dates is necessary to effectuate an orderly transition of trading activity in European style FCOs.

The Exchange also requests accelerated approval so that the adjustment in the size of the European style FCOs can be effectuated as of the opening of trading on Monday, September 14, 1987, the first trading day after the September FCO expiration. The Exchange believes that selection of this date will minimize any hardships on existing holders of European style FCOs while allowing the change to become effective at the earliest possible date. The Exchange notes that, as of August 4, 1987, 65.44% of the open interest in the European style FCOs was in the August and September contracts. The PHLX notes that it is a relatively simple matter, particularly in light of the existing open interest in affected contract positions, for the Options Clearing Corporation ("OCC"), member organizations, and the small number of European style FCO customers holding positions with expiration terms beyond September to simply double the number of contracts outstanding for their accounts.

The Commission finds that the proposed rule changes are consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6, and the rules and regulations thereunder. The PHLX currently has in place an American-style FCO program. By listing European-style FCOs, the PHLX will enable investors to continue to choose which style of FCO they wish to purchase or write.

The Commission finds good cause for approving the proposed rule changes prior to the thirtieth day after the date of publication of notice of filing thereof because the proposed rule changes will provide for an orderly transfer of existing trading activity in European FCOs from the CBOE to the PHLX prior to the September FCO expiration. As the PHLX and the CBOE have determined, and the Commission has agreed, that August 27, 1987 will be the last trading day for these contracts on the CBOE, the Commission believes it is appropriate to allow them to commence trading on the PHLX as of August 28, 1987. The Commission further believes that the September 14, 1987 adjustment date for the adjustment in FCO denomination on the PHLX, and the Exchange's commitment to issue an educational memorandum to all members before the effectiveness of the adjustment, will give existing holders of European style FCOs sufficient notice of the impending change.

Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552 will be available for inspection and copying in the Commission's Public Reference Section, 450 fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by September 24, 1987.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[4] that the proposed rule change is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Dated: August 27, 1987.

Jonathan G. Katz,

Secretary.

[FR Doc. 87-20291 Filed 9-2-87; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-24857; File No. SR-PHLX-87-27]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice and Order Granting Accelerated Approval to Proposed Rule Change

On August 19, 1987, the Philadelphia Stock Exchange, Inc. ("PHLX"), submitted to the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) under the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b-4 thereunder,[2] a proposed rule change to clarify that spread, straddle and combination orders in the Exchanges' foreign currency options contracts ("FCOs") may consist of a combination of American-style and European-style FCOs.

On July 30, 1987, the PHLX and the Chicago Board Options Exchange ("CBOE") entered into an agreement whereby the CBOE agreed to wind down and transfer to the PHLX its rights and interests to European-style FCOs presently listed on the CBOE and the outstanding open interest therein. Under this agreement the PHLX covenanted to file with the Commission to list on PHLX, effective on or before August 31, 1987, substantially similar European-style FCOs in series with open interest existent as of the close of CBOE European-style FCO trading.

On August 10 and 14, 1987, respectively, the PHLX submitted to the Commission proposed rule changes to enable the PHLX to offer European-style FCOs on all underlying foreign currencies and change the contract denominations of the proposed FCOs.[3] The Commission is approving these rules concurrent with this filing.[4]

In connection with the upcoming introduction of trading of European-style FCOs on the PHLX, the PHLX proposes to clarify Rule 1066 by adding a commentary stating that for FCOs a spread, straddle and combination order may consist of either all American-style FCOs, all European-style FCOs, or a combination of American-style and European-style contracts. For example, a straddle may consist of the purchase of 10 American-style currency calls and the purchase of 10 European-style currency puts. Likewise, a spread order in FCOs may consist of the purchase of American-style calls and sale of European-style calls having identical terms.

The proposed rule change is designed to supplement the previously filed rule changes respecting the treatment of European-style options and is intended to increase liquidity and facilitate opportunities for hedging, spreading and combination orders by and between market participants in both American-style and European-style FCOs thereby leading to a more efficiency priced FCO market.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6, and the rules and regulations thereunder.

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[4] 15 U.S.C. 78 s(b)(2)(1982).

[5] 17 CFR 200.30-3(a)(12)(1985).

[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 CFR 240.19b-4 (1985).

[3] *See* File Nos. SR-Phlx-87-24 and SR-Phlx-87-26.

[4] *See* Securities Exchange Act Release No. 34-24859.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof because the proposed rule change will promptly notify investors that they may use combinations of American-style and European-style contracts in executing spreads, straddles and combination orders in FCOs on the PHLX. This should facilitate trading in both American-style and European-style FCOs.

Concurrent with this filing, the Commission is approving a proposal that will enable the PHLX to commence trading of European-style FCOs on August 28, 1987. The Commission believes it is appropriate to accelerate approval of this proposed rule change so that it may coincide with the opening of business on August 28, 1987 and facilitate the maintenance of a fair and orderly market in FCOs on the PHLX.

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by September 24, 1987.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[5] that the proposed rule change is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Dated: August 27, 1987.

Jonathan G. Katz,

Secretary.

[FR Doc. 87-20292 Filed 9-2-87; 8:45 am]

BILLING CODE 8010-01-M

[5] 15 U.S.C. 78s(b)(2) (1982).

[6] 17 CFR 200.30-3(a)(12) (1985).

[Rel. No. IC-15951; 812-6674]

Application; ML-Lee Acquisition Fund, L.P., et al.

August 28, 1987.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption and Order permitting certain transactions under the Investment Company Act of 1940 (the "1940 Act").

Applicants: ML-Lee Acquisition Fund, L.P. ("Partnership"), Mezzanine Investments, L.P. ("Managing General Partner") and Thomas H. Lee Advisors, Inc. ("Investment Adviser") (collectively, "Applicants").

Relevant 1940 Act Sections: Order requested (i) pursuant to sections 6(c), 17(d) and 57(i) and Rule 17d-1 permitting joint certain transactions otherwise prohibited by sections 57(a)(4) and 17(d); and (ii) pursuant to section 57(c) for exemption from section 57(a)(1), and pursuant to sections 17(d), 57(i) and Rule 17d-1 thereunder permitting the acquisition of certain investments.

Summary of Application: Applicants seek an order: (i) Under Sections 6(c), 57(i), and 17(d) of the 1940 Act and Rule 17d-1, permitting the purchase of securities by the Partnership in joint transactions otherwise prohibited by sections 57(a)(4) and 17(d) in which the Investment Adviser or an affiliate thereof is a participant; and (ii) under section 57(c) of the 1940 Act for exemption from section 57(a)(1), and pursuant to sections 17(d), 57(i) and Rule 17d-1 permitting the Partnership to acquire one or more initial investments from the Managing General Partner or an affiliated person thereof.

Filing Date: The application was filed on April 2, 1987, and amended on July 8, July 16, July 22, July 31, and August 3, 1987.

Hearing or Notification of Hearing: If no hearing is ordered, the requested order will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m. on September 22, 1987. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicants with the request, personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, for attorneys, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicants, ML-Lee Acquisition Fund, L.P. and Mezzanine Investments, L.P., Merrill Lynch World Headquarters, North Tower, World Financial Center, New York, New York 10281-1201. Thomas H. Lee Advisors, Inc., One Boston Place, Boston, Massachusetts 02108.

FOR FURTHER INFORMATION CONTACT: Richard Pfordte, Staff Attorney, at (202) 272-2811, or Houghton R. Hallock, Jr., Special Counsel, at (202) 272-3030, Division of Investment Management, Office of Investment Company Regulation.

SUPPLEMENTARY INFORMATION: Following is a summary of the above referenced application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier (800) 231-3282 (in Maryland (301) 258-4300).

Applicants' Representations

1. The Partnership is a newly-formed, Delaware limited partnership organized under an Agreement of Limited Partnership (the "Partnership Agreement"). The Partnership has elected to be regulated as a business development company pursuant to section 54 of the 1940 Act and thus will be subject to sections 55 through 65 of the 1940 Act and to those sections of the 1940 Act made applicable to business development companies by section 59 thereof. The Partnership has been designed to provide the ability for individuals to participate in "mezzanine" level debt and preferred stock investments issued in connection with leveraged buy-outs and other corporate reorganizations. Applicants believe these investments would not be ordinarily available to the Partnership's investors except through a pooled investment vehicle such as the Partnership.

2. The Partnership's investment objectives will be to provide a current return, an opportunity for significant capital appreciation, and a return of investment in a limited period of time through investments in mezzanine loans and other securities ("Qualified Investments"). Qualified Investments include (i) subordinated debt investments (including the mezzanine portion of traditional leveraged buy-outs), private placements of debt with equity components, partial buy-outs and other forms of mezzanine financing with equity participations in the form of straight equity, options, warrants and other equity securities ("Mezzanine

Investments"), and (ii) investments with a term of nine months or less, a portion of which is expected to become Mezzanine Investments. The Partnership will not provide financing for a hostile tender offer or proxy contest, regardless of whether such investment by the Partnership would otherwise constitute a Qualified Investment.

3. The Partnership has filed a registration statement (File No. 33-13394) on Form N-2 under the Securities Act of 1933 ("1933 Act"), with respect to an offering of up to 1,000,000 units of limited partnership interest ("Units"). The public offering price will be $1,000 per Unit, with a maximum aggregate offering price of $1 billion.

4. The General Partners of the Partnership will consist of at least four individual general partners ("Individual General Partners") and the Managing General Partner. The Individual General Partners will include the Independent General Partners (defined to be individuals who are not "interested persons" of the Partnership within the meaning of the 1940 Act) and one General Partner who is an individual and who is an "affiliated person" of the Managing General Partner and/or the Investment Adviser.

5. The Managing General Partner is a limited partnership controlled by its general partner, ML Mezzanine Inc., a special purpose, indirect, wholly-owned subsidiary of Merrill Lynch & Co., Inc. ("ML & Co."). The sole limited partner of the managing General Partner is the Investment Adviser. Under the partnership agreement establishing the Managing General Partner, its limited partner will have no authority to participate in the management of the Managing General Partner nor will it have any voting rights relating to the Managing General Partner. The Managing General Partner will be a registered investment adviser under the Investment Advisers Act of 1940 ("Advisers Act"). Under the Partnership Agreement, the Managing General Partner will be responsible for purchasing and acquiring the investments made by the Partnership, for providing administrative services to the Partnership and for the admission of additional or assignee Limited Partners to the Partnership. The Managing General Partner will receive the allocation of profits and losses provided in the Partnership Agreement. In addition, it will receive an annual administrative fee equal to the larger of $400,000 or .45% of the net offering proceeds, subject to certain adjustments after the fourth year of operations. The limited partner of the Managing General Partner will be allocated substantially all of the profits and losses allocated to the Managing General Partner, other than that which is directly proportionate to the Managing General Partner's equity investment in the Partnership. The Partnership considers its relationship with the Managing General Partner to be an investment advisory relationship, and accordingly, the Partnership relationship and the distributions made thereunder, including specifically the distributions made to the Investment Adviser as the limited partner of the Managing General Partner, will be subject to the provisions of the 1940 Act, including section 15 thereof.

6. The Partnership Agreement provides that a majority of the General Partners will be Independent General Partners. Thomas H. Lee, an affiliated person of the Investment Adviser, will serve as an "interested" Individual General Partner. The Partnership will be managed solely by the Individual General Partners, except with regard to those specific activities of the Partnership for which the Managing General Partner or the Investment Adviser will be responsible. The Individual General Partners provide overall guidance and supervision of Partnership operations and will perform the same functions as directors of a corporation. The Individual General Partners will assume the responsibilities and obligations imposed by the 1940 Act and the regulations thereunder on non-interested directors of a registered investment company.

7. The Partnership Agreement provides that the Individual General Partners may be removed either (i) for cause by the action of two-thirds of the remaining Individual General Partners or (ii) by vote of the Limited Partners. The Managing General Partner may be removed either (i) by a majority of the Individual General Partners or (ii) by vote of the Limited Partners. The Partnership's Limited Partners have no right to control the Partnership's business, but may exercise certain rights and powers of a Limited Partner under the Partnership Agreement, such as approving amendments to the Partnership Agreement. Limited Partners will have all voting rights afforded to investors by the 1940 Act.

8. The Investment Adviser is a corporation substantially-owned and controlled by the Thomas H. Lee Company ("Lee Company"), a private investment firm engaged primarily in acquiring or making majority equity investments in established middle-market companies, often through leveraged acquisition, as well as venture capital investments. The Investment Adviser will act under an investment advisory agreement ("Advisory Agreement") and will be a registered adviser under the Advisers Act. Under the Advisory Agreement, the Investment Adviser will be responsible for the identification of all mezzanine and related equity investments made by the Partnership and will perform other functions done by an investment adviser to a business development company. For its services under the Advisory Agreement, the Investment Adviser will receive an annual fee equal to the larger of $1.2 million or 1.0% of assets under management. The advisory fee will be reduced by a proportionate amount of certain fees received by the Investment Adviser or its affiliates with respect to proposed transactions considered for investment by the Partnership.

9. Merrill Lynch, Pierce, Fenner & Smith Incorporated ("Merrill Lynch") will act as the placement agent for the Units on a "best efforts" basis. Limited Partners will be required to subscribe for at least five Units, except that the minimum purchase for individual retirement accounts will be two Units. Units will be sold only to investors who have (i) gross income of $60,000 during the current year and a net worth (exclusive of homes, home furnishings and automobiles) of $60,000 in excess of the Units for which the investor has subscribed or (ii) a net worth (with the same exclusions) of $150,000 in excess of the proposed purchase price. In establishing suitability standards for the Limited Partners, the Applicants have considered the objective of the Partnership, the risks involved in an investment in the Partnership and the need to establish income and net worth standards that are consistent with the protection of investors.

10. An insurance policy to provide coverage for the Limited Partners has not been obtained at the filing date of the application because (i) the Partnership has been advised by its counsel that Units in the Partnership will constitute valid limited partnership interests in the Partnership and that Limited Partners will be entitled to all of the benefits of limited partners under the Partnership Agreement and The Revised Uniform Limited Partnership Act of the State of Delaware; (ii) based upon the nature of the business to be conducted by the Partnership, the Partnership believes that the risk of liability for actions against the Limited Partners, including actions based upon contract or tort claims, is remote; and (iii) the Partnership Agreement will

obligate the General Partners of the Partnership to take all action which may be necessary or appropriate to protect the limited liability of the Limited Partners. The Partnership will review periodically the appropriateness of obtaining an errors and omissions insurance policy for the Partnership.

11. The allocation of profits and losses of the Partnership will be made in accordance with the Partnership Agreement. In summary, those allocations will be made on a cumulative basis and provide for the allocation to the Managing General Partner of 1% of income and capital gains, in proportion to its equity investment in the Partnership, and up to 20% of cumulative ordinary income and net realized capital gains from investments which is subordinated to a Priority Return (as described in the application) to the Limited Partners of the Partnership. The foregoing allocation has been included in the Partnership Agreement on the basis exclusively of an opinion of counsel to the Partnership that such allocation will not violate the provisions of section 205 of the Advisers Act. Applicants have not requested Commission review or approval of such opinion letter and the Commission expresses no opinion as to counsel's interpretation that section 205(C) of the Advisers Act permits the Partnership's allocations. The specific allocation of profits and losses, as set forth in the Partnership Agreement, is described in detail in the application.

12. Applicants have obtained an order of the Commission determining that the Independent General Partners are not, within the definition of section 2(a)(19) of the 1940 Act, "interested persons" of the Partnership, the Managing General Partner, the Investment Adviser and/or Merrill Lynch solely by virtue of being general partners of the Partnership. (Investment Company Act Release No. 15918, August 12, 1987).

13. Applicants request an order pursuant to sections 6(c), 17(d) and 57(i) of the 1940 Act and Rule 17d-1 thereunder permitting the purchase of securities by the Partnership in joint transactions in which the Investment Adviser or an affiliate thereof is a participant, which transactions are otherwise prohibited under sections 17(d) and 57(a)(4) of the 1940 Act. In structuring the Partnership, Merrill Lynch and the Managing General Partner, in conjunction with the Lee Company, have established specific guidelines for the Partnership's Qualified Investments ("Guidelines"). These Guidelines, which are based on criteria utilized for institutional mezzanine funds that are exempt from registration under the 1940 Act, give prospective investors the parameters of the Partnership's investments, and, as with the institutional partnerships which co-invest with the general partners, Applicants believe that the Guidelines limit potential conflicts of interest by delineating specific categories of investments eligible for investment. The Partnership may alter the Guidelines as a result of changes in the structure of Qualified Investments or otherwise. However, any changes in the Guidelines will require the approval of both the Managing General Partner and the Individual General Partners.

14. Investments for the Partnership consist of "Managed Companies," where the Investment Adviser or its affiliates intend to make available "significant managerial assistance" (as defined in section 2(a)(47) of the 1940 Act) to the issuer of the securities purchased by the Partnership, and the "Non-Managed companies." As used in the Guidelines, the term "Lee Affiliates" includes the Lee Company, the Investment Adviser and any affiliated person of the Lee Company. Unless a Qualified Investment meets the applicable Guidelines, it will not be acquired by the Partnership unless it has been approved in advance by the Independent General Partners in accordance with the conditions set forth in the application. In this regard, while the Partnership may make "bridge investments" in Managed Companies, these investments will be subject to such advance approval requirement since, by their nature, they will not meet all of the applicable Guidelines. The Guidelines, which are primarily financial in nature, relate to various aspects to the Qualified Investments, including yield, cash distribution, leverage, equity rights of the Partnership and other investment criteria. Under the Guidelines, with respect to Managed Companies, (i) the Lee Affiliates will make a meaningful equity investment, either (a) equal to at least $5,000,000 or (b) by acquisition of, or the right to acquire 50% or more of, the equity remaining after any common equity acquired by management and the subordinated lenders; (ii) the Partnership's investment will be the same as, or no less advantageous to the Partnership than any corresponding investments in the same company by third parties, including any Lee Affiliates; and (iii) at least 70% of the Partnership's assets will have to be invested in Qualified Investments in Managed Companies. With respect to Non-Managed Companies, (i) the investment will be structured by third parties which are not affiliates of the Investment Adviser; (ii) the Lee Affiliates will not acquire more than 25% of the non-management equity of a Non-Managed Company (subject to the conditions described below); (iii) the Partnership's investment will be on terms the same as, or no less advantageous to the Partnership than any corresponding investments in the same company by third parties, including any Lee Affiliates; and (iv) not more than 30% of the Partnership's assets will be invested in Non-Managed Companies.

15. The Independent General Partners must determine whether an investment meets the applicable Guidelines; if investments do not meet the Guidelines, then determinations as to several factors must be made by the Independent General Partners before any such investment is made.

16. Co-investments by the Partnership and a Lee Affiliate will be subject to the following terms and conditions:

Conditions

(i) Other than Temporary Investments and investments described below, each investment made by the Partnership will have to meet, in the determination of the Independent General Partners, as described below, the Guidelines for Qualified Investments or be approved by the Managing General Partner and the Individual General Partners.

(ii) Each Qualified Investment that is structured by a Lee Affiliate and approved for investment by it, except for certain *de minimus* investments of less than $7.5 million which are structured by Lee Capital Corporation, a Lee Affiliate, will be brought to the attention of the Independent General Partners for review, subject to condition (iv) below. If the Independent General Partners determine that the investment meets the applicable Guidelines, the investment will be eligible for investment by the Partnership, and each such investment will be acquired by the Partnership to the extent that the Partnership has available funds sufficient to make such acquisition. If there are presented to the Independent General Partners more eligible investments than the Partnership has funds to acquire, the Independent General Partners will have to determine, with the advice of the Investment Adviser and the Managing General Partner, the order of priority of such investments. If a proposed investment does not meet the Guidelines, the Independent General Partners will have to determine that the investment is appropriate for the Partnership in light of its objectives and

does not involve overreaching of the Partnership and then determine, together with the Managing General Partner, whether to acquire such investment for the Partnership.

(iii) Prior to committing to a particular investment that does not meet the Guidelines, the Independent General Partners would be required to determine that (a) the terms of the transaction, including the consideration to be paid, are reasonable and fair to the Limited Partners of the Partnership and do not involve overreaching of the Partnership or such partners on the part of any person concerned and (b) the proposed transaction is consistent with the interests of the Limited Partners of the Partnership and is consistent with the policy of the Partnership as recited in filings made by the Partnership under the 1933 Act, its registration statement and reports filed under the Securities Exchange Act of 1934 and its reports to partners.

(iv) Neither Thomas H. Lee, individually, in his capacity as an Individual General Partner, nor Thomas H. Lee Advisors, Inc., in its capacity as limited partner in the Managing General Partner, will either (a) participate in the deliberations or approval of any investment by the Partnership or (b) receive and comment on information with respect to any potential investments.

(v) Neither the Managing General Partner nor any other Merrill Lynch affiliate will participate in a transaction in which the Partnership invests unless such participation is permitted by the 1940 Act or any separate exemption obtained thereunder.

(vi) To the extent a Lee Affiliate purchases Qualified Investments to be acquired by the Partnership, the terms of purchase (including terms as to purchase price, settlement date, registration rights (if any) and other rights provided to the purchasers of such Qualified Investments) will have to be identical.

(vii) If a Lee Affiliate elects to sell a security that is also held by the Partnership, notice of the proposed sale will be given to the Managing General Partner and the Individual General Partners at the earliest practical time, and the Partnership will be given the opportunity to participate in such sale on a proportionate basis. The Partnership will participate in such sale if the Individual General Partners determine that such action is in the best interests of the Partnership; provided, however, that neither Thomas H. Lee, individually, in his capacity as an Individual General Partner, nor Thomas A. Lee Advisors, Inc., in its capacity as limited partner in the Managing General Partner, will participate in such deliberations. The Managing General Partner and the Individual General Partners will record the basis of their decision as to whether to participate in such sale.

(viii) The Individual General Partners will be provided information quarterly to enable them to determine whether all investments made during the preceding quarter comply with the conditions set forth above; provided, however, that neither Thoamas H. Lee, individually, in his capacity as an Individual General Partner, nor Thomas H. Lee Advisors, Inc., in its capacity as limited partner in the Managing General Partner, will participate in such deliberations to the extent any such investment was recommended to the Partnership by the Investment Adviser. In addition, on a quarterly basis, the Individual General Partners will consider the continuing appropriateness of the standards established for investments by the Partnership. In this regard, the Individual General Partners will consider whether use of such standards continues to be in the best interests of the Partnership and the limited partners and does not involve overreaching of the Partnership or its Limited Partners on the part of any party concerned.

(ix) The Individual General Partners will maintain the records required by section 57(f)(3) of the 1940 Act and will comply with section 57(h) of the 1940 Act, and each of the Applicants will otherwise maintain all records required by the 1940 Act.

17. Applicants also request an order under section 57(c) of the 1940 Act for exemption from the provisions of section 57(a)(1) of the 1940 Act and pursuant to sections 17(d), 57(i) and Rule 17d-1 permitting the proposed acquisition by the Partnership of one or more interim investments from the Managing General Partner or an affiliated person thereof. Such transactions are prohibited by section 57(a)(1) of the 1940 Act and may constitute a joint transaction under sections 17(d) and 57(a)(4) of the 1940 Act. It is contemplated that a period of up to four to six months will elapse before the public offering of the Units is consummated and the Partnership receives the proceeds from the sale of such Units. During this period, it is expected that investment opportunities suitable for the Partnership (i.e., within the investment objective and policies stated in its Prospectus) may come to the attention of the Investment Adviser. The Partnership will not have the funds to make such investments during this period and such investment opportunities could be lost to the Partnership if not then acquired. Therefore, it is proposed that the Managing General Partner, or a subsidiary of ML &Co. that is an affiliated person of the Managing General Partners, acquire such investments as if the Partnership were acquiring such investments directly.

18. Any investment acquired pursuant to the terms of the exemption requested will be a Qualified Investment and must meet the Guidelines unless it is approved in advance by both the Managing General Partner and the Independent General Partners. The Managing General Partner or its affiliate will hold such investments on behalf of the Partnership until the sale of the Units takes place, at which time the Partnership will acquire such investments from the Managing General Partner or its affiliate at the lesser of (i) the value of the investment at the time it is acquired by the Partnership or (ii) the cost to the Managing General Partner or its affiliate of purchasing and holding such investment (reduced by the amount of any dividends or interest received by such entity with respect to such investment). With respect to clause (ii), such cost shall be the original purchase price paid by the Managing General Partner or its affiliate, plus permitted carrying costs as described below. No carrying costs will be paid by the Partnership in respect of the period prior to the later of (1) the date of acquisition of the proposed investment by the Managing General Partner or its affiliate, or (2) the date the Independent General Partners give written approval for the Partnership to purchase the investment. For purposes of the Applicants' order, carrying costs consist of interest charges computed at the lower of (i) the prime commercial lending rate charged by Citibank, N.A., during the period for which carrying costs are permitted to be paid until the date the Partnership acquires the investment or (ii) the effective cost of borrowings by ML & Co. during such period. The effective cost of borrowings by ML & Co. is its actual "Average Cost of Funds," which it calculates on a monthly basis by dividing its consolidated financing expenses by the total cost of borrowings.

19. If the Partnership acquires any of such investments, it will do so within 90 days after the closing of its public offering. Market value of such investments will be determined by the Managing General Partner, subject to review by the Independent General Partners. The Partnership will not be obligated to acquire any such investments if the acquisition of the

investments is not approved by the Independent General Partners or if the public offering is not consummated. In determining whether to approve such investments for the Partnership, the Independent General Partners will consider the terms of the transaction under the standards set forth above in condition (iii) with respect to co-investments, and further, the Independent General Partners will consider the fact that acquisition of such an investment may cause the Partnership to incur carrying costs. If the Partnership does not acquire such investments, the Managing General Partner or its affiliate will retain the investments for its own account. If the acquisition of such investments is approved by the Independent General Partners, the Managing General Partner or its affiliate will transfer each investment so acquired in its entirety to the Partnership following the sale of the Units to the public. Each such investment and the cost thereof will be disclosed in the Prospectus or a supplement thereto.

Applicants' Legal Conclusions

1. Applicants submit that the request for an order permitting the co-investments by the Partnership and the Investment Adviser is consistent with the provisions, policies and purposes of the 1940 Act, and that the participation of the Partnership will be on a basis no less advantageous than that of other participants. In addition, Applicants submit that the Investment Adviser or its affiliate will have significant involvement in structuring transactions, and through such equity participation, will be able to render significant managerial assistance to the companies in which the Applicants co-invest.

2. Applicants submit that the statutory standards of section 57(c) are satisfied. The Managing General Partner or its affiliate will acquire investments suitable for the Partnership within its investment objective and policies, holding such investments for the Partnership during an interim period and then selling such investments to the Partnership at the lower of market value or cost (which may include carrying charges). Based upon the nature of these investments, Applicants submit that the granting of the exemptive relief requested will benefit the Partnership by permitting it to acquire investments it might otherwise not be able to acquire. Because the Managing General Partner or its affiliate will retain the investments for its own account if the acquisition thereof is not approved by the Independent General Partners or the public offering of the Units is not consummated, there will be no incentive for overreaching or unfairness with respect to the Partnership and the transactions are not potentially subject to the abuses section 57(a) is designed to prevent. Moreover, the investments will be disclosed in the Partnership's Prospectus. The Managing General Partner or its affiliate will acquire such investments for the benefit of the Partnership as, in effect, its nominee and will bear the risk of decline in value of such investments, yet not benefit from any increase in value between the time of investment and the purchase of the investment by the Partnership. Accordingly, Applicants believe it is appropriate for the Partnership to pay carrying costs on the terms set forth above.

Applicants' Condition

If the requested order is granted, Applicants agree to the following conditions:

1. Any investments made by the Managing General Partner on behalf of the Partnership before the public offering of Units is consummated and the Partnership has received the proceeds from the sale of Units will be acquired on the terms described above.

2. Applicants undertake that no changes will be made in the Guidelines or the Conditions until an amendment of such order is obtained from the Commission.

3. The Partnership represents that at least 15% of its assets will be invested in Non-Managed Companies in which the Lee Affiliates do not own any securities.

4. Under the Partnership Agreement, in-kind distributions are not specifically authorized; however, Applicants believe that unrealized gains and losses attributable to securities distributed in-kind should be deemed realized at the time of distribution for purposes of allocations. Applicants agree not to make any in-kind distributions of securities to partners until it has either obtained a no-action letter from the staff of the Commission confirming the Partnership's interpretation or, alternatively, has obtained an order pursuant to section 206(A) of the Advisers Act permitting the Partnership to deem such gains or losses to be realized upon making of in-kind distributions of such securities.

By the Commission.

Jonathan G. Katz,

Secretary.

[FR Doc. 87-20293 Filed 9-2-87; 8:45 am]

BILLING CODE 8010-01-M

[File No. 22-17352]

Application and Opportunity for Hearing; Rail Car Associates, Limited Partnership and Union Tank Car Company

August 28, 1987.

Notice is hereby given that Rail Car Associates Limited Partnership and Union Tank Car Company (both of which are referred to as "Applicant") have filed an application under Clause (ii) of section 310(b)(1) of the Trust Indenture Act of 1939 ("Act") for a finding by the Securities and Exchange Commission ("Commission") that the trusteeship of Harris Trust and Savings Bank ("Harris") under one existing indenture dated as of January 15, 1973, which is qualified under the Act, and the proposed trusteeship of Harris under a new indenture are not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify Harris from acting as trustee under either of such indentures.

Section 310(b) of the Act provides in part that if a trustee under an indenture qualified under the Act has or shall acquire any conflicting interest (as defined in such section), it shall within ninety days after ascertaining that it has such conflicting interest, either eliminate such conflicting interest or resign. Subsection (1) of such section provides that, with certain exceptions, a trustee under a qualified indenture shall be deemed to have a conflicting interest if such trustee is trustee under another indenture under which other securities of the same obligor are outstanding. However, under clause (ii) of subsection (1), there may be excluded from the operation of this provision another indenture under which other securities of the same obligor are outstanding, if the obligor shall have sustained the burden of proving, on application to the Commission and after opportunity for hearing thereon, that the trusteeship under such qualified indenture and such other indenture is not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify such trustee from acting as trustee under any of such indentures. Applicant alleges that:

(1) Harris is presently acting as Trustee under Union Tank Car Company's Series 9 Equipment Trust Agreement dated as of January 15, 1973. The aggregate principal amount outstanding as of February 28, 1987 was as follows:

Series	Principal Amount
9	$8,500,000

(2) The Equipment Trust Certificates issued under the Series 9 Trust Agreement are secured by a separate lot of identified railroad cars as will be the Equipment Trust Certificates issued under the proposed Series P-6 Agreement, so that, should Harris have the occasion to proceed against the security of any of the Equipment Trusts, such action would not affect the security or the use of any security, under the other Equipment Trusts. Thus, the existence of the other trusteeships should in no way inhibit or discourage the Trustee's action.

(3) Union Tank Car Company is not in default under of its Equipment Trust obligations.

(4) Such differences as exist between the Series P-6 indenture and the existing indenture for which Harris is presently acting as trustee are not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify Harris from acting as Trustee under any of said indentures.

Applicant has waived notice of hearing, hearing, and any and all rights to specify procedures under the Rules of Practice of the Commission with respect to this application.

For a more detailed statement of the matters of fact and law asserted, all persons are referred to said application, File No. 22-17352, which is a public document on file in the offices of the Commission at 450 5th Street, NW., Judiciary Plaza, Washington, DC 20549.

Notice is further given that any interested person may, not later than September 21, 1987, request in writing that a hearing be held on such matter stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said application which he desires to controvert, or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, 450 5th Street, NW., Judiciary Plaza, Washington, DC 20549. At any time after said date, the Commission may issue an order granting the application, upon such terms and conditions as the Commission may deem necessary or appropriate in the public interest and in the interest of investors, unless a hearing is ordered by the Commission.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

Jonathan Katz,

Secretary.

[FR Doc. 87-20294 Filed 9-2-87; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF STATE

Office of the Secretary

[CM-8/1111]

Partially Closed Meeting; Advisory Committee to United States Section, International North Pacific Fisheries Commission

The Advisory Committee to the United States Section, International North Pacific Fisheries Commission, will meet on September 25, 1987, at the Sheffield Hotel, 720 W. 5th St., Anchorage, Alaska, at 2:00 p.m. This session will discuss the Protocol to the International Convention for the High Seas Fisheries of the North Pacific Ocean, surveillance of foreign fishing fleets, the progress of fisheries research, the Alaska salmon fisheries, and fishery developments as they affect the International North Pacific Fisheries Commission. The session will be open to the public.

The Advisory Committee will also meet from 9:00 a.m. to 5:00 p.m. on September 26, 1987. These sessions will not be open to the public inasmuch as the discussion will involve classified matters pertaining to the United States' negotiating position to be taken at the 34th Annual Meeting of the International North Pacific Fisheries Commission to be held in Vancouver, Canada, November 2-6, 1987. Pursuant to section 4(c) of the North Pacific Fisheries Act of 1954, as amended, 16 U.S.C. 1023(c) which provides that the "advisory committee . . . shall be granted opportunity to examine and to be heard on all proposed programs of study and investigation, reports, and recommendations of the United States Section", the members of the Advisory Committee will examine various options for the negotiating position at the Special Meeting, and these considerations must necessarily involve review of classified matters. Accordingly, the determination has been made to close this session pursuant to section 10(d) of the Federal Advisory Committee Act, 5 U.S.C. App. I, section 10(d) and 5 U.S.C. 552b (c)(1) and (c)(9).

Requests for further information on the meeting should be directed to Mr. Robert J. Ford, Pacific Fisheries Officer, OES/OFA Room 5806, U.S. Department of State, Washington, DC 20520. Mr. Ford can be reached by telephone on (202) 647-2009.

Date: August 25, 1987.

Edward E. Wolfe,

Deputy Assistant Secretary, Oceans and Fisheries Affairs.

[FR Doc. 87-20251 Filed 9-2-87; 8:45 am]

BILLING CODE 4710-09-M

[cm-8/1112]

For International Radio Consultative Committee (CCIR); U.S. Organization; Study Group 6; Meeting

The Department of State announces that Study Group 6 of the U.S. Organization for the International Radio Consultative Committee (CCIR) will meet on October 7 and 8, 1987 at the Naval Ocean System Center in San Diego California. Meetings will begin at 9:00 a.m. on both days.

Study Group 6 deals with matters relating to the propagation of radio waves in and through the ionosphere. The purpose of the meeting is to review preparations for the international meeting of Study Group 6 in the Spring of 1988.

Members of the general public may attend the meeting and join in the discussions subject to instructions of the Chairman. Admittance of public members will be limited to the seating available. Request for further information should be directed to Mr. Richard Shrum, State Department, Washington, DC 20520; telelphone (202) 647-2592.

Date: August 25, 1987.

Richard E. Shrum,

Chairman, U.S. CCIR National Committee.

[FR Doc. 87-20252 Filed 9-2-87; 8:45 am]

BILLING CODE 4710-07-M

[cm 8/1110]

International Telegraph and Telephone Consultative Committee and International Radio Consultative Committee; U.S. Organization; Legal Panel on International Telecommunications Law; Meeting

The Department of State announces the third meeting of the Panel on International Telecommunications Law, which is under the auspices and authority of the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT) and International Radio Consultative Committee (CCIR). The Panel's meeting will convene on

Monday, September 21, 1987 in Room 1408, Department of State, 2201 C Street, NW., Washington, DC

The meeting will begin at 2:00 p.m.

The agenda will include discussion of issues pertaining to the work of the International Telecommunication Union (ITU) and the division of current provisions between a Constitution and Convention. The Panel will address issues relating to the provisions governing amendment, accession, coming into force and similar issues.

Members of the general public may attend the meeting and join in the discussion. Admittance of public members will be limited to the seating available. In that regard, entrance to the Department of State building is controlled and entry will be facilitated if arrangements are made in advance of the meeting. Prior to the meeting, persons who plan to attend should so advise the office of the Deputy U.S. Coordinator for International Communications and Information Policy, Mr. Thomas J. Ramsey, State Department, Washington, DC; telephone (202) 647-5832. All attendees must use the C Street entrance to the building.

Dated: August 21, 1987.

Earl S. Barbely,

Chairman, U.S. CCITT National Committee.

Richard E. Shrum,

Chairman, U.S. CCIR National Committee.

[FR Doc. 87-20253 Filed 9-2-87; 8:45 am]

BILLING CODE 4710-07-M

[CM-8/1108]

Partially Closed Meeting; Advisory Committee on International Law

A meeting of the Advisory Committee on International Law will take place at 10:30 a.m. on Wednesday, September 23, 1987, in Room 6909 of the Department of State, 2201 C Street, NW., Washington, DC. The morning session will not be open to the public; the afternoon session (3:00 p.m. to 4:00 p.m.) will be open to the public up to the capacity of the meeting room.

The subject meeting will focus on policy and legal issues relating to the immunity of foreign States and their instrumentalities in United States courts, the protection of the diplomatic pouch, the Torture Convention and Torture Victims Protection Act and the United States relationship to the International Court of Justice. As the morning session will include examination and discussion of material classified in accordance with Executive Order 12356 the disclosure of which could adversely affect the foreign policy interests of the United States, it has been closed pursuant to section 10(d) of the Federal Advisory Committee Act and 5 U.S.C. 552b(c)(1) and 5 U.S.C. 552b(c)(9)(B).

Entry to the building is controlled and will be facilitated by advance arrangements. Members of the public desiring to attend the afternoon session should, prior to September 22, notify the Office of the Assistant Legal Adviser for Nuclear Affairs (telephone (202) 647-1043) of their name, affiliation, address and telephone number in order to arrange admittance.

Date: August 21, 1987.

Ted A. Borek,

Executive Director.

[FR Doc. 87-20254 Filed 9-2-87; 8:45 am]

BILLING CODE 4710-08-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD 87-063]

Chemical Transportation Advisory Committee; Request for Applications

AGENCY: Coast Guard, DOT.

ACTION: Request for applications.

SUMMARY: The U.S. Coast Guard is seeking applications for appointment to membership on the Chemical Transportation Advisory Committee (CTAC). This committee advises the Chief, Office of Marine Safety, Security and Environmental Protection on regulatory requirements for promoting safety in the transportation of hazardous materials on vessels and the transfer of these materials between vessels and waterfront facilities.

Applications will be considered for eight expiring terms and any other existing vacancies. To achieve the balance of membership required by the Federal Advisory Committee Act, the Coast Guard is especially interested in applications from minorities and women.

The Committee usually meets at least once a year in Washington, DC, with subcommittee meetings for specific problems on an as-required basis.

DATE: Requests for applications should be received no later than December 1, 1987.

ADDRESS: Persons interested in applying should write to Commandant (G-MTH-1), U.S. Coast Guard, 2100 Second Street SW., Washington, DC 20593-0001.

FOR FURTHER INFORMATION CONTACT: Commander Ronald W. Tanner, at the above mailing address, or telephone (202) 267-1217.

Dated: August 31, 1987.

N.W. Lemley,

Acting Executive Director, Chemical Transportation Advisory Committee.

[FR Doc. 87-20340 Filed 9-2-87; 8:45 am]

BILLING CODE 4910-14-M

[CGD 87-060]

Consolidation of Atlantic and Gulf Strike Teams

ACTION: Notice of availability of FONSI.

SUMMARY: The Coast Guard is in the process of consolidating the Atlantic Strike Team (AST) located at Elizabeth City, North Carolina, with the Gulf Strike Team (GST) located at Mobile, Alabama. The Pacific Strike Team located at Hamilton AFB near San Francisco, California, will not be affected by this consolidation. The consolidated unit will be located at Mobile and will serve the Coast Guard Atlantic Area, which includes the states, territories and U.S. possessions east of the Rocky Mountains. This notice announces the public availability of the Environmental Assessment and FONSI prepared for this action.

ADDRESS: The FONSI and Environmental Assessment will be available for inspection and copying at the Marine Safety Council (G-CMC/21), Room 2110, U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593-0001, between the hours of 8:00 a.m. and 4:00 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Mr. Allen R. Thuring, Office of Marine Safety, Security and Environmental Protection, (202) 267-0426.

SUPPLEMENTARY INFORMATION: The primary mission of the strike teams is to provide assistance upon request to federal On-Scene Coordinators when a pollution incident occurs that exceeds the capability of local emergency resources for pollution response. Assistance ranges in nature from sophisticated site entry techniques, which require equipment and training that may be either too costly or impractical to maintain in some locations, to the addition of skilled personnel to assist a unit overburdened by response activity. Increasingly, the strike teams provide expertise and do not utilize response equipment.

In the 14 years since the strike teams were created, the availability of emergency response capability within local governments and from commercial contractors has grown dramatically. However, there remains a need for

supplementary assistance in very serious cases and to fill in gaps where local capability has not developed. This reorganization will continue to support the performance of that mission, but in a more cost effective manner that is reflective of the above noted increases in local and commercial capability.

The Coast Guard has prepared an Environmental Assessment which includes an evaluation of the impacts of this action. As a result of the Environmental Assessment, the Coast Guard announces a finding of no significant impact (FONSI). A detailed discussion of the environmental considerations involved in this action is contained in the Environmental Assessment.

Date: August 28, 1987.

J. W. Kime,

Rear Admiral, U.S. Coast Guard Chief, Office of Marine Safety Security and Environmental Protection.

[FR Doc. 87-20341 Filed 9-2-87; 8:45 am]

BILLING CODE 4910-14-M

[87-064]

Meeting of New York Harbor Traffic Management Advisory Committee

AGENCY: Coast Guard, DOT.

ACTION: Notice of meeting.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. I), notice is hereby given of a meeting of the New York Harbor Traffic Management Advisory Committee to be held on October 7, 1987, in the Conference Room, second floor, U.S. Coast Guard Marine Inspection Office, Battery Park, New York, New York, beginning at 10:00 a.m.

The agenda for this meeting of the New York Harbor Traffic Management Advisory Committee is as follows:

1. Introductions.
2. Vessel Traffic Service New York update.
3. Permanent change of Vessel Traffic Service New York's boundary extensions to the Lehigh Valley Draw bridge and the Hell Gate Railroad bridge.
4. Information report from Vessel Traffic Service New York on a seaplane familiarization ride in NY Harbor.
5. Marina construction requirements implemented by the Philadelphia Corps of Engineers and their possible adaptation to NY Harbor.
6. Use of marine radios by pleasure craft.
7. Topics from the floor.
8. Review of agenda topics and selection of date for next meeting.

The New York Harbor Traffic Management Advisory Committee has been established by Commander, First Coast Guard District to provide information, consultation, and advice with regard to port development, maritime trade, port traffic, and other maritime interests in the harbor. Members of the Committee serve voluntarily without compensation from the Federal Government.

Attendance is open to the interested public. With advance notice to the Chairperson, members of the public may make oral statements at the meeting. Persons wishing to present oral statements should so notify the Executive Director no later than the day before the meeting. Any member of the public may present a written statement to the Committee at any time.

FOR FURTHER INFORMATION CONTACT: Commander W. Young, USCG, Executive Secretary, NY Harbor Traffic Management Advisory Committee, New York Vessel Traffic Service, Governors Island, New York, NY 10004; or by calling (212) 668-7954.

Dated: August 28, 1987.

R.L. Johanson,

Rear Admiral, U.S. Coast Guard Commander, First Coast Guard District.

[FR Doc. 87-20342 Filed 9-2-87; 8:45 am]

BILLING CODE 4910-14-M

Federal Highway Administration

Environmental Impact Statement; Charleston County, SC

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed replacement for the existing John P. Grace Memorial Bridge over the Cooper River in Charleston County, South Carolina.

FOR FURTHER INFORMATION CONTACT: Mr. William H. Rice, District Engineer, Federal Highway Administration, Suite 758, Strom Thurmond Federal Building, 1835 Assembly Street, Columbia, South Carolina, 29201, Telephone: (803) 253-3386.

SUPPLEMENTARY INFORMATION: The Federal Highway Administration in cooperation with the South Carolina Department of Highway and Public Transportation, will prepare an environmental impact statement for replacement of the Grace Memorial Bridge between the city of Charleston and the City of Mount Pleasant. The existing bridge carries two southbound lanes of U.S. 17. The project will extend from the terminus of I-26 in Charleston across Town Creek, Drum Island and the Cooper River to Mathis Ferry Road in Mount Pleasant, a distance approximately 3.0 miles.

Various types of steel and concrete bridges as well as a tunnel will be considered in the EIS and will all generally be in the same corridor as the existing bridge. Each alternate will provide a limited access road with grade separations and interchanges. A funding study will consider the use of tolls to pay for the project.

A letter of intent inviting written comments and suggestions, to ensure that the full range of environmental impacts associated with the project are considered will be sent to appropriate Federal State and local agencies, and to private organizations and interested citizens. A public hearing will be conducted to further involve local citizens in the process. Public notice will be given of the time and place of the hearing. The environmental impact statement will be available for public and agency review and comment.

A formal scoping meeting will be held with Federal State and local agencies, and private interest groups for the purpose of identifying the significant environmental issues to be addressed in the EIS. The scoping meeting will be held on September 22, 1987 at 10:30 a.m. in Seminar Room A of the Business and Technology Center located at 701 East Bay Street in Charleston.

To ensure that the full range of environmental issues are addressed and identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the supplemental EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20,205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovermental consultation on Federal programs and activities apply to this program)

Robert J. Probst,

Division Administrator, Columbia, South Carolina.

[FR Doc. 87-20331 Filed 9-2-87; 8:45am]

BILLING CODE 4910-22-M

Environmental Impact Statement; Jasper, Newton, and McDonald Counties, MO

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed project in Jasper, Newton and McDonald Counties, Missouri.

FOR FURTHER INFORMATION CONTACT:

Mr. James Mullen, District Engineer, Federal Highway Administration, P.O. Box 1787, Jefferson City, MO, 65102, Telephone No. 314-636-7104

Mr. James F. Roberts, Surveys and Plans Engineer, Missouri Highway and Transportation Department, P.O. Box 270, Jefferson City, MO, 65102, Telephone No. 314-751-2876.

SUPPLEMENTARY INFORMATION: (1) The project begins at Carthage, Missouri and extends south approximately 49 miles to the Missouri-Arkansas State Line. The proposed highway will be a four-lane controlled access divided facility. The proposed improvement will serve to reduce traffic congestion on existing Route 71 and Alternate Route 71 in Jasper, Newton, and McDonald Counties in southwestern Missouri. These routes are deficient for handling traffic capacities. This is a Demonstration Project authorized under the Surface Transporation and Uniform Relocation Assistance Act of 1987. This project was authorized for the purpose of demonstrating methods of improving highway safety and accelerating highway construction. It shall also demonstrate the latest high-type geometric design features and new advances in highway traffic control and safety hardware.

(2) Several undetermined alternates will be considered for the purposed highway. The "no build" alternate as well as the upgrading of existing facilities will be addressed.

(3) To date, presentation of the study has been made in four meetings at the local level, and input has been received. The scoping process will be initiated with Federal, State, and local agencies as studies continue. Further public hearings will be held, also.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction)

Issued on August 26, 1987.

James M. Mullen,

District Engineer, Jefferson City.

[FR Doc. 87-20255 Filed 9-2-87; 8:45 am]

BILLING CODE 4910-22-M

Diabetic Conditions and Commercial Drivers; Meeting

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of public meeting.

SUMMARY: The FHWA announces that a conference on Diabetic Conditions and Commercial Drivers will be held on September 9 and 10, 1987, beginning at 12:00 noon at the Crystal City Marriott, 1999 Jefferson Davis Highway, Arlington, Virginia 22202. The telephone number is (703) 521-5500.

The Agenda includes a plenary session which will be followed by consensus development task force meetings and will conclude with a plenary session during which the task force recommendations will be commented on by other task force members. The two plenary sessions will be open to the public. The approximate time for each plenary session is as follows: Plenary Session I, September 9, 1987, 12:00 noon to 2:00 p.m., and Plenary Session II, September 10, 1987, 10:00 a.m. to 12:00 noon.

FOR FURTHER INFORMATION CONTACT: Mr. Dennis P. McEachen, Standards Development Division, Office of Motor Carrier Standards, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590, (202) 366-2987. Office hours are from 7:45 a.m. to 4:15 p.m. Monday through Friday.

Issued August 28, 1987.

R.A. Barnhart,

Federal Highway Administrator.

[FR Doc. 87-20280 Filed 9-2-87; 8:45 am]

BILLING CODE 4910-22-M

Meeting; Environmental Impact and Related Procedures

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of public meeting.

SUMMARY: The FHWA announces a public informational meeting on its recently issued final regulation governing the preparation of environmental impact statements and related environmental documents. The public informational meeting will be held from 10:00 a.m. to 12:00 noon on September 11, 1987, in Washington, DC in Room 4234 at the U.S. Department of Transportation Headquarters, 400 Seventh Street SW., Washington, DC 20590. The agenda will include a presentation on the new regulation and a question and answer session.

The new regulation was published on August 28, 1987, in the **Federal Register** (52 FR 32646), and amends Part 771 of Title 23 of the Code of Federal Regulations. The amendments simplify and streamline the project development process, provide increased decisionmaking authority to agency field offices, and consolidate the FHWA's public involvement requirements. The regulatory changes are part of the FHWA's establishment of a streamlined, one-stop environmental process. A rulemaking process with public notice and comments was conducted, as discussed in the final notice published at 52 FR 32646.

FOR FURTHER INFORMATION CONTACT: Mr. Frederick Skaer, Office of Environmental Policy (HEV-10), (202) 366-2050, FHWA 400 Seventh Street SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., EST, Monday through Friday except legal holidays.

Issued on August 31, 1987.

R.A. Barnhart,

Federal Highway Administrator.

[FR Doc. 87-20343 Filed 9-2-87; 8:45 am]

BILLING CODE 4910-22-M

Meeting; Motor Carrier Advisory Committee

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of public meeting.

SUMMARY: The FHWA announces that the National Motor Carrier Advisory Committee will hold a meeting on September 15, 1987, in Washington, DC, at the U.S. Department of Transportation headquarters, 400 Seventh Street, SW., Washington, DC 20590. The meeting will be held from 9 a.m. to 5 p.m. in Room 4234. This meeting is open to the public. The agenda will focus on the status of the implementation of the commercial drivers license program, public information efforts regarding the motor carrier industry, the development of a "Futures Program" for the industry, a review of previous resolutions regarding drug testing, the status of other FHWA legislative and regulatory activities and a review of old business from previous meetings.

FOR FURTHER INFORMATION CONTACT: Mr. Joseph S. Toole, Executive Director,

National Motor Carrier Advisory Committee, Federal Highway Administration, HOA-1, Room 4218, 400 Seventh Street, SW., Washington, DC 20590, (202) 366-2238. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except legal holidays.

Issued on August 28, 1987.

R. A. Barnhart,

Federal Highway Administrator.

[FR Doc. 87-20281 Filed 9-2-87; 8:45 am]

BILLING CODE 4910-22-M

DEPARTMENT OF THE TREASURY

Office of the Secretary

[Supplement to Department Circular—Public Debt Series—No. 23-87]

Treasury Notes; Series AC-1989

The Secretary announced on August 26, 1987, that the interest rate on the notes designated Series AC-1989, described in Department Circular—Public Debt Series—No. 23-87 dated August 20, 1987, will be 7¾ percent. Interest on the notes will be payable at the rate of 7¾ percent per annum.

Washington, August 27, 1987.

Gerald Murphy,

Fiscal Assistant Secretary.

[FR Doc. 87-20238 Filed 9-2-87; 8:45 am]

BILLING CODE 4810-40-M

[Supplement to Department Circular—Public Debt Series—No. 24-87]

Treasury Notes; Series L-1992

The Secretary announced on August 27, 1987, that the interest rate on the notes designated Series L-1992, described in Department Circular—Public Debt Series—No. 24-87 dated August 20, 1987, will be 8⅜ percent. Interest on the notes will be payable at the rate of 8⅜ percent per annum.

Washington, August 28, 1987.

Gerald Murphy,

Fiscal Assistant Secretary.

[FR Doc. 87-20239 Filed 9-2-87; 8:45 am]

BILLING CODE 4810-40-M

Senior Executive Service; Performance Review Board Membership

AGENCY: Treasury.

ACTION: Notice of Members of Performance Review Board (PRB).

SUMMARY: This notice announces the appointment of members of the composite PRB for the U.S. Savings Bonds Division, the Bureau of the Public Debt, the Bureau of Engraving and Printing, the United States Mint, and the Financial Management Service.

FOR FURTHER INFORMATION CONTACT: Kenneth W. Rath, Assistant Commissioner (Administration), Bureau of the Public Debt, E Street Building, Room 527, Washington, DC 20239-0001; Telephone: (202) 376-4330.

SUPPLEMENTARY INFORMATION: Pursuant to 5 U.S.C. 4314(c)(4) and the Civil Service Reform Act of 1978, the members of the Senior Executive Service Performance Review Board for the U.S. Savings Bonds Division, the Bureau of the Public Debt, the Bureau of Engraving and Printing, the United States Mint, and the Financial Management Service are listed below. This Board reviews the performance of career senior executives below the level of bureau head and principal deputy in the five bureaus. At least three voting members constitute a quorum.

Bureau	Primary	Alternate
SB	Jerrold B. Speers, Executive Director.	Edward J. Guss, Deputy Executive Director.
PD	Kenneth W. Rath, Assistant Commissioner (Administration).	Eleanor J. Holsopple, Assistant Commissioner (Securities and Accounting Services).
E&P	L. Paul Blackmer, Jr., Assistant Commissioner (Administration).	Carl D'Alessandro, Acting Assistant Director (Operations).
Mint	Eugene H. Essner, Deputy Director.	Michael F. Hill, Associate Director for Policy and Management.
FMS	Diane E. Clark, Assistant Commissioner Administration.	Mitchell Levine, Assistant Commissioner Comptroller.

This notice does not meet the Department's criteria for significant regulations.

Kenneth W. Rath,

Assistant Commissioner (Administration), Bureau of the Public Debt, and Acting PRB Chairman, 1987.

[FR Doc. 87-20240 Filed 9-2-87; 8:45 am]

BILLING CODE 4810-40-M

VETERANS ADMINISTRATION

Agency Form Under OMB Review

AGENCY: Veterans Administration.

ACTION: Notice.

The Veterans Administration has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This document contains an extension and lists the following information: (1) The department or staff office issuing the form, (2) the title of the form, (3) the agency form number, if applicable, (4) a description of the need and its use, (5) how often the form must be filled out, (6) who will be required or asked to report, (7) an estimate of the number of responses, (8) an estimate of the total number of hours needed to fill out the form, and (9) an indication of whether section 3504(h) of Pub. L. 96-511 applies.

ADDRESSES: Copies of the forms and supporting documents may be obtained from Patti Viers, Agency Clearance Officer (732), Veterans Administration, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 233-2146. Comments and questions about the items on the list should be directed to the VA's OMB Desk Officer, Joseph Lackey, Office of Management and Budget, 726 Jackson Place, NW., Washington, DC 20503, (202) 395-7316.

DATES: Comments on the information collection should be directed to the OMB Desk Officer within 60 days of this notice.

Dated: August 31, 1987.

By direction of the Administrator

David A Cox,

Associate Deputy Administrator for Management.

Extension

1. Department of Veterans Benefits
2. Request for Approval of School Attendance
3. VA Forms 21-674 and 21-674c
4. This information is necessary to determine eligibility for continued entitlement to benefits for a child between the ages of 18 and 23 who is attending school.
5. On occasion
6. Individuals or households
7. 138,000 responses
8. 34,500 hours
9. Not applicable

1. Department of Veterans Benefits
2. Placement Certificate for Manufactured Home
3. VA Form 26-8644
4. This information certifies the placement of the manufactured home on the property as approved by VA and receipt of all accessories included in the home loan.
5. On occasion
6. Individuals or households; Businesses or other for-profit; and Small businesses or organizations
7. 6,000 responses
8. 1,000 hours
9. Not applicable

1. Department of Veterans Benefits
2. Water-Plumbing Systems Inspection Report (Manufactured Home)
3. VA Form 26-8731a
4. This information is used to determine acceptability of used manufactured homes for VA guaranteed home loans.
5. On occasion
6. Individuals or households; Businesses or other for-profit; and Small businesses or organizations
7. 1,000 responses
8. 2,000 hours
9. Not applicable

1. Department of Veterans Benefits
2. Trainee Request for Leave—Chapter 31, Title 38, U.S.C.
3. VA Form 26-1905h
4. This information is used to determine a veteran's eligibility for subsistence during a leave of absence while participating in the vocational rehabilitation program.
5. On occasion
6. Individuals or households
7. 30,000 responses
8. 7,500 hours
9. Not applicable

1. Department of Veterans Benefits
2. Loan Service Report
3. VA Form 26-6808
4. This information is used to process delinquent guaranteed and insured home loans.
5. On occasion
6. Individuals or households
7. 78,000 responses
8. 32,500 hours
9. Not applicable

[FR Doc. 87-20308 Filed 9-2-87; 8:45 am]
BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 52. No. 171
Thursday, September 3, 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).

COMMISSION ON CIVIL RIGHTS

September 1, 1987.

PLACE: 1121 Vermont Avenue, NW., Room 512, Washington, DC 20425.

DATE AND TIME: Friday, September 11, 1987, 9:00 a.m.–5:00 p.m.

STATUS OF MEETING: Open to the Public.

MATTERS TO BE CONSIDERED:

I. Approval of Agenda
II. Approval of Minutes of Last Meeting
III. Staff Director's Report
  A. Status of Earmarks
  B. Personnel Report
  C. Activity Report
IV. Statement by Clarence M. Pendleton, Jr., Regarding the Flagstaff, Arizona Hearings on the Enforcement of the Indian Civil Rights Act of 1968
V. Report of Commission Subcommittee Regarding Proposed Projects
VI. SAC Recharters
VII. Discussion by SAC Chairs

PERSON TO CONTACT FOR FURTHER INFORMATION: Barbara Brooks, Press and Communications Division (202) 376–8312.

William H. Gillers,
Solicitor, 376–8514.

[FR Doc. 87–20394 Filed 9–1–87; 11:56 am]

BILLING CODE 6335-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 10:30 a.m. on Thursday, August 27, 1987, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider (a) matters relating to the Corporation's assistance agreement with an insured bank; and (b) requests for financial assistance pursuant to section 13(c) of the Federal Deposit Insurance Act.

In calling the meeting, the Board determined, on motion of Director C. C. Hope, Jr. (Appointive), seconded by Director Robert L. Clarke (Comptroller of the Currency), concurred in by Chairman L. William Seidman, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting pursuant to subsections (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

The meeting was held in the Board Room of the FDIC Building located at 550 17th Street, NW., Washington, DC.

Dated: August 31, 1987.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,
Executive Secretary.

[FR Doc. 87–20415 Filed 9–1–87; 12:25pm]

BILLING CODE 6714-01-M

NATIONAL CREDIT UNION ADMINISTRATION

TIME AND DATE: 9:30 a.m., Wednesday, September 9, 1987.

PLACE: 1776 G Street, NW., Washington, DC 20456, 7th Floor, Filene Board Room.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Approval of Minutes of Previous Open Meeting.
2. Economic Commentary.
3. Review of Central Liquidity Facility Lending Rate.
4. Central Liquidity Facility Reserving Policy for FY 1988.
5. Central Liquidity Facility Agent Commitment Fees.
6. Insurance Fund Report.
7. Appeal of Regional Director's Disapproval of Charter Application.
8. Interim Final Rule: Prohibited Lending Practices.
9. Request for Exemption from NCUA's Nonpreferential Treatment and Prohibited Fees Lending Rules.
10. Interpretive Ruling and Policy Statement Regarding Procedures for Developing Regulations.
11. Final Rules: Part 705 and § 700.1, NUCA Rules and Regulations, Community Developing Revolving Loan Program for Credit Unions and Definition of Low Income Members.
12. College Student Credit Union Pilot Program.
13. Federal Credit Union Field of Membership and Chartering Policy.

RECESS: 11:30 a.m.

TIME AND DATE: 11:45 a.m., Wednesday, September 9, 1987.

PLACE: 1776 G Street, NW., Washington, DC 20456, 7th Floor, Filene Board Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Approval of Minutes of Previous Closed Meetings.
2. Approval of Central Liquidity Facility Agent Member. Closed pursuant to exemptions (4), (8), and (9)(A)(ii).
3. Central Liquidity Facility Lines of Credit. Closed pursuant to exemptions (4), (8), and (9)(A)(ii).
4. Requests for Exemption from § 701.21(h)(2)(ii), NCUA Rules and Regulations. Closed pursuant to exemptions (6), (8), and (9)(A)(ii).
5. Appeals of Liquidating Agent Denial of Claims. Closed pursuant to exemptions (6), (7), (8), (9)(A)(ii), and (10).
6. Administrative Action under section 206(h)(1)(a) of the Federal Credit Union Act. Closed pursuant to exemptions (8), (9)(A)(ii), and (9)(B).
7. Board Briefings. Closed pursuant to exemptions (2), (8), (9)(A)(ii), and (9)(B).
8. Personnel Actions. Closed pursuant to exemptions (2) and (6).

FOR MORE INFORMATION CONTACT: Becky Baker, Secretary of the Board, Telephone (202) 357–1100.

Becky Baker,
Secretary of the Board.

[FR Doc. 87–20426 Filed 9–1–87; 1:40 pm]

BILLING CODE 7535-01-M

federal register

Thursday
September 3, 1987

Part II

Department of Labor

Pension and Welfare Benefits Administration

29 CFR Part 2550

Proposed Regulation Regarding Participant Directed Individual Account Plans; Notice of Proposed Rulemaking

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

29 CFR Part 2550

Proposed Regulation Regarding Participant Directed Individual Account Plans (ERISA Section 404(c) Plans)

AGENCY: Department of Labor.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: This document contains a proposed regulation under section 404(c) of the Employee Retirement Income Security Act of 1974 (ERISA, or the Act). That section provides that, where a participant or beneficiary of an employee pension benefit plan exercises control over assets in an individual account maintained for him under the plan, the participant or beneficiary is not considered a fiduciary by reason of his exercise of control and other plan fiduciaries are relieved of liability under Part 4 of Title I of ERISA for the results of the participant's or beneficiary's exercise of control. Section 404(c) specifically contemplates the issuance of regulations, and the proposal describes the circumstances in which section 404(c) applies to a transaction involving a participant's or beneficiary's exercise of control over his individual account. If adopted, the regulation will affect participants and beneficiaries as well as plan fiduciaries.

DATES: Written comments on the proposed regulation must be received by the Department of Labor (the Department) on or before November 2, 1987. The proposed regulation, if adopted, would apply to transactions occurring in plan years beginning after a date 90 days from the date the regulation is published in final form.

ADDRESSES: Written comments (preferably at least three copies) should be submitted to the Office of Regulations and Interpretations, Pension and Welfare Benefits Administration, Room N-5669, U.S. Department of Labor, Washington, DC 20210, and marked "Attention: Section 404(c) regulation." All submissions will be available for public inspection in the Public Documents Room, Pension and Welfare Benefits Administration, Room N-4677, 200 Constitution Avenue NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Nancy M. Rooney, Plan Benefits Security Division, Office of the Solicitor, U.S. Department of Labor, Washington, DC 20210. Telephone (202) 523-9596 or Mark A. Greenstein, Pension and Welfare Benefits Administration, U.S. Department of Labor, Washington, DC 20210. Telephone (202) 523-8671.

SUPPLEMENTARY INFORMATION: This document contains a proposed regulation under section 404(c) of ERISA.[1] That section provides that where a participant or beneficiary of an employee pension benefit plan that provides for individual accounts exercises control over assets in his account, then: (1) the participant or beneficiary shall not be deemed to be a fiduciary by reason of his exercise of control; and (2) no person who is otherwise a fiduciary shall be liable under the fiduciary responsibility provisions of ERISA for any loss, or by reason of any breach, which results from such participant's or beneficiary's exercise of control. A discussion of section 404(c) and a description of the proposed regulation follows.

A. General Considerations

The relief from the fiduciary responsibility provisions of ERISA that is provided by section 404(c) applies only to individual transactions that meet the criteria established by that section—*i.e.*, the transaction must be under the kind of plan described in section 404(c) and the participant must have actually exercised control with respect to the transaction. Thus, a determination whether sections 404(c)(1) and 404(c)(2) apply can be made only on a case by case basis. The proposed regulation provides the general framework for such determinations.

It is the Department's view that section 404(c) is similar to a statutory exception to the general fiduciary provisions of ERISA, and, accordingly, the person asserting applicability of the exception will have the burden of proving that the conditions of section 404(c) and any regulation thereunder have been met.[2]

The proposed regulation is organized in a manner similar to section 404(c) itself. Paragraph (a) describes the general standards of section 404(c). Paragraph (b) describes the kinds of plans that may provide for participant control. Paragraph (c) describes the application of paragraph (b) in certain special circumstances. Paragraph (d) describes the manner in which a participant must exercise control in order for the relief provided by section 404(c) to be available. Paragraph (e) describes the application of sections 404(c)(1) and 404(c)(2). Paragraph (f) defines certain terms that are used in the regulation. Paragraph (g) contains specific examples which illustrate the provisions of the proposal. Paragraph (h) establishes the effective date for the regulation.

B. ERISA Section 404(c) Plans

The proposed regulation defines an "ERISA section 404(c) plan" as an individual account plan described in section 3(34) of ERISA that permits a participant to make an independent choice, from a broad range of investment alternatives, regarding the manner in which any portion of the assets in his individual account is invested.[3] The definition permits a plan to provide for participant control in many different ways and in varying degrees. For example, under the definition, a plan could meet the requirements for treatment as an ERISA section 404(c) plan notwithstanding that it only allows certain participants to exercise control over their individual account balances and notwithstanding that it only permits participants to exercise control over a specified portion of their account balances.[4] However, if

[1] 29 U.S.C. 1104(c).

[2] See *Donovan v. Cunningham*, 716 F.2d 1455, 1465, 1467-68 (5th Cir. 1983) in which it was held that a fiduciary of an employee stock ownership plan had the burden of proof to show that the conditions to the availability of the statutory exemption found in section 408(e) of ERISA were met. As support, the court cited *SEC v. Ralston Purina Co.*, 346 U.S. 119, 126 (1953): "As the Supreme Court has observed in a different context, it seems 'fair and reasonable' to place the burden of proof upon a party who seeks to bring his conduct within a statutory exception to a broad remedial scheme. *SEC v. Ralston Purina Co.*, 346 U.S. 119, 126, 73 S.Ct. 981, 985, 97 L.Ed. 1494 (1953)." *Id.* at 1467-68, n.27.

[3] Section 404(c) refers to a pension plan that "provides for individual accounts." The proposed regulation, however, limits coverage of section 404(c) to "individual account plans" described in section 3(34) of ERISA because the conference report accompanying ERISA, H.R. Rep. No. 1280, 93d Cong., 2d Sess., 305 (1974) (hereafter, the Conference Report) refers to individual account plans that provide for participant control and because section 404(c) seems to contemplate separate individual accounting so that each participant will bear the sole risk of loss attributable to his investment decision.

[4] This discussion deals only with the effect of such classifications on a plan's status as an ERISA section 404(c) plan; in certain circumstances such classifications may violate other provisions of law, including conditions to qualification of a pension plan under section 401(a) of the Internal Revenue Code (the Code). That section provides that a qualified pension plan may not discriminate in favor of employees who are officers, shareholders or highly compensated. See section 401(a)(4) of the Code. In Rev. Rul. 70-370, 1970-2 C.B. 84, the Internal Revenue Service held that a profit sharing plan failed to meet the qualification requirements under section 401 of the Code because only highly compensated employees were permitted to exercise control over assets in their individual accounts.

a plan does not permit a participant to exercise control over all of the assets in his account, the provisions of sections 404(c)(1) and 404(c)(2) would not, in any circumstances, apply to transactions involving assets with respect to which the participant is not permitted to exercise control. To the extent the participant is not permitted to exercise control, plan fiduciaries are subject to all of the fiduciary duties and obligations set forth in Part 4 of Title I of ERISA.[5]

1. Opportunity To Exercise Control

The proposed regulation states that a section 404(c) plan must provide participants with a reasonable opportunity to give investment instructions to a responsible plan fiduciary who is obligated to comply with such instructions.[6] These instructions can be either in written or oral form. If the plan permits oral participant instructions, written confirmations of such instructions must be given by the responsible plan fiduciary. A plan does not fail to meet this requirement because it imposes reasonable restrictions on the frequency with which a participant may give investment directions. For example, opportunities to give instructions may be restricted to a certain degree where the investment options available to the participant consist of pooled funds that, because of the character of the underlying assets and the diversification of the funds' assets, generally may be expected to rise and fall in value slowly and in accord with broad market trends. If, on the other hand, the investment options available to participants include the option to invest in securities that are traded in a volatile market where the value of such securities may fluctuate widely over a short period of time, the proposed regulation would require the plan to permit participants to give investment instructions at any time during which the securities are traded in order for the participant to have a reasonable opportunity to exercise control over assets in his account.[7]

The proposed regulation also provides that a plan does not fail to qualify as an ERISA section 404(c) plan merely because it charges the participant's account with the reasonable expenses of carrying out his instructions provided the participant is informed that such charges will be made and that the participant is furnished periodic reports regarding the actual expenses incurred pursuant to reasonable procedures established under the plan.[8]

Pursuant to paragraph (b)(2)(ii) of the proposed regulation, an ERISA section 404(c) plan may impose certain limitations on the responsible fiduciary's duty to carry out a participant's investment instructions. For example, the proposal states that a plan fiduciary may refuse to implement an investment decision that would generate unrelated business income or unrelated debt-financed income to the plan that would be taxable under the Code.[9] The circumstances described in the proposal are not intended as an exhaustive list and a plan may impose other reasonable limitations. However, such restrictions could so restrict a participant's opportunity to exercise control as to cause the plan to fail to meet the general requirement that an ERISA section 404(c) plan must provide for a broad range of investment alternatives. Thus, such restrictions should be taken into account in determining whether a particular plan meets the requirements for treatment as an ERISA section 404(c) plan and in determining the scope of the responsibilities of plan fiduciaries.

2. Broad Range of Investment Alternatives

a. *In general.* As noted above, the proposed regulation provides that a plan is an ERISA section 404(c) plan only if it offers a "broad range" of investment alternatives. This provision is derived from the discussion of section 404(c) in the Conference Report.[10] Whether a plan provides a broad range of investment alternatives is ultimately a factual question to be resolved in light of the facts and circumstances of the particular case. However, the proposed regulation establishes the minimum standards which a plan must meet in order to provide a sufficient range of investment options.[11]

First, the alternatives available under the plan must be sufficient to permit the participant to materially affect the potential return on the assets in his account and the risks to which they are subject.

Second, the options must be sufficient to permit the participant to pursue a variety of different investment objectives. These include: (1) Capital preservation and generation of income; (2) capital appreciation; and (3) liquidity with a high degree of assurance of repayment.

Third, the plan must provide a sufficient range of investments so that a participant may diversify investments so as to minimize the risk of large losses. There are two aspects to this requirement. First, the proposed regulation makes it clear that, within each of the investment objective categories discussed above, an ERISA section 404(c) plan must offer participants a sufficient number of options so that a participant may diversify investments within each category to minimize the risk of large losses. Second, the regulation contains a more general requirement under which the plan as a whole must provide participants with the opportunity to diversify investments. The nature of the plan and the size of the participants' accounts may affect the number and type of investment options necessary to meet this requirement. For example, a plan which does not provide participants with an opportunity to

[5] ERISA also imposes certain requirements which are not affected by a participant's exercise of control over the assets in his individual account; those requirements, of course, continue to apply to plan fiduciaries even though a plan is an ERISA section 404(c) plan. For example, the bonding requirements of section 412 of ERISA would apply to all persons (other than the participant) who handle plan funds under an ERISA section 404(c) plan.

[6] As discussed below, paragraph (e)(2)(ii) of the proposed regulation describes certain categories of participant instructions with respect to which the provisions of section 404(c) do not apply.

[7] To further illustrate, an opportunity to give instructions once every calendar quarter generally would be sufficient if the investment options available to the participant are diversified pooled funds and the underlying assets of each fund consist of a large, diversified group of securities which are actively traded and for which there is a recognized market. Based on the nature and diversity of these underlying assets, the market value of an interest in any of these funds should reflect overall broad market trends and, hence, should not fluctuate greatly over short periods of time. If, however, an ERISA section 404(c) plan includes an option to invest in commodities futures, it might be necessary, because the market for such securities is highly volatile, for the plan to permit participants to give investment instructions at any time during which such futures are traded in order to provide each participant a reasonable opportunity to exercise control over the assets in his account.

[8] For example, if a plan's summary plan description contains a general description of the type of administrative charges that may be incurred along with the amount of such charge (and any change in that information is reflected in subsequent summaries of material modifications), the requirement of prior periodic disclosure of the existence of these charges generally would be met. Such disclosure would not, however, satisfy the requirement of periodic disclosure of the actual expenses incurred by the participant.

[9] *See* sections 512–514 of the Code.

[10] Conference Report, at 305–6.

[11] Of course, a plan which permits a participant to direct the investment of the assets in his account in any available investment will be considered to offer a broad range of investment alternatives. In cases where the plan limits the investment options available to participants, a determination whether the plan provides a broad range of investment alternatives would be made on a case by case basis, taking into account the factors described in the regulation.

invest in pooled investment funds might not meet the diversification requirement if the average size of the participants' accounts is such that pooled investment is the only reasonable way in which to diversify account investments. In addition, the general diversification requirement should assure that participants have an opportunity to pursue "balanced" investment objectives involving a combination of investments from the specified categories discussed above.[12]

Fourth, the plan must provide a participant the opportunity to invest some or all of his account balance in a relatively "safe" investment—*i.e.*, a fully insured interest-bearing deposit in a bank or similar financial institution or a pooled investment fund the assets of which consist solely of cash and securities issued or guaranteed by the United States or one of its agencies. The principal investment objectives of such an investment fund must include a high level of current income consistent with the preservation of capital and a high degree of liquidity.

Where pooled investment funds are available as investment options, the underlying securities held in the investment funds may be considered in evaluating the extent to which a participant is able to diversify investments so as to minimize the risk of large losses.[13]

The Department notes that, in view of the importance of these provisions defining a broad range of investment opportunities available for participation direction, it will carefully consider comments describing other options that the commentator believes satisfy the requirements of section 404(c) of ERISA and its legislative intent.

b. *Access to information regarding investment options.* The proposed regulation states that only those investment options as to which sufficient information is available to the participant to permit informed investment decisions will be taken into account in determining whether a plan provides a broad range of investment alternatives.[14] This provision does not require plans to *limit* the available investment alternatives to those which meet these information requirements, but rather requires only that participants under an ERISA section 404(c) plan must at least be able to choose from a broad range of investments with respect to which such information *is* available. Thus, a plan can offer investment alternatives for which no information is available and still meet the broad range of investment alternatives requirement if it also offers a sufficient number of investment alternatives about which information is available. Paragraph (g)(1) of the proposal illustrates the operation of this provision.

C. Special Rule for Designated Pooled Investment Funds and Designated Investment Managers

1. *Designated Pooled Funds.* It appears that some individual account plans limit a participant's investment options by permitting participants to choose from a variety of different kinds of *specified* pooled investment funds. These funds frequently are identified in the plan document and may be the only investment options available to the participant. In many cases, all of the available funds are managed by the same investment manager or by affiliated investment managers. The Department has concluded that, in general, these plans should be treated as ERISA section 404(c) plans because they permit participant control and provide for a broad range of investment alternatives. However, these plans appear to differ in at least two respects from other participant-directed plans.

First, these plans offer participants *designated* pooled funds to the exclusion of other investments. Participants are able to choose from funds that have different investment objectives, but once they invest in a fund they do not have control over individual investment decisions made by the pooled fund's manager. Moreover, in many cases, the participant has no choice with respect to the investment managers who do make individual investment decisions. For these reasons, the Department believes that it is important that any regulation under section 404(c) of ERISA clearly reflect plan fiduciaries' ongoing duty to consider the suitability of the designated funds in these circumstances in order to protect the interests of participants.

Second, because a participant may have limited funds in his account, investment in pooled funds may frequently be the only way in which the participant can diversify his account. Thus, the Department believes that it is essential that a sufficient variety of funds be available to enable the participant to pursue—through investment in the designated funds—each of the investment objectives discussed above in connection with the general requirement that the plan permit a participant to choose from a broad range of investments.

In view of the foregoing, the proposed regulation provides that a plan whose investment alternatives include any specified pooled investment fund is an ERISA section 404(c) plan only if (in addition to the plan's compliance with the requirements of paragraph (b)): (1) An independent plan fiduciary is required to designate the pooled investment funds offered as investment options, and (2) the fiduciary designates at least four funds, each of which is managed in furtherance of a different one of four investment objectives (preservation of capital, capital appreciation, liquidity, and balanced funds).[15] For purposes of this rule, an

[12] Even if a plan offers a diverse group of investments in each of the categories of investments discussed above, it may not meet the general diversification standard of the proposed regulation. For example, a plan may fail to provide a participant an opportunity to diversify his account if all of the available options relate to one industry.

[13] This is made clear in an example included in the regulation (paragraph (g)(2)). The Department's position is also consistent with the position taken in the Conference Report with regard to a fiduciary's obligation to diversify plan investments. There, the conferees stated that for efficiency and economy plans may invest all their assets in a single bank or other pooled investment fund, but that the pooled fund itself could have diversified investments, and, in such circumstances, the diversification rule is to be applied to the plan by examining the diversification of the investments in the pooled fund. Conference Report at 305.

For purposes of diversification, an investment in a closed-end management company will not be considered to be an investment in a pooled investment fund unless the investment is in the common stock issued by that company.

[14] The requirement that sufficient information must be available to permit informed investment decisions applies not only to the initial participant investment decision but also to subsequent decisions with regard to that investment. Thus, for example, in order for an investment option to meet this requirement, information regarding the current value of the investment would need to be readily available on a regular basis as well as information regarding the financial condition of the issuer. A participant must also be given sufficient information to make informed decisions with regard to all incidents of ownership of that investment in order for an investment to be taken into account for purposes of the broad range requirement. In the case of a security, such information would include information sufficient to permit the participant to make informed decisions in exercising any voting rights attendant to such ownership. One of the examples (paragraph (g)(1)) illustrates that this standard would be met where the investment options available under the plan include a broad range of publicly-offered securities for which market quotations are readily available and where the plan administrator distributes copies of proxies, periodic reports and similar materials to the participants who have invested in such securities.

[15] For example, a plan which designates all stocks listed on the New York Stock Exchange and one specified pooled investment fund as investment alternatives would fail to meet the requirement for a diversified group of pooled funds contained in paragraph (c)(2) of the proposal because it does not offer at least four funds. Therefore, the plan would not be considered an ERISA section 404(c) plan. The regulation also provides, however, that the plan need not comply with the requirements of paragraph (c)(2) of the proposal merely because it offers a designated investment fund in order to comply with

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"independent" plan fiduciary is a fiduciary that is not affiliated with any of the specified investment funds or with any investment manager of such a fund. Under these rules, a plan that limits participants' choices to a "family of funds" managed by a single investment manager could be treated as an ERISA section 404(c) plan.

2. *Designated Investment Managers.* It is also possible that an individual account plan may limit a participant's investment options by providing participants with the opportunity to appoint one or more *specified* investment managers to make individual investment decisions on behalf of participants.[16]

The Department has concluded that any such plan should also be subject to a special rule in order to assure that a plan fiduciary assumes a continuing obligation to assess the suitability of the designated investment managers. Thus, the proposed regulation provides that a plan whose investment alternatives include the selection of one or more designated investment managers is an ERISA section 404(c) plan only if an independent fiduciary is required to designate the investment managers from which the participant may select. This rule is similar to the first of the two special rules for designated pooled funds. Since, however, a participant's account assets would be managed individually under this kind of plan, the Department has concluded that the general rules in paragraph (b) are sufficient to assure that participants are free to pursue their desired investment objectives by choosing from a broad range of investment alternatives.

Paragraphs (g)(2) and (g)(3) of the proposed regulation illustrate the operation of the special requirements for designated pooled investment funds and designated investment managers.

Finally, the Department emphasizes that the rules for pooled funds are not intended to negate the relief that section 404(c) is intended to provide. In this respect, the independent fiduciary generally would discharge his oversight duties by prudently selecting the investment funds (or investment managers), periodically evaluating their performance, and determining, based on that evaluation, whether the funds should continue to be available as participant investment options. In making these decisions the fiduciary would, of course, consider the special characteristics of ERISA section 404(c) plans.

D. Exercise of Control by a Participant

1. *Generally.* In view of the transactional nature of the relief provided by section 404(c), the proposed regulation makes it clear that a determination whether a participant has in fact exercised control must necessarily be made on a case by case basis, taking into account the relevant facts and circumstances.

The proposed regulation makes it clear that sections 404(c)(1) and 404(c)(2) apply only where the participant's exercise of control has been independent. This is consistent with the Conference Report discussion of section 404(c).[17] In this regard, the proposed regulation describes certain factors that indicate the absence of independent control. These are: (1) Improper influence by a plan fiduciary or plan sponsor with respect to the transaction; (2) concealment from the participant by a plan fiduciary of material nonpublic facts regarding the transaction that are known by the plan fiduciary;[18] and (3) the legal incompetence of the participant where the plan fiduciary accepting his instructions knows him to be incompetent.[19]

The proposed regulation also provides that where a participant exercises control over the assets in his account to engage in a sale or an exchange of property or a loan with a plan fiduciary (other than a plan sponsor, or an affiliate as discussed below)[20] or an affiliate of such fiduciary, such exercise of control will not be "independent" (regardless of whether it meets the other requirements of the regulation) unless the terms of the transaction are fair and reasonable to the participant at the time of the transaction. A transaction will be deemed to be fair and reasonable to the participant if the participant pays no more than, or receives no less than, adequate consideration as defined in section 3(18) of the Act in connection with the transaction. These standards are adopted from established principles relating to the circumstances under which consent of a beneficiary of a trust will relieve a trustee from liability for breach of his fiduciary duties.[21]

2. *Absence of Affirmative Instructions.* Generally, the proposed regulation contemplates that a participant will give affirmative instructions regarding the investment of assets in his individual account. However, the regulation does indicate that section 404 may apply in cases where the participant has not given such affirmative instructions if certain conditions are met. Such passive investment options are limited to the relatively "safe" investments required by paragraph (b)(1)(iii) of the proposal to be included in each ERISA section 404(c) plan—*i.e.*, fully insured interest-bearing deposits in a bank or similar financial institution or a pooled investment fund the assets of which consist solely of cash and securities issued or guaranteed by the United States or one of its agencies. It is contemplated that such a passive investment designation will serve primarily as a "suspense" fund in which

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the "safe" investment option requirement of paragraph (b)(1)(iii) or to provide a "passive" investment option of the kind described in (d)(4)(ii).

[16] In the case of any ERISA section 404(c) plan which permits a participant to designate an investment manager, the individual investment decisions of such an investment manager are not the direct and necessary results of the participant's designation of the manager (see paragraph (e)(2)(iii) of the proposal). Plan fiduciaries would have an obligation to assess the suitability of the investment manager only in cases where the participant's choices are limited to specified investment managers (see paragraphs (c) and (d)(5) of the proposal and the discussion below).

[17] Conference Report, at 305.

[18] As provided in paragraph (d)(5) of the proposed regulation, it is contemplated that generally a fiduciary would have no affirmative obligation to advise participants regarding the suitability of various investment options.

[19] With respect to the third factor, the Department does not intend to impose an affirmative duty on the implementing fiduciary to evaluate the participant's competence. However, the Department is of the opinion that the implementing fiduciary should not be able to invoke section 404(c) to avoid liability for losses resulting from the imprudent instructions of a participant where the fiduciary has actual knowledge of the incompetence.

[20] Paragraph (e)(2)(ii)(D) of this regulation provides that section 404(c) does not relieve any fiduciary of any liability for implementing a participant instruction which results in a transaction between the plan and a plan sponsor or an affiliate or the acquisition or sale of any employer securities or employer real property.

[21] Restatement (Second) of Trusts section 216 (1959) provides:

Section 216. Consent of Beneficiary

(1) Except as stated in Subsections (2) and (3), a beneficiary cannot hold the trustee liable for omission of the trustee as a breach of trust if the beneficiary prior to or at the time of the act or omission consented to it.

(2) The consent of the beneficiary does not preclude him from holding the trustee liable for a breach of trust, if—

(a) the beneficiary was under an incapacity at the time of such consent or of such act or omission; or

(b) the beneficiary, when he gave his consent, did not know of his rights and of the material facts which the trustee did not reasonably believe that the beneficiary knew; or

(c) the consent of the beneficiary was induced by improper conduct of the trustee.

(3) Where the trustee has an adverse interest in the transaction, the consent of the beneficiary does not preclude him from holding the trustee liable for a breach of trust not only under the circumstances stated in Subsection (2), but also if the transaction to which the beneficiary consented involved a bargain which was not fair and reasonable.

See also III Scott, Trusts section 216 (3rd ed. 1967); Bogert, Trusts section 941 (2d ed. 1960).

plan assets are held until such time as a participant makes an investment decision. Therefore, the kinds of investments that may be used for this purpose are limited to those which can be liquidated in a reasonably short period of time and which are most likely to conserve the principal amount deposited, even though the rate of return on assets invested in this way may not be as favorable as other investment opportunities.

The Department is concerned that amounts may accumulate in a suspense account over an extended period of time because the participant is not adequately informed of his opportunity to direct investment of his account assets. Accordingly, the proposed regulation also provides that a participant will be deemed to have exercised control with respect to such automatic allocations only if reasonable procedures are established under the plan which are designed to inform participants of the nature of the passive investment options and the anticipated rate of return of each option and to elicit affirmative instructions.[22]

The proposal also states that the special rules contained in paragraph (c) for plans that offer investment alternatives which include one or more designated pooled investment funds are not applicable to an ERISA section 404(c) plan merely because the plan provides for a "passive" investment fund pursuant to paragraph (d)(4)(ii) of the proposal.

Finally, the proposed regulation specifically states that fiduciaries of an ERISA section 404(c) plan generally have no obligation to advise the participant regarding the suitability of making an investment or of the advisability of retaining an investment that has already been made.

E. Effect of a Participant's Independent Exercise of Control

1. *Participant not treated as a fiduciary.* As provided in section 404(c)(1), the proposed regulation states that a participant is not considered to be a fiduciary solely because he exercises control over assets in his individual account. This provision has two primary effects. First, because a participant is not a fiduciary, he would not violate the prohibited transaction provisions of Title I of ERISA if he exercises control over assets in his account to engage in a transaction with a party in interest.[23] Second, other fiduciaries generally would have no co-fiduciary liability under section 405 of the Act with respect to participant investment decisions under ERISA section 404(c) plans.

2. *Other fiduciary responsibilities.* The proposed regulation discusses in more detail the consequences to other plan fiduciaries of a participant's exercise of control. Section 404(c) provides that plan fiduciaries are relieved of liability for losses, or with respect to breaches of the requirements of Title I, which "result" from a participant's exercise of control over individual account assets. Thus, given the transactional nature of the relief provided by section 404(c), it is necessary to determine in any particular case whether alleged losses or violations resulted from a participant's investment decision.

In the Department's view, section 404(c) was not intended to apply in those situations where losses are attributable to intervening breaches of fiduciary responsibility by the plan official implementing the participant's instructions. Thus, the proposed regulation states that a fiduciary is relieved of responsibility only for the direct and necessary consequences of a participant's exercise of control.[24] Accordingly, if a participant gives investment instructions to a plan fiduciary, and, due to the imprudence of the fiduciary in carrying out the instructions, the participant suffers a loss, then the fiduciary is liable for such loss because it resulted from a breach of his duties as a fiduciary rather than from the participant's exercise of control.

Similarly, if a participant gives investment instructions that may be carried out in more than one way, and the fiduciary chooses a method of carrying out the instructions that results in a breach of his obligations as a fiduciary, then he is liable for any resulting losses because such losses would not be a necessary consequence of the participant's exercise of control. Thus, if a participant directs a fiduciary to acquire certain securities, but does not specify the manner in which the acquisition is to be effected, and the fiduciary causes a party in interest to execute the transaction, the fiduciary would be liable with respect to the resulting prohibited transaction (unless an exemption is otherwise available) notwithstanding the participant's exercise of control.

The proposal also specifically states that the individual investment decisions of an investment manager are not direct and necessary results of the participant's designation of the investment manager or of investment in a pooled investment fund managed by the investment manager. In the Department's view, this provision is consistent with the general rule describing the scope of the relief provided by section 404(c)(2). However, the proposed regulation also provides that this rule should not be construed to impose co-fiduciary liability on a fiduciary who would otherwise be relieved of liability under section 404(c). Thus, if a participant chooses an investment manager who imprudently invests plan assets, the investment manager will not be relieved of liability because his imprudence is not a direct and necessary result of the participant's exercise of control.[25] However, other plan fiduciaries would be relieved of liability under section 405, even if, for example, they had knowledge of the investment manager's imprudent decisions. A fiduciary that designates an investment manager or pooled fund in the manner contemplated by paragraph (c) of the regulation, would, however, be required to take any known imprudence of the manager into account in determining whether to continue the designation of that manager.

[22] The periodic disclosure of this information to the participant by means of summary plan descriptions and summaries of material modifications could satisfy the requirement to inform the participant of the nature of the passive investment options and the anticipated rate of return of each option provided that the plan administrator assures that such information remains current. Such disclosure would not, however, satisfy the requirement that reasonable procedures be established that are designed to elicit affirmative participant investment instructions.

[23] Section 406 of ERISA prohibits a plan *fiduciary* from engaging in a transaction which he knows (or should know) to be a prohibited transaction. It is important to note, however, that section 404(c) of ERISA does not affect the excise taxes imposed on "disqualified persons" under section 4975 of the Internal Revenue Code. This is discussed in more detail below.

[24] In following any particular participant's instruction under a section 404(c) plan, a fiduciary is relieved of liability only with respect to the individual participant whose instruction he is following; that fiduciary is not, however, relieved of any fiduciary obligation he may owe to any other plan participant. Therefore, for example, if a participant in an ERISA section 404(c) plan directs the investment of a portion of his individual account in a pooled investment fund pursuant to an arrangement with the manager of the fund under which the manager will loan a portion of the fund's assets to the participant, the fund manager may be relieved of liability to the directing participant by reason of section 404(c), but would not be relieved of liability with respect to any other plans or plan participants that have interests in the pooled investment fund.

[25] As noted above, liability results from the investment manager's imprudent exercise of discretionary authority over plan assets because, once a participant has invested in a pooled investment fund, the participant no longer has control over the individual investment decisions concerning the assets which are invested in the fund.

It is important to note that the proposed rule relating to individual investment decisions of an investment manager relates only to the scope of the relief provided by section 404(c)(2); it is not intended to create fiduciary duties which would not otherwise exist. Thus, even though the individual decisions of the investment manager of an investment company registered under the Investment Company Act of 1940 would not be considered to "result" from a participant's decision to invest in the company, the manager would have no liability under ERISA for any losses because mutual fund investment advisers are excluded from the statutory definition of "fiduciary" in ERISA (see sections 3(21)(B) and 401(b)(1) of ERISA).

3. *Limitations.* There are four exceptions to the general rule in the proposed regulation regarding the relief provided to a fiduciary. Under these exceptions, a plan fiduciary will not be relieved of liability with respect to a participant's instructions which: (a) would not be in accordance with the documents and instruments governing the plan; (b) would cause a fiduciary to maintain the indicia of ownership of any assets of the plan outside of the jurisdiction of the district courts of the United States (other than as permitted by section 404(b) of the Act); (c) would jeopardize the plan's status as a trust described in section 401(a) of the Code; or (d) would result in a direct or indirect acquisition, sale, or lease of property (including employer securities or employer real property) between a participant and a plan sponsor or an affiliate of the sponsor or a direct or indirect loan to a plan sponsor or any affiliate of the sponsor. In addition, a plan fiduciary will not be relieved of liability with respect to any sale, acquisition or lease of employer securities or employer real property whether or not the transaction involves the employer.

The Conference Report expresses concern regarding participant-directed investments which may inure to the direct or indirect benefit of a plan sponsor and indicates that the Department should impose special standards with respect to such investments.[26] The proposed regulation does not provide relief under section 404(c) with respect to these investments because the Department does not believe that it has sufficient information to determine if it is appropriate to apply section 404(c) to participant-directed investments which may benefit a plan sponsor, or to determine the kinds of safeguards that might be appropriate to assure that participants are not subjected to undue influence with respect to such investments. Nonetheless, the Department recognizes that many participant-directed plans do permit investments in such property and that the Conference Report might be read to contemplate that section 404(c) would apply to at least some participant decisions to invest in property acquired from an employer and in employer securities and employer real property. Thus, the Department specifically invites comments addressing the issue. Such comments should assist the Department in developing a final rule which will limit the potential for the exercise of improper influence by the plan sponsor, but not unduly restrict participant investment options. The Department is particularly interested in comments describing current practices with respect to property acquired from or sold to plan sponsors, the benefits of such investments and the safeguards which exist with respect to such investments.

With respect to employer securities, the Department is particularly interested in commentators' views concerning whether a participant's investments should be limited to a specified percentage of his account balance and/or whether such investments should be limited to publicly-offered securities.

Investment in employer real property, however, appears to be less liquid and may be less appropriate as a participant investment alternative. Accordingly, comments describing any participant investment alternatives that involve employer real property, the safeguards (such as investment limitations) that exist with respect to such investments, and the benefits to the participant of this particular type of real estate investment will be particularly helpful.

4. *Prohibited transactions.* Finally, the proposed regulation makes it clear that, if the conditions to the availability of the relief described in section 404(c)(2) otherwise are met, a fiduciary would be relieved from direct liability (in addition to any co-fiduciary liability) for engaging in a prohibited transaction in violation of section 406 of ERISA if the prohibited transaction is a direct and necessary consequence of the participant's exercise of control. However, the proposed regulation also makes it clear that the relief provided by section 404(c)(2) extends only to the provisions of part 4 of Title I of ERISA (relating to fiduciary responsibility). Therefore, even if a prohibited transaction is a direct and necessary consequence of a participant's exercise of control, nothing in section 404(c) of ERISA would relieve a "disqualified person" described in section 4975(e)(2) of the Code (including a fiduciary) from liability for the taxes imposed by sections 4975 (a) and (b) of the Code with respect to such prohibited transaction. In this respect, the Department notes that, although Reorganization Plan Number 4 of 1978[27] generally transferred the authority of the Secretary of the Treasury to grant exemptions from the provisions of section 4975 of the Code to the Secretary of Labor, authority to issue exemptions for transactions with respect to which a fiduciary is relieved of liability under section 404(c) is expressly left with the Secretary of the Treasury.[28] Accordingly, the Department has no authority to provide exemptive relief for a disqualified person's liability for the excise taxes imposed by section 4975 of the Code with respect to a prohibited transaction that results from a participant's exercise of control pursuant to section 404(c).

Reporting and Disclosure

The proposal also does not address the reporting and disclosure provisions of ERISA with respect to their applicability to ERISA section 404(c) plans. The Department does, however, specifically invite comments discussing the application of the existing reporting and disclosure requirements of ERISA to

[26] The relevant passage of the Conference Report states: "The conferees expect that the [section 404(c)] regulations will provide for stringent standards with respect to determining whether there is an independent exercise of control where the investments may inure to the direct or indirect benefit of the plan sponsor since in this case participants might be subject to pressure with respect to investment decisions. (Because of the difficulty of ensuring that there is independence of choice in an employer established individual retirement account, it is expected that the regulations will generally provide that sufficient individual control will not exist with respect to the acquisition of employer securities by participants and beneficiaries under this type of plan)." Conference Report at 305.

[27] 43 FR 47713, October 17, 1978; effective December 31, 1978 (44 FR 1065, January 3, 1979).

[28] Section 102 of the Reorganization Plan provides in part as follows:

"Except as otherwise provided in Section 105 of this plan, all authority of the Secretary of the Treasury to issue the following described documents pursuant to the statutes hereinafter specified is hereby transferred to the Secretary of Labor:

"(a) regulations, rulings, opinions, and exemptions under section 4975 of the Code.

* * * * *

"EXCEPT for . . . exemptions with respect to transactions that are exempted by subsection 404(c) of ERISA from the provisions of Part 4 of Subtitle B of Title I of ERISA . . . ."

such plans and whether it would be appropriate for the Department to develop an alternative method of compliance under section 110 of ERISA for ERISA section 404(c) plans.

Effective Date

In general, the proposed regulation would be effective with respect to transactions occurring in plan years beginning after a date 90 days from the date the regulation is published in final form. Transactions before that date would be governed by section 404(c) of the Act without regard to the regulation.

Technical Revisions

Pursuant to recent amendments to the rules for publication of the Office of the Federal Register, this proposal contains a proposed amendment of the authority citation for Part 2550 of Chapter XXV of Title 29 of the Code of Federal Regulations.

Executive Order 12291 Statement

The Department has determined that the proposed regulatory action would not constitute a "major rule" as that term is used in Executive Order 12291 because the action would not result in: an annual effect on the economy of $100 million; a major increase in costs or prices for consumers, individual industries, government agencies, or geographical regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States based enterprises to compete with foreign based enterprises in domestic or export markets.

Regulatory Flexibility Act Statement

The Department has determined that this regulation would not have a significant economic effect on small plans. In conducting the analysis required under the Regulatory Flexibility Act, it was estimated that the total annual cost to the approximately 15,600 small plans which may be affected by the regulation would be just over $6 million, or a cost of approximately $410 per plan. This does not reflect an actual increase in costs to most plans with participant directed account features since the regulations are intended to reflect, to a large extent, current administrative practices by these plans.

Paperwork Reduction Act Statement

This proposed regulation contains several paperwork requirements. The regulation has been forwarded for approval to the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1980 (P.L. 96-511). A control number has not yet been assigned.

Statutory Authority

The proposed regulation set forth herein is issued pursuant to sections 404(c) (Pub. L. 93-406, 88 Stat. 877, 29 U.S.C. 1104) and 505 (Pub. L. 93-406, 88 Stat. 894, 29 U.S.C. 1135) of the Act and under Secretary of Labor's Order No. 1-87.

List of Subjects in 29 CFR Part 2550

Employee benefit plans, Employee Retirement Income Security Act, Employee stock ownership plans, Exemptions, Fiduciaries, Investments, Investments foreign, Party in interest, Pensions, Pension and Welfare Benefit Programs Office, Prohibited transactions, Real estate, Securities, Surety bonds, Trusts and Trustees.

In view of the foregoing the Department proposes to amend Part 2550 of Chapter XXV of Title 29 of the Code of Federal Regulations as follows:

PART 2550—RULES AND REGULATIONS FOR FIDUCIARY RESPONSIBILITY

1. By revising the authority citation for Part 2550 to read as set forth below and the authority citations following all the sections in Part 2550 are removed.

Authority: 29 U.S.C. 1135.

§ 2550.401b-1 also issued under sec. 102, Reorganization Plan No. 4 of 1978 (43 FR 47713, Oct. 17, 1978), effective December 31, 1978 (44 FR 1065, Jan. 3, 1979), 3 CFR, 1978 Comp., 332.

§ 2550.404c-1 also issued under 29 U.S.C. 1104.

§ 2550.407c-3 also issued under 29 U.S.C. 1107.

§ 2550.412-1 also issued under 29 U.S.C. 1112.

§ 2550.414b-1 also issued under 29 U.S.C. 1114.

Secretary of Labor's Order No. 1-86.

2. By adding a new § 2550.404c-1 to read as follows:

§ 2550.404c-1 ERISA Section 404(c) Plans.

(a) *In General.* Section 404(c) of the Act provides that if a pension plan that provides for individual accounts permits a participant or beneficiary to exercise control over the assets in his account and that participant or beneficiary in fact exercises control over assets in his account, then the participant or beneficiary shall not be deemed to be a fiduciary by reason of his exercise of control and no person who is otherwise a fiduciary shall be liable for any loss, or by reason of any breach, which results from such exercise of control. This section describes the kinds of plans that are "ERISA section 404(c) plans," the circumstances in which a participant is considered to have exercised independent control over the assets in his account as contemplated by section 404(c), and the consequences of a participant's exercise of control.

(b) *ERISA section 404(c) plans*—(1) *In general.* An "ERISA section 404(c) plan" is an individual account plan described in section 3(34) of the Act that:

(i) Provides an opportunity for a participant or beneficiary to exercise control over the assets in his individual account (see paragraph (b)(2));

(ii) Provides a participant or beneficiary an opportunity to choose, from a broad range of investment alternatives, the manner in which some or all of the assets in his account are invested (see paragraph (b)(3));

(iii) Provides a participant or beneficiary an opportunity to invest some or all of the assets in his account in an investment which is either:

(A) An interest-bearing deposit in a bank or similar financial institution, which deposit has a high degree of liquidity and is fully insured against loss by the United States or an agency of the United States, or

(B) A pooled investment fund the assets of which consist solely of cash and securities issued or guaranteed by the United States or one of its agencies and the principal investment objectives of which include a high level of current income consistent with the preservation of capital and a high degree of liquidity; and

(iv) Meets the requirements of paragraph (c), in the case of a plan under which the investment alternatives available to a participant or beneficiary include investment in one or more designated pooled investment funds or the selection by a participant of one or more designated investment managers.

(2) *Opportunity to exercise control.* (i) A plan provides a participant or beneficiary the opportunity to exercise control over assets in his account if, under the terms of the plan, the participant or beneficiary has a reasonable opportunity to give written investment instructions (or oral instructions followed by a written confirmation of such instructions returned to the participant) to an identified plan fiduciary who is obligated to comply with such instructions.

(ii) A plan does not fail to provide an opportunity for a participant or beneficiary to exercise control over his individual account merely because it—

(A) Imposes reasonable restrictions on the frequency with which the

participant or beneficiary may give investment instructions;

(B) Charges the participant or beneficiary's account for the reasonable expenses of carrying out his instructions, provided reasonable procedures are established under the plan to inform participants that such charges are made and to inform each participant periodically of the actual expenses incurred with respect to his individual account; or

(C) Permits a fiduciary to decline to implement participant instructions which would generate income that would be taxable to the plan.

(iii) Paragraph (d) of this section describes the circumstances under which a participant or beneficiary will be considered to have exercised independent control with respect to a particular transaction.

(3) *Broad range of investment alternatives.* (i) A plan offers a broad range of investment alternatives only if the available alternatives are sufficient to provide the participant or beneficiary with a reasonable opportunity to:

(A) Materially affect the potential return on amounts in his individual account with respect to which he is permitted to exercise control and the degree of risk to which such amounts are subject;

(B) Choose from a diversified group of investments within each of the following categories:

(*1*) Investments which can reasonably be expected to result in the generation of a high level of income while preserving capital in the long term;

(*2*) Investments which can reasonably be expected to result in capital appreciation, or

(*3*) Investments which can reasonably be expected to result in the generation of a high level of current income consistent with the preservation of capital and a high degree of liquidity; and,

(C) Diversify the investments of that portion of his individual account with respect to which he is permitted to exercise control so as to minimize the risk of large losses, taking into account the nature of the plan and the size of participants' accounts.

(ii) *Diversity and pooled investment funds.* Where pooled investment funds are available as investment options to participants or beneficiaries, the underlying investments of the pooled investments funds shall be considered in determining whether the plan satisfies the requirements of paragraphs (b)(3)(i)(B) and (b)(3)(i)(C) (relating to diversification of investments).

(iii) In determining whether a plan provides a broad range of investment alternatives, only those investment alternatives are to be taken into account as to which sufficient information is available to the participant or beneficiary to permit informed investment decisions.

(c) *Special Rule for Designated Pooled Investment Funds and Investment Managers*—(1) *In general.* A plan under which the investment alternatives available to a participant or beneficiary include investment in one or more designated pooled investment funds (other than a fund described in paragraph (b)(1)(iii) or (d)(4)(ii)) or the right to choose from one or more designated investment managers, shall be treated as an ERISA section 404(c) plan only if it meets the requirements of this paragraph in addition to the requirements of paragraph (b).

(2) *Pooled investment funds.* (i) A plan under which the investment alternatives available to a participant or beneficiary include investment in designated pooled investment funds is an ERISA section 404(c) plan only if, under the plan, an independent fiduciary is required to designate a diversified group of pooled investment funds (as described in paragraph (c)(2)(ii)).

(ii) For purposes of this paragraph (c)(2), a "diversified group" of pooled investment funds is a group of at least four funds each of which has a different one of the following primary objectives:

(A) The generation of the highest level of income consistent with the preservation of capital over the long term;

(B) Capital appreciation;

(C) A balance between capital appreciation and preservation of capital and generation of income; and

(D) The generation of a high level of current income consistent with the preservation of capital and a high degree of liquidity.

(3) *Designated investment managers.* A plan under which the investment alternatives available to a participant or beneficiary include the right to appoint a designated investment manager is an ERISA section 404(c) plan only if, under the plan, an independent fiduciary is required to designate the investment manager(s) which the participant or beneficiary may appoint.

(4) *Independent fiduciary.* For purposes of this paragraph (c), a fiduciary is an independent fiduciary if he is not affiliated with any designated pooled investment fund or any investment manager with respect to such a fund or with any designated investment manager.

(d) *Exercise of control*—(1) *In general.* Sections 404(c)(1) and 404(c)(2) of the Act and paragraphs (a) and (e) of this section apply only with respect to a transaction where a participant or beneficiary has exercised independent control in fact with respect to the investment of assets in his individual account under an ERISA section 404(c) plan.

(2) *Independent control.* Whether a participant or beneficiary has exercised independent control in fact with respect to a transaction depends on the facts and circumstances of the particular case. However, a participant's or beneficiary's exercise of control is not independent in fact if:

(i) The participant or beneficiary is subjected to improper influence by a plan fiduciary or the plan sponsor with respect to the transaction;

(ii) A plan fiduciary has concealed material non-public facts regarding the transaction from the participant or beneficiary; or

(iii) The participant or beneficiary is legally incompetent and the responsible plan fiduciary accepts the instructions of the participant or beneficiary knowing him to be legally incompetent.

(3) *Transactions involving a fiduciary.* In the case of a sale, exchange or leasing of property (other than a transaction described in paragraph (e)(2)(ii)(D)) between an ERISA section 404(c) plan and a plan fiduciary or an affiliate of such a fiduciary, or a loan to a plan fiduciary or an affiliate of such a fiduciary, the participant or beneficiary will not be deemed to have exercised independent control unless the transaction is fair and reasonable to him. For purposes of this paragraph (d)(3), a transaction will be deemed to be fair and reasonable to a participant or beneficiary if he pays no more than, or receives no less than, adequate consideration (as defined in section 3(18) of the Act) in connection with the transaction.

(4) *Absence of affirmative direction.* Generally, an affirmative investment direction by a participant or beneficiary is required to establish that a participant or beneficiary has exercised independent control with respect to an investment. However, a participant or beneficiary shall be deemed to have exercised independent control with respect to investments of any amount in his individual account over which he is permitted to exercise control, but as to which he has not given affirmative investment instructions, if:

(i) Reasonable procedures are established under the plan—

(A) To inform participants of the manner in which individual account assets will be invested in the absence of affirmative instructions and the

anticipated rate of return on such investments; and

(B) To elicit affirmative investment instructions from the participant; and

(ii) Amounts with respect to which no affirmative investment instructions have been received are invested in an investment vehicle described in paragraph (b)(1)(iii).

(5) *No obligation to advise.* In general, a fiduciary has no obligation under part 4 of Title I of the Act to provide advice to a participant or beneficiary with respect to an investment made pursuant to the participant's or beneficiary's independent exercise of control under an ERISA section 404(c) plan. See paragraph (d)(2)(ii), however, with respect to the effect of a fiduciary's concealment of material, nonpublic facts regarding a transaction.

(e) *Effect of independent exercise of control*—(1) *Participant or beneficiary not a fiduciary.* If a participant or beneficiary of an ERISA section 404(c) plan exercises independent control over assets in his individual account in the manner described in paragraph (d), then such participant or beneficiary is not a fiduciary of the plan by reason of such exercise of control.

(2) *Limitation on liability of plan fiduciaries.* (i) If a participant or beneficiary of an ERISA section 404(c) plan exercises independent control over assets in his individual account in the manner described in paragraph (d), then no other person who is a fiduciary with respect to such plan shall be liable for any loss, or with respect to any breach of part 4 of Title I of the Act, that is the direct and necessary result of the participant's or beneficiary's exercise of control.

(ii) Paragraph (e)(2)(i) does not apply with respect to any instruction which, if implemented—

(A) Would not be in accordance with the documents and instruments governing the plan insofar as such documents and instruments are consistent with the provisions of Title I of ERISA;

(B) Would cause a fiduciary to maintain the indicia of ownership of any assets of the plan outside the jurisdiction of the district courts of the United States other than as permitted by section 404(b) of the Act and 29 CFR 2550.404b–1;

(C) Would jeopardize the plan's status as a trust described in section 401(a) of the Internal Revenue Code; or

(D) Would result in a direct or indirect:

(*1*) Sale, exchange, or lease of property between a plan sponsor or any affiliate of the sponsor and the plan;

(*2*) Loan to a plan sponsor or any affiliate of the sponsor;

(*3*) Acquisition or sale of any employer security (as defined in section 407(d)(1) of the Act); or

(*4*) Acquisition, sale, or lease of any employer real property (as defined in section 407(d)(2) of the Act).

(iii) The individual investment decisions of an investment manager who is designated directly by a participant or who manages a pooled investment fund in which a participant has invested are not direct and necessary results of the designation of the investment manager or of investment in the pooled investment fund. However, this paragraph (e)(2)(iii) shall not be construed to result in liability under section 405 of ERISA with respect to a fiduciary (other than the investment manager) who would otherwise be relieved of liability by reason of section 404(c)(2) of the Act and this paragraph (e).

(3) *Prohibited transactions.* The relief provided by section 404(c) of the Act and this section applies only to the provisions of Part 4 of Title I of the Act. Therefore, nothing in this section relieves a disqualified person from the taxes imposed by sections 4975 (a) and (b) of the Internal Revenue Code with respect to the transactions prohibited by section 4975(c)(1) of the Code.

(f) *Definitions.* For purposes of this section:

(1) "Pooled investment fund" means:

(i) An investment company described in section 3(a) of the Investment Company Act of 1940,

(ii) A common or collective trust fund or a pooled investment fund maintained by a bank,

(iii) A pooled separate account of an insurance company qualified to do business in a State, or

(iv) Any entity whose assets include plan assets by reason of a plan's investment in the entity;

(2) "Adequate consideration" has the meaning given it in section 3(18) of the Act and in any regulations under this title;

(3) "Investment manager" includes any person described in section 3(38) of the Act and any person who exercises discretionary authority or control over the assets of a plan or a pooled investment fund or who provides investment advice with respect to such assets for a fee;

(4) An "affiliate" of a person includes the following:

(i) Any person directly or indirectly controlling, controlled by, or under common control with the person;

(ii) Any officer, director, partner, employee, an employee of an affiliated employer, relative (as defined in section 3(15) of ERISA), brother, sister, or spouse of a brother or sister, of the person; and

(iii) Any corporation or partnership of which the person is an officer, director or partner.

For purposes of this paragraph (f)(4), the term "control" means, with respect to a person other than an individual, the power to exercise a controlling influence over the management or policies of such person.

(g) *Examples.* The provisions of this section are illustrated by the following examples. Examples (5) through (12) assume that the participant has exercised independent control with respect to his individual account under an ERISA section 404(c) plan described in paragraph (b) and has not directed a transaction described in paragraph (e)(2)(ii).

(1) Plan A is an individual account plan described in section 3(34) of the Act under which a plan participant may direct the plan administrator to invest any portion of his individual account in any asset which it is administratively feasible for the plan to hold and the acquisition of which would not result in disqualification of the plan under the Internal Revenue Code. Plan A provides that the plan administrator is obligated to effect participant investment instructions when requested but must decline to implement any participant instructions which would not be in accordance with plan documents or which would cause a fiduciary to hold the indicia of ownership of any plan assets outside the jurisdiction of the district courts of the United States. In addition, Plan A provides that the administrator is required to forward to the participant any proxy solicitations, periodic reports, and other communications with respect to participant directed investments in publicly-offered securities. Plan A is an ERISA section 404(c) plan. Although a participant in Plan A would be permitted to direct an investment as to which there is not sufficient information available to permit an informed investment decision, it nonetheless provides a broad range of investment alternatives as to which such information is available (*i.e.*, publicly-offered securities). Finally, Plan A is an ERISA section 404(c) plan notwithstanding that it does not meet the requirements of paragraph (c) because it does not limit the choices of pooled funds or investment managers to *designated* funds or to *designated* managers.

(2) Plan B is an individual account plan described in section 3(34) of the Act. Plan B provides for participant directed investments in the following manner: Under the plan, participants may direct investments only in shares of mutual funds designated by the plan's named fiduciary or in a government securities investment fund described in paragraph (b)(1)(iii) and designated by the plan's named fiduciary. The plan document requires the named fiduciary to designate a "diversified group" of mutual funds (as

described in paragraph (c)(2)(ii)) as permissible participant investments. Pursuant to the terms of the plan, the appropriate plan fiduciary designates diversified income, growth, balance, and cash equivalency funds all of which are managed by one investment manager. Absent other relevant circumstances, Plan B is an ERISA section 404(c) plan because: (i) Under the terms of the plan, participants and beneficiaries have a reasonable opportunity to give investment instructions to a plan fiduciary who is obligated to carry out those instructions (as described in paragraph (b)(2)); (ii) the investment alternatives available to a participant or beneficiary allow him to significantly affect the potential return on his account balance and the degree of risk to which his account balance is subject, and (iii) the participant or beneficiary is permitted to diversify the investments of his account since the income, growth, balance, and cash equivalency pooled investment funds are each diversified (see paragraph (b)(3)(ii)). The plan is required to meet the requirements of paragraph (c) because the pooled investment funds in which participants may invest are limited to designated funds, but Plan B satisfies the requirements of paragraph (c) because it provides the participant a choice from a diversified group of four funds of the kind described in that paragraph.

(3) Assume that Plan B contains the same provisions as those described in paragraph (g)(2). However, the appropriate plan fiduciary designates one diversified growth fund, one diversified income fund, and one diversified balanced fund, but does not designate a cash equivalency fund. Plan B is not a section 404(c) plan because the plan fiduciary has not specified at least one fund within each of the four categories of funds described in paragraph (c)(2). If, however, the appropriate fiduciary designates a cash equivalency fund, Plan B would then be an ERISA section 404(c) plan.

(4) Plan C, an individual account plan described in section 3(34) of the Act, permits a participant to give investment instructions to the plan administrator in the same manner as Plan A (see paragraph (g)(1)). Plan C, however, limits the investment options available to the participant to an interest-bearing account of Bank A and three different securities issued by private corporations: A debt obligation of a large, well-established company, stock of another large, well-established company, and highly speculative stock of another company. Plan C does not provide for a broad range of investment alternatives because, under the plan, although a participant is able to significantly affect the potential return on his account balance and the degree of risk to which his account balance is subject and is able to invest in different securities which arguably would allow the participant to achieve the three required investment goals of paragraph (b)(3)(i)(B), the participant would not have an opportunity to diversify his investments within each of the three investment groups so as to minimize the risk of large losses (see paragraphs (b)(3)(i)(B) and (b)(3)(i)(C)).

(5) A participant, P, independently exercises control over assets in his individual account plan by directing a plan fiduciary, F, to invest 100% of his account balance in a single stock. P is not a fiduciary with respect to the plan by reason of his exercise of control and F will not be liable for any losses that may necessarily result from P's investment instruction.

(6) Assume the same facts as in paragraph (g)(5), except that P directs F to purchase the stock from B, who is a party in interest with respect to the plan. Neither P nor F has engaged in a transaction prohibited under section 406 of the Act: P because he is not a fiduciary with respect to the plan by reason of his exercise of control and F because he is not liable for any breach of Part 4 of Title I that is the direct and necessary consequence of P's exercise of control. However, a prohibited transaction under section 4975(c) of the Internal Revenue Code may have occurred, and, in the absence of an exemption, tax liability may be imposed pursuant to sections 4975 (a) and (b) of the Code.

(7) Assume the same facts as in paragraph (g)(6), except that P does not specify the use of B, and F chooses to purchase the stock from B. In the absence of an exemption, F has engaged in a prohibited transaction described in 406(a) of ERISA because the decision to purchase the stock from B is not a direct or necessary result of P's exercise of control.

(8) Pursuant to the terms of the plan, plan fiduciary F designates three reputable investment managers which participants may appoint to manage assets in their individual accounts. Participant P selects M, one of the designated managers, to manage the assets in his account. M prudently manages P's account for 6 months after which he incurs losses in managing the account through his imprudence. M has engaged in a breach of fiduciary duty because M's imprudent management of P's account is not a direct or necessary result of P's exercise of control (the choice of M as manager). F has no fiduciary liability for M's imprudence because he has no affirmative duty to advise P (see paragraph (d)(5)) and because F is relieved of co-fiduciary liability by reason of section 404(c)(2) (see paragraph (e)). F does have a duty to determine the suitability of M as an investment manager, however, and M's imprudence would be a factor which F must consider in periodically reevaluating its decision to designate M.

(9) Participant P instructs plan fiduciary F to appoint G as his investment manager pursuant to the terms of the plan which provide P total discretion in choosing an investment manager. Through G's imprudence, G incurs losses in managing P's account. G has engaged in a breach of fiduciary duty because G's imprudent management of P's account is not a direct or necessary result of P's exercise of control (the choice of G as manager). Plan fiduciary F has no fiduciary liability for G's negligence because F has no obligation to advise P (see paragraph (d)(5)) and because F is relieved of co-fiduciary liability for G's actions by reason of section 404(c)(2) (see paragraph (c)(2)(iii)). In addition, F also has no duty to determine the suitability of G as an investment manager because the plan does not limit P's choices to *designated* investment managers.

(10) Participant P directs a plan fiduciary, F, a bank, to invest all of the assets in his individual account in a collective trust fund managed by F that is invested solely in a diversified portfolio of common stocks. Due to economic conditions, the value of the common stocks in the bank collective trust fund declines while the value of publicly-offered fixed income obligations remains relatively stable. F is not liable for any losses incurred by P solely because his individual account was not diversified to include fixed income obligations. Such losses are the direct result of P's exercise of control; moreover, under paragraph (d)(5) of this section F has no obligation to advise P regarding his investment decisions.

(11) Assume the same facts as in paragraph (g)(10) except that F, in managing the collective trust fund, invests the assets of the fund solely in a few highly speculative stocks. F is liable for losses resulting from his imprudent investment in the speculative stocks and for his failure to diversify the assets of the account. This conduct involves a separate breach of F's fiduciary duty that is not a direct or necessary result of P's exercise of control (see paragraph (e)(2)(iii)).

(12) Participant P, in exercising control over the assets in his individual account, directs a plan fiduciary F to purchase a limited partnership share in a limited partnership managed by Y. Just prior to P's instruction to purchase, Y provides F with a confidential report which is pessimistic concerning the prospects of the investments made by the partnership. Without disclosing the contents of the report, F executes P's instructions. Participant P has not exercised independent control in fact with respect to the transaction because F has concealed a material nonpublic fact (the pessimistic report) from P (see paragraph (d)(2)(ii)).

(h) *Effective date.* This section is effective with respect to transactions occurring in plan years beginning after [90 days after publication of a final rule]. Transactions occurring before that date would be governed by section 404(c) of the Act without regard to the regulation.

Signed at Washington, DC, this 20th day of August, 1987.

David M. Walker,

Deputy Assistant Secretary of Labor, Pension and Welfare Benefits Administration, United States Department of Labor.

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September 3, 1987

Part III

Department of Labor

Employment and Training Administration

20 CFR Part 602

Federal-State Unemployment Compensation Program; Unemployment Insurance Quality Control Program; Final Rule

DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Part 602

Federal-State Unemployment Compensation Program; Unemployment Insurance Quality Control Program

AGENCY: Employment and Training Administration, Labor.

ACTION: Final rule.

SUMMARY: The Secretary of Labor is issuing the final regulation to establish a permanent Quality Control program for the Federal-State unemployment insurance system. The Quality Control program will be a major tool to assess the timeliness and accuracy of State administration of unemployment insurance in order to improve program performance and revenue collection, and to reduce inaccurate benefit payments and claims denials, administrative errors, and abuse in the unemployment insurance system.

EFFECTIVE DATE: October 5, 1987.

FOR FURTHER INFORMATION CONTACT: Carolyn M. Golding, Director, Unemployment Insurance Service, Employment and Training Administration, U.S. Department of Labor, Room S-4231, Francis Perkins Building, 200 Constitution Ave. NW., Washington, DC 20210. Telephone: (202) 535-0600 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

Recent reviews of benefit payments and revenue collections indicate potentially serious problems in the Federal-State Unemployment Insurance (UI) system. The Random Audit program, which evaluated benefit payments in 46 States, found a percentage of errors in making payments which needs to be reduced. In addition, audits of benefits payment control, tax accounting and cash management activities indicated the need for improvement in all of these functions. To address these needs, a Quality Control (QC) program will be initiated; QC will expand upon previous efforts, notably the Random Audit program, and provide the basis for diagnosing problems and taking corrective actions.

QC Will Be Mandatory

The QC program will be the principal means by which the Federal-State UI partners evaluate the administration of a State's UI law and achieve improvement in program operations. Its design relies heavily on the experience of the Random Audit program, which was voluntary for the States. Given the importance of ensuring the accurate and timely payment of benefits to eligible UI claimants and the accurate and prompt collection of UI revenues, however, participation of the States in the QC program will be mandatory.

Section-by-Section Regulatory Highlights

Subpart A, *General Provisions*, sets out the purpose and scope of the QC program, including the laws to which the regulation applies.

Subpart B, *Federal Requirements*, defines the authority under which these regulations are issued. It also explains the Secretary of Labor's (Secretary) interpretation of the authority allowing the Department of Labor (Department) to make the QC program mandatory.

The Department does not believe that a mandatory QC program will require any State to amend its law to fulfill the methods of administration requirement in section 303(a)(1) of the Social Security Act (SSA) (42 U.S.C. 503(a)(1)) as the QC program is an expansion/enhancement of other Federal-State UI evaluation programs, such as Random Audit and Quality Appraisal, which have been operative in State agencies for some time. States are encouraged, however, to review their laws to ensure that an adequate legal basis exists for implementing QC.

Subpart C, *State Responsibilities*, contains requirements which ensure the objectivity of the State's QC unit and eliminates potential conflicts of interest. Subpart C also provides that:

(1) The State shall sample, investigate cases, and classify findings in accordance with standard procedures; use a questionnaire prescribed by the Department, in which the collection of demographic data will be limited to those related to eligibility and those necessary for validating the representativeness of samples; and

(2) The State shall conclude all findings of inaccuracy as detected through QC investigations with appropriate official actions; and

(3) The State shall inform claimants in writing that the information obtained from a QC investigation may affect their eligibility for benefits and inform employers in writing that the information obtained from QC investigation of revenues may affect their tax liability; and

(4) The State shall transmit data so obtained (without identifying individuals) and other required reports to the Department; and release the results of the QC program at the same time each year in a format prescribed by the Department; and

(5) The Department may determine the QC program, or a portion of the program, is not necessary for the proper and efficient administration of a State law and, therefore, the State need not administer the entire QC program or designated portion of the QC program. However, it is not anticipated at this time that the section will result in exceptions in cases other than those in which the costs of operating a QC program might be deemed by the Department to be excessive in relating to the overall results obtained.

Subpart D, *Federal Responsibilities*, defines the management and oversight responsibilities that the Department has under these regulations. These responsibilities include establishing required methods and procedures, providing technical assistance, maintaining a computer data base, validating QC methodology, and reviewing QC operational procedures and samples.

Subpart E, *QC Grants to States*, provides that: (1) The Secretary has the authority to recapture QC granted funds expended which are not necessary for the proper and efficient administration of the QC program; and (2) after notice and a hearing, the Secretary may withhold all Title III grants from a State that fails to implement a QC program in accordance with Part 602. However, under Part 602, there is no sanction or incentive to influence achievement of any specific error rate, although errors revealed by the QC operation might result in questions being raised about methods of administration or other Federal requirements.

Consultation for Development of the Proposed Rule

The Department published an Advance Notice of Proposed Rulemaking in the **Federal Register** on September 26, 1984, at 49 FR 38083, to inform interested persons of its intentions to establish a permanent QC program for the UI system. During the 30-day comment period, the Department received five letters with comments. Prior to and after the request for formal comments, the Department held numerous meetings with those involved in the UI system to solicit ideas and reactions to the proposed design of the QC system.

In June 1985, the Secretary of Labor decided to delay the planned July 1985 implementation of the QC program and directed the undertaking of a wide-ranging policy review. The purpose of the review was to explore fully and

formally the basic policy decisions forming the framework of the QC system and to ensure full participation of the many groups involved in UI administration.

The Secretary's review was announced in a notice published in the **Federal Register** on August 6, 1985, at 50 FR 31787 and a public meeting was announced to be held on August 21, 1985, at 50 FR 31792, inviting viewpoints, suggestions, and alternative approaches from Governors, employer groups, organized labor, and State Employment Security Administrators. Each group was asked to comment specifically on nine (9) design issues which were described in the **Federal Register** on August 6, 1985, at 50 FR 31787.

Listed below are decisions on the nine design issues which were reached after consideration of the 61 comments received.

1. *System Operations.* The QC system will provide mixed Federal/State division of responsibilities.

2. *Coverage.* QC will be mandatory for the States.

3. *Access to Data.* States will be required to release QC results annually using a standard format, retaining the option of release by States before any national release.

4. *Scope.* QC investigations will be conducted State-wide at Federally-established sample levels. Beyond the minimum sampling effort, States will be given the flexibility to examine subjects more closely through such choices as increased sample size, augmented sampling, or special studies.

5. *Investigative Objectives.* Case reviews of the QC sample claims will focus on both outcomes and process.

6. *Purpose.* The QC program will focus on correcting, not just measuring problems. Data to support operational corrections will be required and data to affect policy and legislative changes will be optional.

7. *Methodology.* QC will feature a prescribed minimum sample size specified for each State, standard definitions and methodology, and will offer flexibility for additional State-designed sampling and special studies (subject to Departmental approval).

8. *Error Correction Strategies.* The Department will encourage corrective action and foster it through technical assistance, but will not mandate corrective action.

9. *Programs Included.* QC will cover both paid and denied claims under all major regular benefit programs as well as revenue activities and it will be gradually extended to other programs such as Extended Benefits and Trade Readjustment Allowances.

In response to the Secretary's review of QC, representatives of several District of Columbia-based public interest groups including the Interstate Conference of Employment Security Agencies, Inc. (ICESA), the National Conference of State Legislatures, the National Federation of Independent Businesses, the Council of State Chambers of Commerce, UBA Inc. (United Benefit Advisor, Inc.), the U.S. Chamber of Commerce, and the American Federal of Labor-Congress of Industrial Organizations (AFL-CIO), suggested a series of QC principles. These consensus principles (described later under Major Themes) were adopted as policy by the Department and issued in Unemployment Insurance Program Letter (UIPL) No. 4-86, on December 20, 1985.

The proposed regulation was written to conform to the consensus principles plus the decisions on the design issues. Decisions which deal with procedural subjects are reflected in The Benefits Quality Control State Operations Handbook (Benefits QC Handbook) which the Department prepared and issued separately for comment.

Comments Received in Response to the Notice of Proposed Rulemaking

The proposed rule (new Part 602) to establish the QC program was published for comment in the **Federal Register** on July 25, 1986 at 51 FR 26846. On August 12, 1986, the Department extended the period for comments on the proposed rule until September 9, 1986, at 51 FR 28840.

The Department received timely comments from 33 organizations and individuals. An additional seven organizations submitted comments after the close of the comment period. The majority of comments were from State Employment Security Agencies (SESAs); comments were also received from other interested parties such as public interest groups. All comments received timely were given careful consideration in preparing the final regulation in this document.

Major Themes in the Comments

Three major themes were present in the comments: (1) questioning the Secretary's authority to mandate a QC program as a requirement under the Federal law; (2) a desire for more specificity in the regulation; and (3) the desire that the regulation reflect the consensus recommendations previously accepted by the Department which were submitted by ICESA on behalf of several District of Columbia-based public interest groups.

The first major area of concern, the Secretary's authority to mandate the program, is addressed in the section-by-section analysis that follows.

The request for specificity, the second major theme, reflected States' expressed desire to be protected from any undue exercise of Departmental discretion outside the regulatory process. Ten commenters expressed concern about the failure of the proposed regulation to specify all of the requirements of the QC program. After carefully considering these comments, the Department has concluded that the regulatory approach taken, that of issuing a broad and brief implementing regulation supported by detailed operating procedures in handbooks, is the most appropriate way of establishing the program. The regulation establishes and defines the program while the handbooks provide the necessary level of detail and flexibility needed to initiate and operate the QC program. This approach is considered appropriate because it allows for phasing in QC and making handbook changes based on early experience. It is also consistent with the Administration's desire to limit detailed regulations where possible. The Department committed itself to gathering the maximum possible public and State input before modifying and issuing the regulation in this document and the operations' handbooks. Although they will not be published in the **Federal Register**, handbooks containing detailed operating procedures have been and will continue to be broadly circulated for comment before being issued or modified by the Department.

In a related group of responses, thirteen commenters identified particular sections of the regulation that they believed did not provide sufficient specificity for the States (e.g., contents of the questionnaire, timing/contents of the annual release of data). The Department does not want to make these sections more specific because of the need for flexibility to make the QC program more comprehensive in succeeding years. These items will be part of the handbooks and will be circulated widely for comment before being issued or modified by the Department.

The third theme was that the consensus principles be included in the regulation. These principles were suggested by representatives of the previously listed District of Columbia-based public interest groups. They were outlined in an issuance from the Department that was sent to all interested parties (UIPL No. 4-86). Six

commenters requested that the consensus principles be incorporated in the body of the regulation. Another fourteen requested that certain specific principles be included.

Although the principles are already embodied in the operations handbooks and other implementing instructions, the Department agrees they should be specifically included in the regulation as well. The principles, with the sections of the regulation modified to embody them indicated in brackets, follow:

1. All States would perform "Core QC." That is, a minimum of 400 weeks claimed cases, per State per year, would be investigated to determine whether the payments were proper. [§ 602.21(b)] Only those data elements that relate to eligibility for UI benefits would be collected. [§ 602.21(c)(3)] [This principle was accepted in modified form by the Department to (1) substitute "cases of weeks paid" for "weeks claimed cases" and (2) include the collection of demographic data necessary to conduct proportions tests to validate the selection of representative samples.]

2. QC would be expanded to include the review/investigation of claims that had been denied and employer tax collection activities. In addition, other categories of UI payments (interstate benefits, combined wage claims, and Federal UI benefits) should eventually be included in the program. [§ 602.1]

3. States would not be required to furnish information to the Federal Government about individuals whose claims are audited unless that information were provided without revealing the identity of the individuals. [§ 602.21(f)] [This principle was accepted in modified form by the Department to specify that each State shall furnish information to the Department without, *in any manner*, identifying individuals *to whom such data pertain*.]

4. The collection of demographic data elements that do not relate to an individual's eligibility for UI benefits would not be a part of QC. [§ 602.21(c)(3)] [This principle was accepted in modified form by the Department to include the collection of demographic data necessary to conduct proportions tests to validate the selection of representative samples.]

5. Obtaining information needed for QC by telephone rather than in face-to-face interviews would be tested on a limited basis. [§ 602.30(b)] [This principle was accepted in modified form by the Department to provide also for tests of collecting data by mail.]

6. A portion of additional resources would be used for analysis of data generated by QC, to increase the number of claims sampled in areas where more information is needed, and for corrective action. [§ 602.40(b)] [This principle was accepted in modified form by the Department to specify that the Department *may* allocate additional resources, *if available*, to States for analysis of data generated by the QC program, to increase the number of claims sampled in areas where more information is needed, and for corrective action.]

7. No sanctions nor funding "incentives" would be used to force the achievement of specified error rates. [§ 602.43]

8. States would be required to release the results of the QC program at the same time each year, providing calendar year results using a standardized format to present the data. States would have the opportunity to release this information prior to any release at the national level. [§ 602.21(g)]

Section-by-Section Analysis of Comments

Subpart A—General Provisions

Section 602.1 Purpose.

Section 602.2 Scope.

Eleven commenters said that the inclusion of Denials and/or Revenue in the QC regulation is inappropriate or premature at this time. While it is true that only Core QC, which assesses the benefit payment operations by investigating paid claims, has been designed and tested thus far, the Department wrote the regulation broadly to provide authority for what is planned as a comprehensive QC program. Also, by its acceptance of consensus principle number two, the Department is committed to expand the QC program to include the investigation of claims that have been denied and employer revenue collection activities (Revenue QC) which would include any other UI revenues, such as payments in lieu of contributions and reimbursements from the Extended Unemployment Compensation Account (EUCA). The methodologies will be developed in conjunction with SESAs and tested through State-operated pilot programs to ensure that they are effective mechanisms for State use.

One commenter stated that the "Purpose" section is too narrow in its explanation of the QC program: The first sentence is nebulous and open to interpretation, and the last sentence should be excluded. The "Purpose" section has been expanded to explain that QC will be a major tool to assess the timeliness and accuracy of State administration of the UI program. Additionally, the last sentence of the paragraph has been revised to clarify that the reference to "collections" does refer to revenue collections which includes any other UI revenues such as payments in lieu of contributions and EUCA reimbursements.

Two commenters proposed that States be allowed the option to participate in whichever components of the QC program (benefits, denials, or revenue) they believe that they need. While States may have ideas of which areas of their programs require attention, the Random Audit experience demonstrated to the Department the value of such a program nationwide.

Subpart B—Federal Requirements

Section 602.10 Federal law requirements.

Section 602.11 Secretary's interpretation.

Five commenters questioned the authority of the Secretary to mandate a QC program. One commenter said that requiring a State to operate a QC program goes far beyond the intent of section 303(a)(6) of the SSA, which gives the Secretary authority to require reports. Legal authority to establish QC derives from both sections 303(a)(1) and 303(a)(6) of the SSA. As described in the regulation, the Secretary interprets these sections to authorize QC among the "methods of administration . . . as are found by the Secretary of Labor to be reasonably calculated to insure full payment of unemployment compensation when due," as well as authorizing the Secretary to require verifiable reports of its QC implementation and operations. The methods of administration requirement (section 303(a)(1), SSA) has from the beginning of the program been interpreted as pertaining to all UI operations, including revenue and benefit operations.

One commenter suggested that QC would be more successful and States would be more cooperative if it were voluntary, as was Random Audit. Observations of QC as operated since March 30, 1986 and its predecessor, Random Audit, both of which were voluntary, have revealed less than adequate adherence by several States to methodology necessary to ensure valid results.

Another commenter suggested that § 602.11(a), which says in the proposed rule, "the Secretary interprets section 303(a)(1), SSA, to require that a State law [provide for] such methods of administration . . . and collection [and handling] of unemployment revenues [and reimbursements], with the greatest

accuracy feasible" is sufficient, and that § 602.11(d) requiring a State law authorizing QC is unnecessary. Section 602.11(d) has been improperly interpreted by this commenter. Section 602.11 sets forth the Secretary of Labor's basic interpretations of sections 303(a)(1) and 303(a)(6) as they relate to the QC program. As stated earlier in the Section-by-Section Regulatory Highlights, the Secretary has no reason to believe that a mandatory QC program will require any State to amend its law. Section 602.11(d) is included to insure that States interpret their existing law to require the establishment of a QC program. Without § 602.11(d), a State might construe their methods of administration requirement to be sufficient without the establishment of a QC program.

To clarify that QC involves both conformity and compliance, additions were made to both §§ 602.10(d) and 602.11. An additional sentence in § 602.11(c) states, "Further, conformity of the State law with those requirements is required by section 303(a) and section 601.5 of this chapter."

Subpart C—State Responsibilities

Nine commenters stated that corrective action should be funded and/or required by the Federal government and that technical assistance should be made available to help correct the errors detected by QC. Concerning funding of corrective actions, State initiatives in response to Random Audit data and to QC data collected on a voluntary basis have demonstrated that many corrective actions can be taken with existing resources as part of ongoing management oversight. Should it develop that necessary actions nationwide cannot be supported with available resources, the Department will use the information from QC findings in budget development to seek funding for such necessary corrective actions. However, such data is expected to be available only after QC has operated for some time in each State. The regulation was modified by the addition of § 602.40(b) to authorize the Department to allocate additional resources, if available, for corrective action, as called for in consensus principle number six.

The Department finds no need to impose an explicit requirement that SESAs implement corrective action. It believes that SESAs want to operate the best possible UI program and also have a strong incentive to improve their operations and lower taxes for the benefit of their own States' employers whose taxes finance UI. Rather than promulgating such a requirement, the Department is committed to providing technical assistance to the States to help correct errors detected by QC. To this end, the Department funded an analyst position in each State so that SESAs may develop additional expertise to help determine where their problems lie.

Section 602.20 Organization.

Two commenters opposed direction by the Department of the States' organizational structure. The limits imposed by the regulation are intended to protect the integrity of the program while preserving the States' prerogatives. The SESA is free to locate the QC unit wherever it wishes so long as it is independent of, and not accountable to, any unit performing functions the QC unit evaluates. The Department allows the SESA full flexibility to locate the unit within this constraint.

One commenter questioned the wisdom of prohibiting the QC unit from being within the UI Division, reportable to the UI Director, or under the authority of the State Commissioner of Labor. This is an apparent misinterpretation of the requirements intended to ensure independence from operational units being evaluated. The regulation would prohibit the QC unit from reporting to a manager whose sole or predominant responsibility is to manage an area, e.g. benefit payment operations, being evaluated. Depending upon the organizational structure of the State, therefore, the QC unit could report to the State Commissioner of Labor, the SESA Administrator, or the UI Director.

Section 602.21 Standard methods and procedures.

Section 602.21 has been renamed to more aptly describe the subjects included and reorganized to achieve a more logical order. Following is a table showing the new section title and topics covered in each subsection compared to the location of the same material in the proposed rule.

Final rule	Proposed rule
602.21 Standard methods and procedures.	602.21 Sampling, study methodology, recordkeeping, and reporting.
602.21(a) [In reference to using standard methods and procedures established by the Department].	602.21(b).
602.21(b) [In reference to representative sample minimums set by the Department].	602.21(a)(1).
602.21(c) [In reference to prompt and in-depth case investigations].	602.21(a)(2).
602.21(c)(1) [In reference to informing claimants/employers of effect of QC].	602.21(d).
602.21(c)(2) [In reference to the use of the questionnaire being required].	602.21(e).
602.21(c)(3) [In reference to collecting data required by the Department].	602.21(b).
602.21(c)(4) [In reference to taking official actions on inaccuracies detected though QC investigations].	602.21(c).
602.21(d)(1) [In reference to classifying benefit payment case findings].	602.21(a)(4).
602.21(d)(2) [In reference to classifying denial case findings].	602.21(a)(3).
602.21(e) [In reference to making and maintaining records].	602.21(a)(5)
602.21(f) [In reference to furnishing information and reports].	602.21(a)(6)
602.21(g) [In reference to releasing the results of the QC program].	602.21(a)(7).

One commenter contended that QC is not cost effective because of high unit cost, that sampling should be reduced from 12 months to one month, and that QC should be incorporated into the UI Quality Appraisal system (the existing system used to assess performance in UI benefits, appeals, and revenue collections). The Department recognizes the expense of operating a QC program, but the investment in QC, when compared to the overall administrative costs of the UI program (less than two percent) and to benefit outlays (two tenths of one percent), is very worthwhile. Studies of alternative investigative methods have been and will continue to be undertaken in order to identify the most cost-effective procedures. Despite the costs of the QC program, it is expected to realize savings that would more than offset costs. The QC and Quality Appraisal programs have been examined, and duplications have already been eliminated. Ultimately the two assessment systems will be merged into a single system which preserves Quality Appraisal's useful features.

Section 602.21(a) [In reference to using standard methods and procedures established by the Department].

Ten commenters objected to the inflexibility of the prescribed methodology and the absence of alternative methodology. Consensus principle number five on this subject states that the Department will test collecting information by telephone rather than in face-to-face interviews, and this language, modified to provide also for tests of collecting data by mail, has been added to the regulation at § 602.30(b). Furthermore, in keeping with the commitment to test alternative methodologies, the Department has approved and supported one SESA's proposal for such a test. Other SESAs'

proposals for conducting their own tests are also welcomed.

Two commenters stated that the required methods and procedures should be established only after consultation and should be specified in the regulation. The methods and procedures are not specified in the regulation due to the nature of the regulatory approach taken with the QC program. The Department has sought and used input from SESAs in the development of QC methodology and will continue to do so. State comments on two draft versions of the benefits QC State Operations Handbook (Benefits QC Handbook) have led to several modifications in the methodology. Future revisions to the Benefits QC Handbook also will be circulated for comment before being issued. After agreeing to the consensus principles, the Department made additional changes to the methodology.

Section 602.21(b) [In reference to representative sample minimums set by DOL].

Five commenters were concerned that the regulation does not specify minimum sample sizes but gives the Department the authority to establish minimum sample sizes outside the regulatory process. Two expressed the opinion that States should have input on the number of cases sampled to reflect State-specific factors affecting the time it takes to complete an investigation. Two others proposed that States should be allowed to reduce the sample pull below existing Benefits QC Handbook limits if necessary due to illnesses, vacancies, leave, etc. In contrast, another commenter believed that the sample sizes will be too small to make valid estimates.

The Department concurs in consensus principle number one that each State sample a minimum of 400 cases and has amended the regulation to incorporate that principle. The principle, as incorporated, has been modified for technical accuracy. The term "cases of weeks paid", which are covered in Core QC, has been substituted for the suggested language of "weeks claimed cases" as contained in the consensus principles.

The Department believes that 400 cases per year is the minimum needed to enable sufficiently precise QC inferences to be made for each State. It has further specified in the Benefits QC Handbook, minimum weekly sample sizes—which do allow States some flexibility to adjust to staffing constraints—to ensure that the QC samples are large enough to permit valid inferences to be made from the data obtained each quarter. Samples below these minimums run the risk of significantly reducing the usefulness and reliability of data from an entire quarter.

Two commenters suggested that special studies should largely be at State discretion, with no mandatory application to the national data perspective. SESAs have discretion to determine what should be studied; however, the Department must reserve the right to review State proposals to ensure that they are technically valid and consistent with QC objectives.

Another commenter suggested that nonscientific, ad hoc studies are inexpensive and useful and should be included. The Department recognizes that nonscientific, ad hoc studies have been performed for years by SESAs. Such studies are encouraged so long as the minimum requirements for QC are met.

Section 602.21(c) [In reference to completing prompt and in-depth case investigations to determine degree of accuracy and timeliness].

Two commenters objected to the addition to the regulation of timeliness as a subject of assessment without first consulting the States. Reference to timeliness in this section refers not to QC case completion, but to more general UI applications such as claim payment timeliness. This language has been included to permit future applications of the QC program beyond those in the existing design of the QC case investigations, e.g., utilization of capabilities built into the QC system to eliminate the need for periodic reports which provide data from which first payment time lapse is measured.

Section 602.21(c)(1) [In reference to informing claimants and employers in writing of the effect of QC investigations].

Section 602.21(c)(1) was clarified to explain that States must inform claimants in writing that the information obtained from a QC investigation may affect their eligibility for benefits. Each State must also inform employers in writing that the information obtained from a QC investigation of revenue may affect their tax liability.

Section 602.21(c)(2) [In reference to the use of the questionnaire being required].

Eleven commenters objected to the language that States must require claimants to complete a questionnaire, contending that the Department/SESAs do not have the legal authority or that it is a post facto eligibility determination. The Department's legal authority to establish the QC program encompasses the use of the questionnaire. A standard questionnaire is necessary in order to ensure the reliability of data collected. Each State will apply its own law for claimant eligibility requirements to obtain claimant participation in answering the questionnaire, and the regulation has been revised to clarify that requirement. Information obtained from QC is no different than that obtained from any other source having the potential to affect claimant eligibility. The establishment of a QC program would not affect the SESA's authority to undertake redeterminations or necessitate any change in State finality laws. The language in the regulation in § 602.11(d) has been modified to emphasize this position.

Three commenters were concerned about the absence of any specific information in the regulation about the contents of the required questionnaire. In light of the regulatory approach taken in the QC program, it would be inappropriate to include this level of specificity in the regulation. The questionnaire is included as an appendix to the Benefits QC Handbook and was developed and revised with State input.

Two commenters contended that it is not feasible to require a questionnaire because claimants cannot always be located. The Benefits QC Handbook acknowledges that it is not possible to complete all questionnaires and has provided for the investigator to document attempts to interview the claimant. In situations where the claimant cannot be located, the investigator must investigate the claim using the information that can be obtained from agency records.

Section 602.21(c)(3) [In reference to collecting data required by the Department].

Eleven commenters stated that the collection of demographic data beyond that necessary for determination of eligibility is inappropriate or should be optional for the States. The Department accepts this position, which is also contained in consensus principles number one and four, and has revised the regulation to so state and identify the demographic data that are necessary to conduct proportions tests for the purpose of validating the selection of representative samples: Claimants' date of birth, sex, and ethnic classification.

Section 602.21(c)(4) [In reference to concluding all findings of inaccuracy as detected through QC investigations with appropriate official actions].

The language in this section has been revised to more accurately set forth the requirement that appropriate official actions be taken when inaccuracies are detected through QC investigations. The term "determination" used in the proposed rule is too narrow in definition as an inaccuracy may be properly concluded with some other appropriate action. Moreover, State finality laws may preclude action.

Section 602.21(d)(1) and (2) [In reference to classifying QC case findings].

One commenter stated that there is too much detail regarding the classification of cases, which should more appropriately be located in the Benefits QC Handbook. In contrast, another commenter suggested that the regulation should define "error." The Department believes that a proper balance between the regulation and the operational handbooks will be maintained by the regulation setting forth the major classification of case findings (e.g., proper payments, overpayments, underpayments, or proper denials) while the handbooks prescribe the detailed categories and definitions of error.

Section 602.21(f) [In reference to furnishing information and reports].

Two commenters were concerned that the regulation does not make clear what data are to be transmitted, why they are to be transmitted weekly, or how they are to be used. They believe that the statement "for statistical and other analysis" is too general and does not support State integrity. In keeping with the broad regulatory approach described earlier, the Department does not believe it should specify in the regulation which QC data are to be collected and transmitted; such detail is contained in the Benefits QC Handbook. However, the Department has modified the regulation at § 602.30 to identify examples of how the data are to be used. Section 602.30 was amended to state that a QC data base will be combined with other data for statistical and other analyses such as assessing the impact of economic cycles, funding levels, and workload levels on program accuracy and timeliness.

Five commenters stated that weekly transmission of data was inappropriate. The Department finds that weekly transmission is desirable because Federal oversight responsibility involves ensuring that cases are sampled properly and completed in a timely manner to ensure reliability of data. Prompt entry and transmission of QC data are necessary to enable the Department to conduct proportions tests at frequent intervals in order to minimize the possibility that large blocks of data might be invalidated.

Seven commenters preceived a need to ensure privacy of claimant's Social Security numbers. Based on these comments, the Department's desire to incorporate consensus principle number three, and compliance with the Privacy Act of 1974 (5 U.S.C. 552(a)), the Department has modified the regulation. Containing even more restrictive language than presented in consensus principle number three, the regulation now specifies that States will be required to furnish information and reports to the Department of Labor, including weekly transmissions of case data entered into the automatic QC system and annual reports, without, in any way, identifying individuals to whom such data pertain. The States are being provided with software which will ensure that identifiers for all data transmitted from States will be encrypted so that individual claimants cannot be identified from information furnished to the Department. The Department does not maintain any records or establish any identifiers on individual persons under the QC program; therefore, no system of records is being established which would be subject to the Privacy Act.

Section 602.21(g) [In reference to releasing results of the QC program].

Five commenters requested that the timing/format of the annual release of QC data be specified in regulation. Four additional commenters requested that the release of QC data to the public should be controlled by the States.

Two others believed that publication of QC results by the Department in a standardized format may lead to unfair and unrealistic comparisons between States. Nine commenters stated that flexibility on release of information was necessary. One commenter said that the annual release of data should include full disclosure of the States' work search requirements, while another saw a need to differentiate between "correctable" and "non-correctable" improper payments. Two commenters stated that QC results should be published at the national level only as a composite-of-performance rate of all States, and that individual State data should be released by the Department only if a State fails to release its own data within 90 days of a composite release.

In response to these varied comments, the Department has agreed to consensus principle number eight that States will release calendar year results of the QC program at the same time each year, using a standardized format to present the data. States will have the opportunity to release this information prior to any release at the national level. This language has been added to the regulation. Specific formats and procedures will be promulgated through the Benefits QC Handbook, rather than in regulation, consistent with the regulatory approach previously described. The Department is committed to ensuring that significant concerns on the subject continue to be identified and addressed. Although there are no general plans to publish handbook sections in the **Federal Register**, proposals related to releasing the QC data will use this mechanism to ensure that all interested parties have the opportunity to comment.

Section 602.22 Exceptions.

One commenter suggested that the final rule should stipulate that States can petition the Department for exclusion from QC. As stated in the background statement of the proposed regulation, published at 51 FR 26846 on July 25, 1986, and repeated in the section titled QC Will Be Mandatory above, "Given the importance of ensuring accurate and timely payment of benefits to eligible UI claimants and accurate and prompt collection of UI contributions, however, participation of the States in the QC program will be mandatory." At this time it is anticipated that the only jurisdiction that may be excepted from Core QC would be the Virgin Islands. The Department has determined, therefore, that a procedure for requesting exemptions is not necessary. However, the regulation has been revised to clarify that cost effectivensss will be considered in excepting States from participation in QC. Moreover, any exceptions will be discussed with the individual State in advance of any final decison.

Subpart D—Federal Responsibilities

Section 602.30(a) [In reference to the establishment of methods and procedures].

Two commenters stated that the required methods and procedures should be established only after consultation with the States and should be specified in the regulation. Reponse to this comment is included in the earlier discussion of § 602.21(a) [In

reference to using standard methods and procedures established by the Department].

Section 602.30(b) [In reference to alternative methodologies].

In response to the ten commenters objecting to the inflexibility of the prescribed methodology and the absence of alternative methodology, the Department has added a section to the regulation concerning consensus principle number five, alternative methodologies. Complete reponse to this comment is found in the earlier discussion of § 602.21(a) [In reference to using standard methods and procedures established by the Department].

Section 602.30(c) [In reference to the Department maintaining a computerized data base].

Four commenters were concerned about the need, cost, and security of Federal data bases and of access to State data bases. The need for a Federal data base and its uses are addressed in § 602.21(f) above. Prior to the transmission of case data, States will encrypt each claimant's social security number, thereby preventing identification of any individual's record. This should ensure the maintenance of privacy in the data base. While the Department recognizes the cost of maintaining a Federal data base, its use and potential savings outweigh the expense. More discussion of QC cost benefit is found in § 602.21 above.

SESAs are presumed to have established appropriate security and password procedures to prohibit unauthorized access to either the SESA mainframe or the QC microcomputers. There will be no mandatory access by the Department to any data in the SESA mainframe in the operation of the QC program under this part, although access to such data may be required in connection with audits conducted under State or Federal authority.

Section 602.31 Oversight.

Two commenters stated that the Department should have the responsibility to establish uniform, standard methods and procedures, but monitoring of the State operational procedures should be limited to ensuring only that States meet conformity and compliance requirements. The QC program is based on the Secretary's interpretations of section 303 of the SSA, which contains the "methods of administration" requirement. All departures from these requirements pose a potential conformity/compliance issue.

Subpart E—Grants to States

Section 602.40 Funding.

Three commenters stated that the regulation should ensure, and the Department should provide, sufficient funds in order for States to meet the Federal QC requirements. This would not be appropriate subject matter for regulation, because the Department is dependent upon Congress for appropriation levels and cannot guarantee, in regulation, specified funding. Furthermore, it should not be necessary for any State to use State resources for implementing and maintaining a QC program, as adequate resources have been provided for such purpose.

One commenter requested that the regulation should stipulate that State revenues not be used for QC. To prohibit States from using State revenues for QC could be counterproductive. The Department would not want to discourage States from taking the initiative to expand QC to meet their own needs.

In response to the six commenters wishing the consensus principles to be explicitly incorporated in the regulation, the Department has added § 602.40(b). This new section, embodying a slightly modified version of consensus principle number six, states that the Department may allocate additional resources, if available, to States for analysis of data generated by the QC program, to increase the number of claims sampled in areas where more information is needed, for pilot studies for the purpose of expanding the QC program, and for corrective action. The revision to the exact language of consensus principle number six acknowledges that allocations can only be made if funds are available and provides some Departmental discretion in making the allocation.

Section 602.41 Proper expenditure of QC granted funds.

One commenter pointed out that subjecting QC funds to recapture seems inconsistent with the Administrative Financing Initiative (AFI). There is no inconsistency between financing and proper expenditure requirements with respect to QC and the four short-term changes made thus far under the Department's AFI which was published in the **Federal Register** at 51 FR 18052. Should future changes in administrative financing pose any issue, a reconciliation will be effected.

Sections 303(a)(8) and (9), SSA, require that State laws include provisions for:

> . . . the expenditure of all moneys received pursuant to section 302 of this title solely for the purposes and in the amounts found necessary by the Secretary of Labor for the proper and efficient administration of such State law; and
>
> . . . The replacement, within a reasonable time, of any moneys received pursuant to section 302 of this title, which, because of any action or contingency, have been lost or have been expended for purposes other than or in amounts in excess of, those found necessary by the Secretary of Labor for the proper administration of such state law.

These provisions authorize the Department to take exception to and require reimbursement for any expenditure made which is not in compliance with requirements placed on States for the operation of QC. This reference is set forth in the regulation to notify States that an interim step will be taken before proceeding with any action to withhold all grants.

Another commenter observed that effective review of the use of QC granted funds will be difficult unless they are identified as a separately budgeted item. SESAs will be responsible for operating the QC program in accordance with the QC requirements. The Department will be responsible for ensuring that SESA program performance is adequate. It will only be necessary for the Department to review SESA use of grant funds if program performance is inadequate.

Section 602.42 Effect of failure to implement a Quality Control program.

Twelve commenters questioned the authority of the Secretary to withhold grants for failure to implement QC in accordance with Federal requirements. The Social Security Act makes the Secretary responsible for ensuring that SESAs adopt such methods of administration as will ensure full payment of unemployment compensation when due, and makes provision for grants withdrawal to ensure conformity/compliance. The Random Audit experience has revealed the existence of problems in the payment of benefits and has demonstrated that this approach is feasible for estimating the extent of improper payments. The Secretary has determined that implementation of QC will be the most efficient means of fulfilling these responsibilities.

It is the intent of the Department to ensure that an effective QC program is implemented by providing adequate funding and offering technical assistance to SESAs as needed. Consistent with other aspects of UI administration, withdrawal of grants would be a last resort.

Four commenters were concerned that conformity/compliance issues could be raised for failure to run the QC program within the strict guidelines of the QC methodology. They suggested that the regulation should clarify that administrative funding would not be withheld unless a State "refuses" to participate in QC. It was further suggested that the Department should give States quarterly written assurance that their QC program is in compliance with Federal rules, and if deficiences are found by the Department, they should be specifically defined for corrective action.

The language from the proposed regulation is being maintained to be consistent with that of section 303(a)(1) SSA, and the Secretary's interpretation as set out in the regulation. Failure to comply substantially with QC methodology could result in proceeding under section 303(b), SSA. However, the intent of the regulation is not to withhold administrative funding for technical deficiences beyond the SESA's control. The Department will be conducting routine compliance monitoring of the State QC programs and providing regular feedback to the States. If problems are found, it will be in the interest of all parties involved to resolve them. As with all such matters, the Department will work cooperatively with a State before taking any formal conformity/compliance action. The regulation states that "the Department of Labor shall, for purposes of determining eligibility for grants . . . annually review the adequacy of the administration of a State's QC program." This is deemed sufficiently frequent for official notification to the SESAs.

One commenter proposed that definition of the word "implementation" was necessary. For purposes of this regulation, implementation refers to the act of establishing a QC program in accordance with the regulation and the prescribed methodology in the QC operations' handbooks. (Thus far only the Benefits QC Handbook has been written and issued.) Further definition does not appear appropriate or necessary.

Section 602.43 No incentives or sanctions based on specific error rates.

Two commenters said that the regulation should state that no sanctions or funding incentives will be used to force achievement of specified error rates. This position also was stated in consensus principle number seven. The Department has revised the regulation, substituting the word "influence" for "force", to incorporate this principle.

Appendix A—Standard for Claims Determinations—Separation Information

Three commenters asserted that Appendix A is not needed and should be deleted from the regulation. The appendix is intended to support the QC requirement that appropriate action resulting from QC investigations be issued officially. This ensures that findings are subject to the same possible challenges by claimants as other agency actions. The inclusion of Appendix A in the regulation is mandated by the Office of the Federal Register's rule on incorporation by reference.

Another commenter was concerned that Appendix A changes procedural instructions, which if not followed could result in sanctions. Procedural instructions are not affected by inclusion of Appendix A, which is presently contained in the Employment Security Manual, and is a requirement independent of the QC regulation.

Other Comments Which Are Not Section Specific

Eleven commenters contended that the problem with UI is that it is systematically underfunded. Furthermore, they content that if the requirements of Gramm-Rudman legislation are implemented, it is implicit that the QC program will be fully funded, while funding for the payment of benefits and collection of revenues will be reduced. This would result in QC having a higher priority than the operation of the basic UI program. The Department believes that QC is essential at any time, regardless of budget constraints. Moreover, QC could reveal the impact of such variables as budget and workload fluctuations. Such information would be invaluable in future budget discussions.

One commenter believed that the QC rule represents a potential for substantial interference in State UI administrative processes and objected to the potential use of QC to enforce non-statutory Federal work-search standards upon States without making those standards explicit. The Department does not intend to impose or enforce non-statutory work-search standards. The QC program will not interfere with the administrative processes of SESAs, since the QC program methodology simply verifies the degree to which SESAs are applying their own State laws and official operational procedures. Thus, it will yield a great deal of information which will assist SESA managers in operating the UI program or assessing the need to revise their own UI law and policies.

One commenter requested a delay of the implementation of the QC program, originally limited to the audit of benefit payments, until other elements of UI administration, notably denials and revenue collections, can be included. After a thorough review of the QC program, a decision was made to proceed with the revised QC program. As described in UIPL No. 4-86, which presented the aforementioned consensus principles as Departmental policy, the revised QC program was implemented voluntarily in March 1986. Such implementation was called for in consensus principle number one. Consistent with consensus principle number two, the Core QC program will be expanded to include the investigation of claims that have been denied and employer revenue collection activities. The QC denials pilot was launched in five States in October 1986 and Revenue QC is currently being designed.

Two commenters contended that QC should be designed to improve quality through corrective action rather than to be a longitudinal research project which provides for statistics and data compilation. The Department concurs that the objective of the QC program is to improve program operations. Any longitudinal research will be dealt with separately.

One commenter stated that the QC program should easily meet the definition of a "major rule" as outlined in the published proposal. Executive Order 12291 on Federal Regulations defines the requirements for classification as a "major rule". As stated in the preamble of the proposed rule and repeated below, this rule is not classified as a "major rule" because it is not likely to result in (1) an annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Other Comments Which Are Not Applicable to the Regulation

Individuals or groups who made the following comments will receive direct responses from the Department since they do not apply to the regulation:

One commenter noted language in the QC State Operations Handbook which required a log-in account to be established on the SESA mainframe computer for the sole purpose of

allowing data file transfer from the SESA computer to the QC microcomputer. This assumes a QC-to-mainframe link. This commenter believes that the Secretary does not have the authority to mandate such internal operations.

Another commenter was opposed to telephone transmission of QC data between State and National Office during nonworking hours.

One commenter suggested that local office managers' comments be obtained whenever mispayments are detected in a QC investigation.

Four commenters suggested establishment of a National Clearinghouse on Corrective Strategies for the purpose of exchanging ideas and experiences under the QC program.

Another commenter suggested that State staff need more training on interpreting QC data.

Untimely Comments

As noted above, a number of comments were received after the comment period had ended. While these comments are not addressed specifically in this document, the comments were examined, and most were found to present nothing of substantial import not addressed in the timely comments discussed above. Those individuals or groups which presented additional issues or concerns will receive direct responses from the Department.

Technical and COnforming CHanges

In addition to the changes noted above, other technical and conforming changes have been made to improve the accuracy and completeness of the regulation.

Authority

Section 302(a), SSA, (42 U.S.C. section 502(a)) requires the Secretary of Labor to certify payment of granted funds to each State in:

> . . . such amounts as the Secretary of Labor determines to be necessary . . . for the proper and efficient administration of . . .

the State's unemployment compensation law.

Section 303(a)(1), stipulates that the Secretary shall make no certification for payment of granted funds unless he finds the State law includes provision for:

> Such methods of administration . . . as are found by the Secretary of Labor to be reasonably calculated to insure full payment of unemployment compensation when due.

The rule interprets section 303(a)(1) to require that States administer a QC program in accordance with Federal requirements and, therefore, QC is a condition for certification of granted funds by the Secretary.

Under section 303(a)(6), SSA, the Secretary has authority to require States to make reports. Under this section, the Secretary has the authority to require the States to make reports concerning their implementation and operation of the QC program.

Classification—Executive Order 12291

The rule in this document is not classified as a "major rule" under Executive Order 12291 on Federal Regulations, because it is not likely to result in (1) an annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Accordingly, no regulatory impact analysis is required.

Paperwork Reduction Act

The Department has complied with the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. Chapter 35. Approval of recordkeeping requirements at §§ 602.21(c)(2), 602.21(e), and 602.21(f) are under OMB control number 1205-0245.

Regulatory Flexibility Act

This rule will have no "significant economic impact on a substantial number of small entities" within the meaning of 5 U.S.C. 605(b). This rule implements an internal QC program, and has no significant economic impact on any small entities. The Secretary of Labor has certified to the Chief Counsel for Advocacy of the Small Business Administration to this effect. Accordingly, no regulatory flexibility analysis is required.

Catalog of Federal Domestic Assistance

This program is listed in the *Catalog of Federal Domestic Assistance* at number 17.225, Unemployment Insurance.

List of Subjects in 20 CFR Part 602

Labor, Unemployment compensation, Reporting and recordkeeping requirements.

Words of Issuance

For the reasons set out in the preamble, Part 602 is added to Title 20, Chapter V, of the Code of Federal Regualtions to read as set forth below.

Signed at Washington, DC, on August 27, 1987.

William E. Brock,
Secretary of Labor.

PART 602—QUALITY CONTROL IN THE FEDERAL-STATE UNEMPLOYMENT INSURANCE SYSTEM

Subpart A—General Provisions

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Appendix A To Part 602—Standard For Claim Determinations—Separation Information.

Authority: 42 U.S.C. 1302.

Subpart A—General Provisions

§ 602.1 Purpose.

The purpose of this part is to prescribe a Quality Control (QC) program for the Federal-State unemployment insurance (UI) system, which is applicable to the State UI programs and the Federal unemployment benefit and allowance programs administered by the State Employment Security Agencies (SESA) under agreements between the States and the Secretary of Labor (Secretary). QC will be a major tool to assess the timeliness and accuracy of State administration of the UI program. It is designed to identify errors in claims processes and revenue collections (including payments in lieu of contributions and Extended Unemployment Compensation Account collections), analyze causes, and support the initiation of corrective action.

§ 602.2 Scope.

This part applies to all State laws approved by the Secretary under the Federal Unemployment Tax Act (section

3304 of the Internal Revenue Code of 1954, 26 U.S.C. section 3304), to the administration of the State laws, and to any Federal unemployment benefit and allowance program administered by the SESAs under agreements between the States and the Secretary. QC is a requirement for all States, initially being applicable to the largest permanently authorized programs (regular UI including Combined-Wage-Claims) and federally-funded programs (Unemployment Compensation for Ex-Servicemen and Unemployment Compensation for Federal Employees). Other elements of the QC program (e.g., interstate, extended benefit programs, benefit denials, and revenue collections) will be phased in under a schedule determined by the Department in consultation with State agencies.

Subpart B—Federal Requirements

§ 602.10 Federal law requirements.

(a) Section 303(a)(1) of the Social Security Act (SSA), 42 U.S.C. 503(a)(1), requires that a State law include provision for:

> Such methods of administration . . . as are found by the Secretary of Labor to be reasonably calculated to insure full payment of unemployment compensation when due.

(b) Section 303(a)(6), SSA, 42 U.S.C. 505(a)(6), requires that a State law include provision for:

> The making of such reports, in such form and containing such information, as the Secretary of Labor may from time to time require, and compliance with such provisions as the Secretary of Labor may from time to time find necessary to assure the correctness and verification of such reports.

(c) Section 303(b), SSA, 42 U.S.C. 503(b), provides in part that:

> Whenever the Secretary of Labor, after reasonable notice and opportunity for hearing to the State agency charged with the administration of the State law, finds that in the administration of the law there is—
>
> * * * * *
>
> (2) a failure to comply substantially with any provision specified in subsection (a);
>
> the Secretary of Labor shall notify such State agency that further payments will not be made to the State until the Secretary of Labor is satisfied that there is no longer any such denial or failure to comply. Until he is so satisfied, he shall make no further certification to the Secretary of the Treasury with respect to such State . . . .

(d) Certification of payment of granted funds to a State is withheld only when the Secretary finds, after reasonable notice and opportunity for hearing to the State agency—

(1) That any provision required by section 303(a) of the Social Security Act is no longer included in the State unemployment compensation law, or

(2) That in the administration of the State unemployment compensation law there has been a failure to comply substantially with any required provision of such law.

§ 602.11 Secretary's interpretation.

(a) The Secretary interprets section 303(a)(1), SSA, to require that a State law provide for such methods of administration as will reasonably ensure the prompt and full payment of unemployment benefits to eligible claimants, and collection and handling of income for the State unemployment fund (particularly taxes and reimbursements), with the greatest accuracy feasible.

(b) The Secretary interprets sections 303(a)(1) and 303(a)(6), SSA, to authorize the Department of Labor to prescribe standard definitions, methods and procedures, and reporting requirements for the QC program and to ensure accuracy and verification of QC findings.

(c) The Secretary interprets section 303(b)(2), SSA to require that, in the administration of a State law, there shall be substantial compliance with the provisions required by sections 303(a) (1) and (6). Further, conformity of the State law with those requirements is required by section 303(a) and § 601.5(a) of this chapter.

(d) To satisfy the requirements of sections 303(a) (1) and (6), a State law must contain a provision requiring, or which is construed to require, the establishment and maintenance of a QC program in accordance with the requirements of this part. The establishment and maintenance of such a QC program in accordance with this part shall not require any change in State law concerning authority to undertake redeterminations of claims or liabilities or the finality of any determination, redetermination or decision.

Subpart C—State Responsibilities

§ 602.20 Organization.

Each State shall establish a QC unit independent of, and not accountable to, any unit performing functions subject to evaluation by the QC unit. The organizational location of this unit shall be positioned to maximize its objectivity, to facilitate its access to information necessary to carry out its responsibilities, and to minimize organizational conflict of interest.

§ 602.21 Standard methods and procedures.

Each State shall:

(a) Perform the requirements of this section in accordance with instructions issued by the Department, pursuant to § 602.30(a) of this part, to ensure standardization of methods and procedures in a manner consistent with this part;

(b) Select representative samples for QC study of at least a minimum size specified by the Department to ensure statistical validity (for benefit payments, a minimum of 400 cases of weeks paid per State per year);

(c) Complete prompt and in-depth case investigations to determine the degree of accuracy and timeliness in the administration of the State UI law and Federal programs with respect to benefit determinations, benefit payments, and revenue collections; and conduct other measurements and studies necessary or appropriate for carrying out the purposes of this part; and in conducting investigations each State shall:

(1) Inform claimants in writing that the information obtained from a QC investigation may affect their eligibility for benefits and inform employers in writing that the information obtained from a QC investigation of revenue may affect their tax liability,

(2) Use a questionnaire, prescribed by the Department, which is designed to obtain such data as the Department deems necessary for the operation of the QC program; require completion of the questionnaire by claimants in accordance with the eligibility and reporting authority under State law,

(3) Collect data identified by the Department as necessary for the operation of the QC program; however, the collection of demographic data will be limited to those data which relate to an individual's eligibility for UI benefits and necessary to conduct proportions tests to validate the selection of representative samples (the demographic data elements necessary to conduct proportions tests are claimants' date of birth, sex, and ethnic classification); and

(4) Conclude all findings of inaccuracy as detected through QC investigations with appropriate official actions, in accordance with the applicable State and Federal laws; make any determinations with respect to individual benefit claims in accordance with the Secretary's "Standard for Claim Determinations—Separation Information" in the *Employment Security Manual*, Part V, sections 6010–6015 (Appendix A of this part);

(d) Classify benefit case findings resulting from QC investigations as:

(1) Proper payments, underpayments, or overpayments in benefit payment cases, or

(2) Proper denials or underpayments in benefit denial cases;

(e) Make and maintain records pertaining to the QC program, and make all such records available in a timely manner for inspection, examination, and audit by such Federal officials as the Secretary may designate or as may be required or authorized by law;

(f) Furnish information and reports to the Department, including weekly transmissions of case data entered into the automated QC system and annual reports, without, in any manner, identifying individuals to whom such data pertain; and

(g) Release the results of the QC program at the same time each year, providing calendar year results using a standardized format to present the data as prescribed by the Department; States will have the opportunity to release this information prior to any release by the Department.

(Approved by the Office of Management and Budget under Control Number 1205-0245)

§ 602.22 Exceptions.

If the Department determines that the QC program, or any constituent part of the QC program, is not necessary for the proper and efficient administration of a State law or in the Department's view is not cost effective, the Department shall use established procedures to advise the State that it is partially or totally excepted from the specified requirements of this part. Any determination under this section shall be made only after consultations with the State agency.

Subpart D—Federal Responsibilities

§ 602.30 Management.

(a) The Department shall establish required methods and procedures (as specified in § 602.21 of this part); and provide technical assistance as needed on the QC process.

(b) The Department shall consider and explore alternatives to the prescribed sampling, study, recordkeeping, and reporting methodologies. This shall include, but not be limited to, testing the obtaining of information needed for QC by telephone and mail rather than in face-to-face interviews.

(c) The Department shall maintain a computerized data base of QC case data which is transmitted to the Department under § 602.21, which will be combined with other data for statistical and other analysis such as assessing the impact of economic cycles, funding levels, and workload levels on program accuracy and timeliness.

§ 602.31 Oversight.

The Department shall review QC operational procedures and samples, and validate QC methodology to ensure uniformity in the administration of the QC program and to ensure compliance with the requirements of this part. The Department shall, for purposes of determining eligibility for grants described in § 602.40, annually review the adequacy of the administration of a State's QC program.

Subpart E—Quality Control Grants to States

§ 602.40 Funding.

(a) The Department shall use established procedures to notify States of the availability of funds for the operation of QC programs in accordance with this part.

(b) The Department may allocate additional resources, if available, to States for analysis of date generated by the QC program, to increase the number of claims sampled in areas where more information is needed, for pilot studies for the purpose of expanding the QC program, and for corrective action.

§ 602.41 Proper expenditure of Quality Control granted funds.

The Secretary may, after reasonable notice and opportunity for hearing to the State agency, take exception to and require repayment of an expenditure for the operation of a QC program if it is found by the Secretary that such expenditure is not necessary for the proper and efficient administration of the QC program in the State. See Actions 303(a)(8), 303(a)(9) and 303(b)(2), SSA, and 20 CFR 601.5. For purposes of this section, an expenditure will be found not necessary for proper and efficient administration if such expenditure fails to comply with the requirements of Subpart C of this part.

§ 602.42 Effect of failure to implement Quality Control program.

Any State which the Secretary finds, after reasonable notice and opportunity for hearing, has not implemented or maintained a QC program in accordance with this part will not be eligible for any grants under Title III of the Social Security Act until such time as the Secretary is satisfied that there is no longer any failure to conform or to comply substantially with any provision specified in this part. See sections 303(a)(1), 303(a)(6), and 303(b)(2), SSA, and 20 CFR 601.5.

§ 602.43 No incentives or sanctions based on specific error rates.

Neither sanctions nor funding incentives shall be used by the Department to influence the achievement of specified error rates in State UI programs.

Appendix A to Part 602—Standard for Claim Determinations—Separation Information

Employment Security Manual (Part V, Sections 6010-6015)

6010 *Federal Law Requirements.* Section 303(a)(1) of the Social Security Act requires that a State law include provision for:

"Such methods of administration . . . as are found by the Secretary to be reasonably calculated to insure full payment of unemployment compensation when due."

Section 303(a)(3) of the Social Security Act requires that a State law include provision for:

"Opportunity for a fair hearing before an impartial tribunal, for all individuals whose claims for unemployment compensation are denied."

Section 3304(a)(4) of the Federal Unemployment Tax Act and section 303(a)(5) of the Social Security Act require that a State law include provision for:

"Expenditure of all money withdrawn from an unemployment fund of such State, in the payment of unemployment compensation. . . .

Section 3306(h) of the Federal Unemployment Tax Act defines "compensation" as "cash benefits payable to individuals with respect to their unemployment."

6011 *Secretary's Interpretation of Federal Law Requirements.* The Secretary interprets the above sections to require that a State law include provisions which will insure that:

A. Individuals who may be entitled to unemployment compensation are furnished such information as will reasonably afford them an opportunity to know, establish, and protect their rights under the unemployment compensation law of such State, and

B. The State agency obtains and records in time for the prompt determination and review of benefit claims such information as will reasonably insure the payment of benefits to individuals to whom benefits are due.

6012 *Criteria for Review of State Law Conformity with Federal Requirements:*

In determining the conformity of a State law with the above requirements of the Federal Unemployment Tax Act and the Social Security Act as interpreted by the Secretary, the following criteria will be applied:

A. Is it required that individuals who may be entitled to unemployment compensation be furnished such information of their potential rights to benefits, including the manner and places of filing claims, the reasons for determinations, and their rights of appeal, as will insure them a reasonable opportunity to know, establish, and protect their rights under the law of the State?

B. Is the State agency required to obtain, in time for prompt determination of rights to benefits such information as will reasonably

insure the payment of benefits to individuals to whom benefits are due?

C. Is the State agency required to keep records of the facts considered in reaching determinations of rights to benefits?

6013 *Claim Determinations Requirements Designed To Meet Department of Labor Criteria:*

A. *Investigation of claims.* The State agency is required to obtain promptly and prior to a determination of an individual's right to benefits, such facts pertaining thereto as will be sufficient reasonably to insure the payment of benefits when due.

This requirement embraces five separate elements:

1. It is the responsibility of the agency to take the initiative in the discovery of information. This responsibility may not be passed on to the claimant or the employer. In addition to the agency's own records, this information may be obtained from the worker, the employer, or other sources. If the information obtained in the first instance discloses no essential disagreement and provides a sufficient basis for a fair determination, no further investigation is necessary. If the information obtained from other sources differs essentially from that furnished by the claimant, the agency, in order to meet its responsibility, is required to inform the claimant of such information from other sources and to afford the claimant an opportunity to furnish any further facts he may have.

2. Evidentiary facts must be obtained as distinguished from ultimate facts or conclusions. That a worker was discharged for misconduct is an ultimate fact or conclusion; that he destroyed a machine upon which he was working is a primary or evidentiary fact, and the sort of fact that the requirement refers to.

3. The information obtained must be sufficient reasonably to insure the payment of benefits when due. In general, the investigation made by the agency must be complete enough to provide information upon which the agency may act with reasonable assurance that its decision is consistent with the unemployment compensation law. On the other hand, the investigation should not be so exhaustive and time-consuming as unduly to delay the payment of benefits and to result in excessive costs.

4. Information must be obtained promptly so that the payment of benefits is not unduly delayed.

5. If the State agency requires any particular evidence from the worker, it must give him a reasonable opportunity to obtain such evidence.

B. *Recording of facts.* The agency must keep a written record of the facts considered in reaching its determinations.

C. *Determination notices.*

1. The agency must give each claimant a written notice of:

a. Any monetary determination with respect to his benefit year;

b. Any determination with respect to purging a disqualification if, under the State law, a condition or qualification must be satisfied with respect to each week of disqualification; but in lieu of giving written notice of each determination for each week in which it is determined that the claimant has met the requirements for purging, the agency may inform the claimant that he has purged the disqualification for a week by notation of his applicant identification card or otherwise in writing.

c. Any other determination which adversely affects [1] his rights to benefits, except that written notice of determination need not be given with respect to:

(1) A week in a benefit year for which the claimant's weekly benefit amount is reduced in whole or in part by earnings if, the first time in the benefit year that there is such a reduction, he is required to be furnished a booklet or leaflet containing the information set forth below in paragraph 2f(1). However, a written notice of determination is required if: (a) there is a dispute concerning the reduction with respect to any week (e.g., as to the amount computed as the appropriate reduction, etc.); or (b) there is a change in the State law (or in the application thereof) affecting the reduction; or

(2) Any week in a benefit year subsequent to the first week in such benefit year in which benefits were denied, or reduced in whole or in part for reasons other than earnings, if denial or reduction for such subsequent week is based on the same reason and the same facts as for the first week, and if written notice of determination is required to be given to the claimant with respect to such first week, and with such notice of determination, he is required to be given a booklet or pamphlet containing the information set forth below in paragraphs 2f(2) and 2h. However, a written notice of determination is required if: (a) there is a dispute concerning the denial or reduction of benefits with respect to such week; or (b) there is a change in the State law (or in the application thereof) affecting the denial or reduction; or (c) there is a change in the amount of the reduction except as to the balance covered by the last reduction in a series of reductions.

Note.—This procedure may be applied to determinations made with respect to any subsequent weeks for the same reason and on the basis of the same facts: (a) that claimant is unable to work, unavailable for work, or is disqualified under the labor dispute provision; and (b) reducing claimant's weekly benefit amount because of income other than earnings or offset by reason of overpayment.

2. The agency must include in written notices of determinations furnished to claimants sufficient information to enable them to understand the determinations, the reasons therefor, and their rights to protest, request reconsideration, or appeal.

The written notice of monetary determination must contain the information specified in the following items (except h) unless an item is specifically not applicable. A written notice of any other determination must contain the information specified in as many of the following items as are necessary to enable the claimant to understand the determination and to inform him of his appeal rights. Information specifically applicable to the individual claimant must be contained in the written notice of determination. Information of general application such as (but not limited to) the explanation of benefits for partial unemployment, information as to deductions, seasonality factors, and information as to the manner and place of taking an appeal, extension of the appeal period, and where to obtain information and assistance may be contained in a booklet or leaflet which is given the claimant with his monetary determination.

a. *Base period wages.* The statement concerning base-period wages must be in sufficient detail to show the basis of computation of eligibility and weekly and maximum benefit amounts. (If maximum benefits are allowed, it may not be necessary to show details of earnings.)

b. *Employer name.* The name of the employer who reported the wages is necessary so that the worker may check the wage transcript and know whether it is correct. If the worker is given only the employer number, he may not be able to check the accuracy of the wage transcript.

c. *Explanation of benefit formula—weekly and maximum benefit amounts.* Sufficient information must be given the worker so that he will understand how his weekly benefit amount, including allowances for dependents, and his maximum benefit amount were figured. If benefits are computed by means of a table contained in the law, the table must be furnished with the notice of determination whether benefits are granted or denied.

The written notice of determination must show clearly the weekly benefit amount and the maximum potential benefits to which the claimant is entitled.

The notice to a claimant found ineligible by reason of insufficient earnings in the base period must inform him clearly of the reason for ineligibility. An explanation of the benefit formula contained in a booklet or pamphlet should be given to each claimant at or prior to the time he receives written notice of a monetary determination.

d. *Benefit year.* An explanation of what is meant by the benefit year and identification of the claimant's benefit year must be included in the notice of determination.

e. *Information as to benefits for partial unemployment.* There must be included either in the written notice of determination or in a booklet or pamphlet accompanying the notice an explanation of the claimant's rights to partial benefits for any week with respect to which he is working less than his normal customary full-time workweek because of

[1] A determination "adversely affects" claimant's right to benefits if it (1) results in a denial to him of benefits (including a cancellation of benefits or wage credits or any reduction in whole or in part below the weekly or maximum amount established by his monetary determination) for any week or other period; or (2) denies credit for a waiting week; or (3) applies any disqualification or penalty; or (4) determines that he has not satisfied a condition of eligibility, requalification for benefits, or purging a disqualification; or (5) determines that an overpayment has been made or orders repayment or recoupment of any sum paid to him; or (6) applies a previously determined overpayment, penalty, or order for repayment or recoupment; or (7) in any other way denies claimant a right to benefits under the State law.

lack of work and for which he earns less than his weekly benefit amount or weekly benefit amount plus earnings, whichever is provided by the State law. If the explanation is contained in the notice of determination, reference to the item in the notice in which his weekly benefit amount is entered should be made.

f. *Deductions from weekly benefits.*

(1) *Earnings.* Although written notice of determinations deducting earnings from a claimant's weekly benefit amount is generally not required (see paragraph 1 c (1) above), where written notice of determination is required (or given) it shall set forth the amount of earnings, the method of computing the deduction in sufficient detail to enable the claimant to verify the accuracy of the deduction, and his right to protest, request redetermination, and appeal. Where a written notice of determination is given to the claimant because there has been a change in the State law or in the application of the law, an explanation of the change shall be included.

Where claimant is not required to receive a written notice of determination, he must be given a booklet or pamphlet the first time in his benefit year that there is a deduction for earnings which shall include the following information:

(a) The method of computing deductions for earnings in sufficient detail to enable the claimant to verify the accuracy of the deduction;

(b) That he will not automatically be given a written notice of determination for a week with respect to which there is a deduction for earnings (unless there is a dispute concerning the reduction with respect to a week or there has been a change in the State law or in the application of the law affecting the deduction) but that he may obtain such a written notice upon request; and

(c) A clear statement of his right to protest, request a redetermination, and appeal from any determination deducting earnings from his weekly benefit amount even though he does not automatically receive a written notice of determination; and if the State law requires written notice of determination in order to effectuate a protest, redetermination, or appeal, he must be so advised and advised also that he must request a written notice of determination before he takes any such action.

(2) *Other deductions.*

(a) A written notice of determination is required with respect to the first week in claimant's benefit year in which there is a reduction from his benefits for a reason other than earnings. This notice must describe the deduction made from claimant's weekly benefit amount, the reason for the deduction, the method of computing it in sufficient detail to enable him to verify the accuracy of such deduction, and his right to protest, request redetermination, or appeal.

(b) A written notice of determination is not required for subsequent weeks that a deduction is made for the same reason and on the basis of the same facts, if the notice of determination pursuant to (2)(a), or a booklet or pamphlet given him with such notice explains (i) the several kinds of deductions which may be made under the State law (e.g., retirement pensions, vacation pay, and overpayments); (ii) the method of computing each kind of deduction in sufficient detail that claimant will be able to verify the accuracy of deductions made from his weekly benefit payments; (iii) any limitation on the amount of any deduction or the time in which any deduction may be made; (iv) that he will not automatically be given a written notice of determination for subsequent weeks with respect to which there is a deduction for the same reason and on the basis of the same facts, but that he may obtain a written notice of determination upon request; (v) his right to protest, request redetermination, or appeal with respect to subsequent weeks for which there is a reduction from his benefits for the same reason, and on the basis of the same facts even though he does not automatically receive a written notice of determination; and (vi) that if the State law requires written notice of determination in order to effectuate a protest, redetermination, or appeal, he must be so advised and advised also that he must request a written notice of determination before he takes any such action.

g. *Seasonality factors.* If the individual's determination is affected by seasonality factors under the State law, an adequate explanation must be made. General explanation of seasonality factors which may affect determinations for subsequent weeks may be included in a booklet or pamphlet given claimant with his notice of monetary determination.

h. *Disqualification or ineligibility.* If a disqualification is imposed, or if the claimant is declared ineligible for one or more weeks, he must be given not only a statement of the period of disqualification or ineligibility and the amount of wage-credit reductions, if any, but also an explanation of the reason for the ineligibility or disqualification. This explanation must be sufficiently detailed so that he will understand why he is ineligible or why he has been disqualified, and what he must do in order to requalify for benefits or purge the disqualification. The statement must be individualized to indicate the facts upon which the determination was based, e.g., state, "It is found that you left your work with Blank Company because you were tired of working; the separation was voluntary, and the reason does not constitute good cause," rather than merely the phrase "voluntary quit." Checking a box as to the reason for the disqualification is not a sufficiently detailed explanation. However, this statement of the reason for the disqualification need not be a restatement of all facts considered in arriving at the determination.

i. *Appeal rights.* The claimant must be given information with respect to his appeal rights.

(1) The following information shall be included in the notice of determination:

(a) A statement that he may appeal or, if the State law requires or permits a protest or redetermination before an appeal, that he may protest or request a redetermination.

(b) The period within which an appeal, protest, or request for redetermination must be filed. The number of days provided by statute must be shown as well as either the beginning date or ending date of the period. (It is recommended that the ending date of the appeal period be shown, as this is the more understandable of the alternatives.)

(2) The following information must be included either in the notice of determination or in separate informational material referred to in the notice:

(a) The manner in which the appeal, protest, or request for redetermination must be filed, e.g., by signed letter, written statement, or on a prescribed form, and the place or places to which the appeal, protest, or request for redetermination may be mailed or hand-delivered.

(b) An explanation of any circumstances (such as nonworkdays, good cause, etc.) which will extend the period for the appeal, protest, or request for redetermination beyond the date stated or identified in the notice of determination.

(c) That any further information claimant may need or desire can be obtained together with assistance in filing his appeal, protest, or request for redetermination from the local office.

If the information is given in separate material, the notice of determination would adequately refer to such material if it said, for example, "For other information about your (appeal), (protest), (redetermination) rights, see pages ____ to ____ of the _____ (name of pamphlet or booklet) heretofore furnished to you."

6014 *Separation Information Requirements Designed To Meet Department of Labor Criteria:*

A. *Information to agency.* Where workers are separated, employers are required to furnish the agency promptly, either upon agency request or upon such separation, a notice describing the reasons for and the circumstances of the separation and any additional information which might affect a claimant's right to benefits. Where workers are working less than full time, employers are required to furnish the agency promptly, upon agency request, information concerning a claimant's hours of work and his wages during the claim periods involved, and other facts which might affect a claimant's eligibility for benefits during such periods.

When workers are separated and the notices are obtained on a request basis, or when workers are working less than full time and the agency requests information, it is essential to the prompt processing of claims that the request be sent out promptly after the claim is filed and the employer be given a specific period within which to return the notice, preferably within 2 working days.

When workers are separated and notices are obtained upon separation, it is essential that the employer be required to send the notice to the agency with sufficient promptness to insure that, if a claim is filed, it may be processed promptly. Normally, it is desirable that such a notice be sent to the central office of the agency, since the employer may not know in which local office the workers will file his claim. The usual procedure is for the employer to give the worker a copy of the notice sent by the employer to the agency.

B. *Information to worker.*

1. *Information required to be given.* Employers are required to give their employees information and instructions concerning the employees' potential rights to benefits and concerning registration for work and filing claims for benefits.

The information furnished to employees under such a requirement need not be elaborate; it need only be adequate to insure that the worker who is separated or who is working less than full time knows he is potentially eligible for benefits and is informed as to what he is to do or where he is to go to file his claim and register for work. When he files his claim, he can obtain more detailed information.

In States that do not require employers to furnish periodically to the State agency detailed reports of the wages paid to their employees, each employer is required to furnish to his employees information as to (a) the name under which he is registered by the State agency, (b) the address where he maintains his payroll records, and (c) the workers' need for this information if and when they file claims for benefits.

2. *Methods for giving information.* The information and instructions required above may be given in any of the following ways:

a. *Posters prominently displayed in the employer's establishment.* The State agency should supply employers with a sufficient number of posters for distribution throughout their places of business and should see that the posters are conspicuously displayed at all times.

b. *Leaflets.* Leaflets distributed either periodically or at the time of separation or reduction of hours. The State agency should supply employers with a sufficient number of leaflets.

c. *Individual notices.* Individual notices given to each employee at the time of separation or reduction in hours.

It is recommended that the State agency's publicity program be used to supplement the employer-information requirements. Such a program should stress the availability and location of claim-filing offices and the importance of visiting those offices whenever the worker is unemployed, wishes to apply for benefits, and to seek a job.

6015 *Evaluation of Alternative State Provisions with Respect to Claim Determinations and Separation Information.* If the State law provisions do not conform to the suggested requirements set forth in sections 6013 and 6014, but the State law contains alternative provisions, the Bureau of Employment Security, in collaboration with the State agency, will study the actual or anticipated effects of the alternative provisions. If the Administrator of the Bureau concludes that the alternative provisions satisfy the criteria in section 6012, he will so notify the State agency. If the Administrator of the Bureau does not so conclude, he will submit the matter to the Secretary. If the Secretary concludes that the alternative provisions satisfy the criteria in section 6012, the State agency will be so notified. If the Secretary concludes that there is a question as to whether the alternative provisions satisfy the criteria, the State agency will be advised that unless the State law provisions are appropriately revised, a notice of hearing will be issued as required by the Code of Federal Regulations, title 20, section 601.5.

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Thursday
September 3, 1987

Part IV

Department of Housing and Urban Development

Office of the Secretary

Transitional Housing Demonstration Program; Notice of Funds Availability

Supportive Housing Demonstration Program; Notice of Delegation of Authority

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

[Docket No. N-87-1727; FR-2396]

Transitional Housing Demonstration Program; Notice of Funds Availability

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

ACTION: Notice of funds availability.

SUMMARY: The Transitional Housing Demonstration Program, authorized in HUD's regular fiscal year 1987 appropriation, is designed to develop innovative approaches to providing housing and supportive services to help facilitate the transition to independent living for homeless persons. Under the program, HUD provides assistance to eligible governmental and private nonprofit organizations in the forms of: (1) interest-free advances to cover part of the costs of acquiring and rehabilitating (or both) existing structures for use in the provision of housing and supportive services for homeless persons; (2) funding of a portion of the operating costs of the housing; and (3) technical assistance to recipients in carrying out activities under the program. This notice is intended to inform the public of the requirements that will govern the use of amounts appropriated for the program by the Supplemental Appropriations Act, 1987 (Pub. L. 100–71, approved July 11, 1987).

EFFECTIVE DATE: September 3, 1987.

FOR FURTHER INFORMATION CONTACT: Lawrence Goldberger, Director, Office of Elderly and Assisted Housing, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, D.C. 20410, telephone (202) 755–5720. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION:

I. Background

The Transitional Housing Demonstration Program was first included in the Homeless Housing Act of 1986, enacted as Part B of title V of HUD's regular appropriation for fiscal year 1987.[1] HUD published final guidelines for the operation of the program and an invitation for applications for funding on June 9, 1987 (52 FR 21743). A technical correction concerning program requirements was published on July 13, 1987 (52 FR 26187).

On July 22, 1987, the President approved the Stewart B. McKinney Homeless Assistance Act, Pub. L. 100–77 ("McKinney Act"). Title IV of the McKinney Act contains a number of housing assistance provisions to be administered by HUD.

Subtitle C of Title IV of the McKinney Act authorizes the Supportive Housing Demonstration Program. This program has two components—a reauthorization (with amendments) of the Transitional Housing Demonstration Program and a new program of Permanent Housing for Handicapped Homeless Persons. The McKinney Act makes the following substantive changes to the Transitional Housing Demonstration Program: (1) an increased emphasis on serving the needs of specified populations of homeless persons; (2) the redefinition of significant terms used for the program affecting the homeless persons who may be served, the eligibility of applicants and recipients, and the supportive services that may be provided; (3) the addition of authority to fund moderate rehabilitation grants; (4) the revision of provisions governing repayments of advances provided under the program; (5) the addition of provisions addressing the prevention of undue benefits upon the sale or disposition of a project that has been acquired or rehabilitated with funds provided under the program; (6) the expansion of the term of the commitment to operate a funded project from five years to ten; (7) the codification of requirements that recipients must match Federal assistance with at least an equal amount of other funds; and (8) the addition of limitations on the use of program funds to replace certain public funds, and limitations on the amount of administrative expenses. In addition to these changes, Subtitle A of Title IV of the McKinney Act adds requirements for a Comprehensive Homeless Assistance Plan, as discussed below.

Section 426 of the McKinney Act requires HUD, not later than 90 days after enactment, to establish by notice such requirements as may be necessary to carry out the provisions of the Supportive Housing Demonstration Program. HUD is developing a proposed rule to govern the Supportive Housing Demonstration Program. Following an opportunity for public comment, a final rule will be issued.

Until final regulations implementing the program are issued, section 426(a) of the McKinney Act provides that HUD's rules implementing the provisions made effective by HUD's appropriations for fiscal year 1987 (*i.e.*, the Transitional Housing Demonstration Program Guidelines published on June 9, 1987, 52 FR 21743) shall govern the transitional housing provisions of the Supportive Housing Demonstration Program.

In addition to other amounts authorized by law, section 428(a) of the McKinney Act authorizes $80 million to be appropriated to carry out the Supportive Housing Demonstration program for fiscal year 1987. Of the funds provided under Subtitle C under any fiscal year, section 428(b) provides that not less than $20 million is to be allocated to transitional housing projects that serve homeless families with children, and not less than $15 million is to be allocated to projects that provide permanent housing for handicapped homeless persons.

The Supplemental Appropriations Act, 1987 (Pub. L. 100–71, approved July 11, 1987), appropriated $80 million for supportive housing. Of the $80 million, $65 million is available for funding under the transitional housing provisions of the Supportive Housing Demonstration Program during this fiscal year. This figure is computed by deducting the $15 million set aside for the program for permanent housing for handicapped homeless persons (for which no HUD regulations or guidelines have, as yet been adopted) from the total $80 million recently appropriated and authorized for the Supportive Housing Demonstration Program. The $15 million in funding for permanent housing for handicapped homeless persons will be made available following the issuance of final regulations governing the Supportive Housing Demonstration Program.

The $65 million is in addition to the $5 million already made available for the Transitional Housing Demonstration Program in HUD's regular appropriation for fiscal year 1987. (In the final guidelines issued June 9, 1987, HUD announced the availability of this $5 million in funding and invited applications for the program. Applications were due on August 7, 1987 and HUD is currently selecting recipients for this $5 million in funding.)

Consistent with section 426(a) of the McKinney Act, the use of the $65 million appropriated and the selection of applications will be governed by the Transitional Housing Demonstration Program Guidelines published June 9, 1987 (52 FR 21743). This notice announces the availability of the additional $65 million for transitional

[1] Section 101(g), Pub. L. 99–500 (approved October 18, 1986) and Pub. L. 99–591 (approved October 30, 1986), making appropriations as provided for in H.R. 5313, 99th Cong., 2d Sess. (1986) (as passed by the House of Representatives and by the Senate) to the extent and in the manner provided for in H. Rep. No. 977, 99th Cong., 2d Sess. (1966).

housing and informs the public of the requirements that will govern the use of these funds.

II. Requirements governing the Program

In addition to the Transitional Housing Demonstration Program Guidelines, the following requirements will govern the use of the finds and the selection of applications under this notice:

A. Comprehensive Homeless Assistance Plan.

Subtitle A of Title IV of the McKinney Act adds new requirements for a Comprehensive Homeless Assistance Plan. Section 401(a) prohibits assistance under the other provisions of Title IV (including the Supportive Housing Demonstration Program) from being made available to, or within the jurisdiction of States, metropolitan cities or urban counties that are eligible for a formula grant under the Emergency Shelter Grants Program (contained in Subtitle B of Title IV), unless the jurisdiction has a HUD-approved Comprehensive Homeless Assistance Plan. (Private nonprofit organizations seeking assistance under certain programs, including the Supportive Housing Demonstration Program, however, may apply for and receive assistance without regard to a city's or an urban county's Plan approval, if the applicable State Comprehensive Plan has been approved.) Under section 401(f), applications for assistance must contain or be accompanied by a certification from the State or from the formula grant city or county, as appropriate, that the proposed activities are consistent with the plan.

The Department has reviewed the statutory text and legislative history of Subtitle A and section 426(a) of the McKinney Act, and has determined that the requirements for the establishment of the Comprehensive Plan apply to the use of funds appropriated for the transitional housing component of the Supportive Housing Demonstration Program under the Supplemental Appropriations Act, 1987. The language of Subtitle A establishes the Plan as an independent, specific condition to the receipt of funding under each of the other Subtitles of Title IV. Section 426(a), on the other hand, makes the transitional housing component of the Supportive Housing Demonstration Program subject to the provisions of the recently issued Transitional Housing Demonstration Program Guidelines by means of a general incorporation by reference, without any attention to specific features of the involved program. The Department believes that the clear funding condition in Subtitle A of the McKinney Act should take precedence over section 426(a)'s more general directive.

In addition, to hold the Comprehensive Plan inapplicable to the transitional housing component of the Supportive Housing Demonstration Program would frustrate the McKinney Act's purpose of according to States and localities responsibility for coordinating all of Title IV's assistance programs in a comprehensive manner. As the Conference Report accompanying the Act states:

> The conference report improves upon current law (1) by providing a streamlined requirement for one comprehensive plan covering all facets of assistance to the homeless under this Act, and (2) by placing at the relevant State or local level clear responsibility for coordinating assistance under various sections of this Act with other forms of assistance. (H. Rep. No. 174, 100th Cong., 1st Sess. 73 (1987)).

Thus, HUD will apply requirements for the Comprehensive Plan on applicants for assistance under this notice.

Section 401(f) of the McKinney Act requires that every application submitted under Title IV must contain or be accompanied by a certification made by the appropriate public official stating that the proposal activities are consistent with the Comprehensive Plan. On August 14, 1987, the Department published a notice in the **Federal Register** (52 FR 30628) establishing requirements for the Plan. Among other things, the notice specifies the time required for Comprehensive Plan submission and approval. The notice allows jurisdictions until September 28, 1987 to prepare and submit their plan to HUD. Following that submission, HUD will process and review the plans and, if the plan is approved, will provide a written notification of approval within 30 days of receipt. If the plan is disapproved, HUD will notify the jurisdiction of the reasons for disapproval within 15 days. In order to receive formula allocations, all State and ESG formula grantees must have Comprehensive Plan approval by November 27, 1987.

To postpone the application submission process until applicants have had a reasonable opportunity to obtain a certification that the application is consistent with a *HUD-approved* plan would extend the data for submission of applications and for final selection of applications for transitional housing assistance under this notice of funds availability far into the future. The purpose of the Comprehensive Plan is not to provide a source of delay or administrative burden, but to ensure that assistance under the McKinney Act is provided in a coherent and expeditious manner. H. Rep. 174, 100th Cong., 1st Sess. 73 (1987). Similarly, the clear intent of section 426(a) of the McKinney Act (which permits the use of the Transitional Housing Demonstration Program guidelines for the transitional housing provisions of the Supportive Housing Demonstration Program) is to ensure that transitional housing assistance is available at the earliest possible time.

Consistent with this intent, the time limits established for Comprehensive Plan submission and approval, and the section 401(f) requirement that every application must contain or be accompanied by a certificate of consistency with the Comprehensive Plan, HUD will require applicants to submit a certification by the appropriate public official (described below) stating that the application is consistent with a Comprehensive Plan *that has been approved by HUD or submitted to HUD for approval.* HUD will not select an application for funding unless the Comprehensive Plan has been approved before the date the HUD makes its final selections.

The Comprehensive Plan notice described the certification requirements applicable to transitional housing proposals. As modified to permit the submission of certifications before HUD approval of the Comprehensive Plan, the certification requirements are:

—If the applicant is a State or formula grantee under the Emergency Shelter Grants program, the public official responsible for submitting the Comprehensive Plan for the applicant must certify that the proposed project is consistent with the applicant's Comprehensive Plan, as submitted to HUD.

—If the applicant is a governmental entity that is not a State or a formula grantee under the Emergency Shelter Grants program (such as a Public Housing Agency), and (1) the governmental entity is applying for assistance to be used within the jurisdiction of an ESG formula grantee, the applicant must submit a certification of the public official responsible for submitting the Comprehensive Plan for the ESG formula grantee, stating that the proposed project is consistent with the grantee's Comprehensive Plan, as submitted to HUD; or (2) the governmental entity is applying for assistance to be used outside of the jurisdiction of any ESG formula grantee, the applicant must submit a certification of the public official responsible for the

submission of the Comprehensive Plan for the State in which the assistance is to be provided, stating that the proposed project is consistent with the State's Comprehensive Plan, as submitted to HUD.

—If the applicant is a private nonprofit organization and the assistance is to be provided within the jurisdiction of an ESG formula grantee, the applicant must submit a certification of the public official responsible for submitting the Comprehensive Plan for the ESG formula grantee, stating that the proposed project is consistent with the ESG formula grantee's Comprehensive Plan, as submitted by HUD. If the ESG formula grantee does not plan to submit a Comprehensive Plan to HUD, or if the assistance will not be provided within the jurisdiction of an ESG formula grantee, the private nonprofit organization must submit a certification of the public official responsible for submitting the Comprehensive Plan for the State in which the assistance is to be provided, stating that the proposed project is consistent with the State's Comprehensive Plan, as submitted to HUD.

B. Historic Preservation.

The Transitional Housing Demonstration Guidelines, as amended on July 13, 1987 (52 FR 26187), required applicants to provide a letter from the State Historic Preservation Officer (SHPO), indicating that the proposed project would not involve an historic property as defined in 36 CFR 800.2(e) (*i.e.* an historic or prehistoric district, site, building, structure, or object included in or eligible for inclusion in the National Register of Historic Places), and would not involve a structure that is immediately adjacent to an historic property listed on the Register. Under the guidelines, the SHPO letter was a threshold requirement. An application could not be approved if the letter was omitted.

HUD has reconsidered the imposition of this requirement and has decided to revise the historic preservation requirement for applications filed under this notice. The requirement for the SHPO letter was originally imposed to enable HUD to comply with the congressional mandate for speedy implementation of the demonstration and to benefit homeless persons as quickly as possible. While there still is a necessity for expeditious action, HUD believes that the disqualification of historic properties is no longer appropriate. Under this notice, HUD has a substantially larger amount of funding available and is concerned that the continued application of this restrictive requirement could exclude meritorious applications.

Accordingly, HUD will not prohibit the use of historic properties for transitional housing projects. HUD will meet its responsibilities under the National Historic Preservation Act and related authorities as part of the environmental review under 24 CFR Part 50. This environmental review is performed in the third stage of the selection process. As an aid to early processing, HUD will require the applicant to indicate in its application whether the project will involve the use of, or be adjacent to, an historic property and, if so, to identify the historic property. For assistance in meeting the application requirement, the applicant may request available information on historic properties from the SHPO, the local government or any local historic commission or organization.

HUD believes that notice and public comment on this change are impracticable, unnecessary and contrary to the public interest. The change does not substantially alter the existing regulatory framework. Rather, the notice continues to permit HUD to fulfill its statutory duty to ensure compliance with historic preservation requirements, while relieving a regulatory burden by relaxing application requirements that may unduly restrict the number of applications submitted. Moreover, HUD believes that effecting this change through the use of public notice and comment would delay the timely execution of its responsibilities under the Supportive Housing Demonstration Program contrary to its regulatory responsibilities under the McKinney Act. The clear intent of section 426(a), which subjects transitional housing assistance under the McKinney Act to the guidelines until final supportive housing regulations are issued, was to ensure that transitional housing assistance under the program is available at the earliest possible time.

C. Funding Categories.

Section 428(b)(1) the McKinney Act provides that at least $20 million of the funds provided under the Supportive Housing Demonstration Program for any fiscal year shall be allocated to transitional housing projects that serve homeless families with children. Section 428(c) of the McKinney Act directs HUD to provide additional funding consideration to projects designed especially to meet the needs of deinstitutionalized homeless individuals and other homeless persons with mental disabilities, so that such projects will receive a significant share of the funds provided under the subtitle. In accordance with this provision, the conference report accompanying the Supplemental Appropriations Act designates $30 million to be used for transitional housing for deinstitutionalized individuals.

To ensure that these congressional directives are met, HUD has established three separate funding categories. These categories include applications that propose to serve (1) homeless families with children; (2) deinstitutionalized homeless individuals and other homeless individuals with mental disabilities; and (3) other homeless individuals or families. Thee categories are more fully described below.

(1) *Applications that propose to serve homeless families with children.* For the purposes of this notice, a homeless family with children means a family (consisting of at least one adult and at leat one child under the age of 18) which meets the definition of homeless person as defined in Section IV.A. of the Transitional Housing Demonstration Program Guidelines (52 FR at 21761). The Guidelines define homeless person as a homeless individual or family which does not have access to traditional or permanent housing, but which is capable of living independently within a reasonable amount of time, not to exceed 18 months. A person is capable of living independently if, at the time the person is reviewed for admission to transitional housing, the recipient determines that: (1) the resources reasonably expected to be available in the community after the person's anticipated departure from transitional housing will be adequate to meet the person's housing needs and requirements for continued services, and (2) the person will understand the importance, and will be capable, of using these resources after his or her departure from transitional housing.

An application will fall within this funding category if at least 75 percent of the total population of the project to be served by the proposal meet the definition of homeless families with children. $20 million will be available for funding these applications.

(2) *Applications that propose to serve deinstitutionalized homeless individuals and other homeless individuals with mental disabilities.* For the purposes of this notice, a deinstitutionalized homeless individual or homeless individual with mental disabilities means an individual who meets the definition of homeless person (as defined in the guidelines cited above) and who has a mental or emotional impairment which is expected to be of

long-continued and indefinite duration, is a substantial impediment to his or her ability to live independently, and is of such a nature that the ability to live independently could be improved by more suitable living conditions (*i.e.*, a stable residential situation). This term also includes a family that meets the definition of homeless person, as defined in the guidelines, if the head of the family (or the spouse of the head of the family) has an impairment as described above. Projects that will serve deinstitutionalized homeless individuals or other homeless individuals with mental disabilities who also suffer from alcoholism or drug addiction, may be included in this funding category.

An application will fall within this category if at least 75 percent of the total population of the project to be served by the proposal meet the definition of deinstitutionalized homeless individual and other homeless individual with mental disabilities. $30 million will be available for funding applications in this category.

(3) *Applications that propose to serve other homeless individuals or homeless families that meet the definition of homeless person as defined under the guidelines.* $15 million will be available for funding applications in this category.

HUD will require each applicant to identify the category of homeless individuals that it wishes to serve. Applications in each of the three funding categories will compete separately for the funds available to the category. Selections will be made by applying the four-stage selection process described at 52 FR 21764-21767 to applications falling within each of the three funding categories.

D. Application process.

HUD has developed an application package prescribing the information that applicants must submit. The application package will be provided upon the written or oral request of any party made to the address set forth in the beginning of this document or by calling (202) 755-8232. This is not a toll-free number. Applications must be on the forms prescribed by HUD and must be received at that address by 5:15 p.m. on October 30, 1987. Late-filed applications will be rejected.

Applicants that participated in the earlier funding competition will be required to resubmit their applications to be eligible for funding under this notice. Such applicants should review the application package carefully before resubmitting their original applications, since some requirements contained in the package have been modified. (For example, in the earlier application package, applicants were required to demonstrate site control at least through December 31, 1987. The new application package will require site control at least through March 1, 1988.)

Following the expiration of the October 30, 1987 deadline, HUD headquarters will review, rate and rank the applications in each funding category consistent with the selection procedures described in the Transitional Housing Demonstration Guidelines, as modified by this notice. By mid-December 1987, HUD will make its final selections. No information regarding the status of applications will be released until final selections are completed.

Other information

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR Part 50, which implements section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection in the Office of the General Counsel, Rules Docket Clerk, at the above address.

The information collection requirements contained in this notice have been approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501-3520). The OMB control number is 2502-0361.

The Catalog of Federal Domestic Assistance Program Number is 14.178.

Authority: Title IV, Subtitle C of the Stewart B. McKinney Homeless Assistance Act, Pub. L. 100-77, approved July 22, 1987; Section 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Dated: August 26, 1987.

James E. Schoenberger,

Acting General Deputy Assistant Secretary for Housing-Deputy Federal Housing Commissioner.

[FR Doc. 87-20235 Filed 9-2-87; 8:45 am]

BILLING CODE 4210-32-M

Office of the Secretary

[Docket No. D-87-858; FR-2385]

Delegation of Authority With Respect to Supportive Housing Demonstration Program

AGENCY: Office of the Secretary, HUD.

ACTION: Notice of concurrent delegation of authority.

SUMMARY: The Supportive Housing Demonstration Program was authorized by Title IV, Subtitle C of the Stewart B. McKinney Homeless Assistance Act (Pub. L. 100-77, approved July 22, 1987). This notice delegates to the Assistant Secretary for Housing-Federal Housing Commissioner and the General Deputy Assistant Secretary for Housing-Deputy Federal Housing Commissioner, the Secretary's power and authority with respect to this Program, subject to specified exceptions.

EFFECTIVE DATE: September 3, 1987.

FOR FURTHER INFORMATION CONTACT: Lawrence Goldberger, Director, Office of Elderly and Assisted Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 755-5720. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: This notice states the scope of authority given to the Assistant Secretary for Housing-Federal Housing Commissioner and General Deputy Assistant Secretary for Housing-Deputy Federal Housing Commissioner for the Supportive Housing Demonstration Program. All of the Secretary's authority with respect to this Program is delegated except the power to sue and be sued. The authority delegated includes the authority to redelegate to employees of the Department, except for the authority to issue rules regulations and guidelines under the Program.

The Supportive Housing Demonstration Program is a program authorized by Title IV, Subtitle C of the Stewart B. McKinney Homeless Assistance Act (Pub. L. 100-77, approved July 22, 1987). A notice of funds availability for the transitional housing component of this program is published elsewhere in today's issue of the **Federal Register.** Accordingly, the Secretary delegates as follows:

Section A—Authority Delegated

The Assistant Secretary for Housing-Federal Housing Commissioner and the General Deputy Assistant Secretary for Housing-Deputy Federal Housing Commissioner are authorized individually to exercise the power and authority of the Secretary of Housing and Urban Development with respect to the Supportive Housing Demonstration Program as authorized in Title IV, Subtitle C of the Stewart B. McKinney Homeless Assistance Act (Pub. L. 100-77), approved July 22, 1987, except as indicated in Section B below. This includes the authority to issue or waive

rules, regulations, or guidelines under the Program.

Section B—Authority Excepted

There is excepted from the authority delegated under Section A the power to sue or be sued.

Section C—Authority to Redelegate

The Assistant Secretary for Housing-Federal Housing Commissioner and the General Deputy Assistant Secretary for Housing-Deputy Federal Housing Commissioner are authorized, individually, to redelegate to employees of the Department any of the power and authority delegated under Section A, and not excepted under Section B of this delegation. In addition, the Assistant Secretary and the General Deputy Assistant Secretary are not authorized to redelegate the authority to issue or waive rules, regulations and guidelines under the Program.

(Sec. 7(d) Department of Housing and Urban Development Act (42 U.S.C. 3535(d))

Dated: August 26, 1987.

Carl D. Covitz,

Under Secretary.

[FR Doc. 87-20236 Filed 9-2-87; 8:45 am]

BILLING CODE 4210-32-M

federal register

Thursday
September 3, 1987

Part V

Environmental Protection Agency

40 CFR Part 136

Guidelines Establishing Test Procedures for the Analysis of Pollutants; Interim Final Rule and Request for Comments and Proposed Regulation

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 136

[FRL 3197-4(b)]

Guidelines Establishing Test Procedures for the Analysis of Pollutants

AGENCY: Environmental Protection Agency (EPA).

ACTION: Interim Final Rule and Request for Comments.

SUMMARY: This interim final rule amends the Guidelines Establishing Test Procedures for the Analysis of Pollutants under section 304(h) of the Clean Water Act. This amendment approves an additional analytical technique to measure the concentrations of twenty-three inorganic chemicals. This technique, the direct current plasma (DCP) atomic emission spectrometric method, is substantially equivalent in both precision and accuracy to the techniques already approved. Approved analytical techniques are required for determining compliance with effluent limitations, guidelines and standards and in pretreatment standards set forth at 40 CFR Parts 402 through 699 (unless otherwise specially noted or defined in those parts.)

DATE: Interim final rule effective October 5, 1987. The Agency will accept comments on this amendment until October 19, 1987.

ADDRESS: Send comments to Mr. Robert Graves, Environmental Monitoring and Support Laboratory, Office of Research and Development, U.S. Environmental Protection Agency, Cincinnati, Ohio 45268.

The record and all supporting information is available to the public for inspection or copying during normal business hours at the Environmental Monitoring and Support Laboratory, 26 West St. Clair Street, Cincinnati, Ohio. The public should contact the Equivalency Staff at (513) 569-7301 for access. Materials in the public docket include the following documents:

- Technical reviews of the proposed analytical techniques.
- Report with recommendations from the Director, Environmental Monitoring and Support Laboratory in Cincinnati.
- Copies of the proposed analytical techniques and performance data.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Graves, address above. Telephone number: (513) 569-7315.

SUPPLEMENTARY INFORMATION:

I. Authority and Background

This regulation is proposed under authority of sections 304(h) and 501(a) of the Clean Water Act, 33 U.S.C. 1251 *et seq.* (the Federal Water Pollution Control Act Amendments of 1972 as amended by the Clean Water Act of 1977) (the "Act"). Section 304(h) of the Act requires the Administrator of the EPA to "promulgate guidelines establishing test procedures for the analysis of pollutants that shall include the factors which must be provided in any certification pursuant to section 401 of this Act or permit application pursuant to section 402 of this Act." Section 501(a) of the Act authorizes the Administrator to "prescribe such regulations as are necessary to carry out his functions under this Act."

EPA promulgated "Guidelines Establishing Test Procedures for the Analysis of Pollutants" in 40 CFR Part 136 on October 16, 1973 (38 FR 28758). These guidelines, which were amended on December 1, 1976 (41 FR 52780), provided test procedures for 115 well known pollutants and pollutant parameters, including metals and a number of organic compounds.

On October 26, 1984 the EPA promulgated regulations in the **Federal Register** (49 FR 43234) which further amended Part 136. These amendments approved gas chromatographic (GC), gas chromatographic/mass spectrometric (GC/MS), and high pressure liquid chromatographic (HPLC) methods for the analysis of the 111 toxic organic "priority" pollutants, an analytical method for carbonaceous biochemical oxygen demand (CBOD), a method for metals by inductively coupled plasma spectrophotometry (ICP), and mandatory sample container, preservation and holding time requirements. The test procedures for the organic pollutants included provisions for performance criteria that analysts must meet. These provisions were promulgated as interim final rulemaking. A correction notice was published on January 4, 1985 (50 FR 690-697). EPA also published technical amendments in those regulations in the **Federal Register** of June 30, 1986 (51 FR 23692).

The Virginia Electric Power Company and others (VEPCO) challenged the October, 1984 regulations (*Virginia Electric Power Co.*, et al. v. *U.S. Environmental Protection Agency*, et al., No. 84-2227, (4th Cir. filed Nov. 9, 1984)). In settling that challenge, EPA and the parties entered into a settlement agreement (July 12, 1985). In the settlement, EPA agreed to propose a change to the procedures for approving new, alternate test methods for nationwide use to allow an opportunity for notice and comment prior to final approval. Beckman Instruments, Inc., in accordance with the guidelines published at 40 CFR Section 136.5, has applied for nationwide approval of the Beckman Instruments, Inc., method, "Direct Current Plasma—Optical Emission Spectrometric Method for Trace Elemental Analysis of Water and Waste," for the analysis of the following metals: Aluminum, Barium, Beryllium, Boron, Cadmium, Calcium, Chromium, Cobalt, Copper, Gold, Iron, Lead, Magnesium, Manganese, Molybdenum, Nickel, Palladium, Platinum, Silver, Sodium, Titanium, Vanadium, and Zinc.

This method describes a technique for the simultaneous multi-element or sequential determination of trace elements by DC argon plasma spectroscopy. The basis of the method is the measurement of atomic emission by an optical spectroscopic technique. Samples are nebulized and the aerosol is transported into a DC argon plasma where excitation of the analyte atoms occurs. When these excited atoms decay to a lower energy state, characteristic atomic line emission spectra are produced. The spectra are dispersed by an echelle grating spectrometer and the intensities of the lines are monitored by photomultiplier tubes. The photocurrents from the photomultiplier tubes are processed and controlled by a computer system.

A background correction technique may be required to compensate for variable background contribution to the determination of trace elements. Background must be measured adjacent to analyte lines on samples during analysis.

EPA's Environmental Monitoring and Support Laboratory in Cincinnati, Ohio (EMSL-CI) has thoroughly reviewed and evaluated the supporting data submitted by the Beckman Instruments, Inc. That information is on file at EMSL-CI, 26 West St. Clair, Cincinnati, Ohio 45268. It is available for public inspection, to the extent consistent with 40 CFR Part 2 (EPA's "Public Information" regulations). The approved method description is available from Beckman Instruments, Inc., Scientific Instruments Division, Campus Drive at Jamboree Boulevard, P.O. Box C-19600, Irvine, California 92713.

Based on EMSL-CI's review, and pursuant to 40 CFR 136.5, EPA gives interim approval for the Beckman Instruments, Inc., DCP procedure as an alternate test procedure for nationwide use. As an approved alternate test procedure, the Beckman DCP procedure

would be acceptable for use by any person required to use procedures approved under section 304(h) of the CWA.

Currently, EPA regulations at 40 CFR 136.5 do not require a notice and comment period for the Administrator to approve new alternate test methods. However, elsewhere in today's **Federal Register**, EPA is proposing to add an opportunity for public comment to the procedures under § 136.5. In accordance with the settlement agreement, EPA is publishing this DCP method as an interim final rule with an opportunity for comment. Thus, although EPA regulations do not yet require a comment period for approval of alternate methods under 40 CFR 136.5, EPA will consider changes in the final rule to reflect appropriate comments.

Public comment is requested concerning the suitability of the DCP technique as an alternative method for the determination of the twenty-three metals.

II. Regulatory Requirements

Executive Order 12291 (46 FR 13193, February 19, 1981), requires a regulatory impact analysis if it is determined that the regulations are considered to be "major rules." EPA has determined that this regulation is not a "major rule," and thus a regulatory impact analysis has not been prepared. This rule will not have a significant effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 602 *et. seq.*). There is no change in the paperwork requirements as a result of this rule.

List of Subjects in 40 CFR Part 136

Water pollution control.

Dated: August 14, 1987.

Lee M. Thomas,

Administrator.

In consideration of the preceding, EPA amends Chapter I, Subchapter D of Title 40 of the Code of Federal Regulations as follows:

PART 136—[AMENDED]

1. The authority citation for Part 136 continues to read as follows:

Authority: Secs. 301, 304(h), 307, and 501(a) Public Law 95–217, Stat. 1566, *et seq.* (33 U.S.C. 1251 *et seq.*) (The Federal Water Pollution Control Act Amendments of 1972 as amended by the Clean Water Act of 1977).

2. Section 136.3 is amended by revising the following entries in Table IB of paragraph (a): 3, Aluminum; 7, Barium; 8, Beryllium; 10, Boron; 12, Cadmium; 13, Calcium; 19, Chromium; 20, Cobalt; 22, Copper; 26, Gold; 30, Iron; 32, Lead; 33, Magnesium; 34, Manganese; 36, Molybdenum; 37, Nickel; 47, Palladium; 51, Platinum; 62, Silver; 63, Sodium; 72, Titanium; 74, Vanadium; and 75, Zinc; and by adding a new footnote 33 as follows:

§ 136.3 Identification of test procedures

(a) * * *

TABLE IB.—LIST OF APPROVED INORGANIC TEST PROCEDURES

Parameter, units and method	Reference (method No. or page)				Other
	EPA 1979	Std. methods 16th Ed.	ASTM	USGS [4]	
* * * *		*	*		*
3. Aluminum—Total,[3] mg/L; Digestion[3] followed by:					
AA direct aspiration	202.1	303C		I-3051-84	
AA furnace	202.2	304			
Inductively coupled plasma (ICP)					200.7 [4]
Direct current plasma (DCP), or					Note 33
Colorimetric (Eriochrome cyanine R)		306B			
* * * *		*	*		*
7. Barium—Total,[3] mg/L; Digestion[3] followed by:					
AA direct aspiration	208.1	303C		I-3084-84	
AA furnace	208.2	304			
ICP, or					200.7 [4]
DCP					Note 33
* * * *		*	*		*
8. Beryllium—Total,[3] mg/L; Digestion[3] followed by:					
AA direct aspiration	210.1	303C	D3645-84(A)	I-3095-84	
AA furnace	210.2	304			
ICP					200.7 [4]
DCP, or					Note 33
Colorimetric (aluminon)		309B			
* * * *		*	*		*
10. Boron—Total, mg/L;					
Colorimetric (curcumin)	212.3	404A		I-3112-84	
ICP, or					200.7[4]
DCP					Note 33
* * * *		*	*		*
12. Cadmium—Total,[3] mg/L; Digestion [3] followed by:					
AA direct aspiration,	213.1	303A or B	D3557-84 (A or B)	I-3135-84 or I-3136-84	33.089 [2], p.37 [8]
AA furnace	213.2	304			
ICP					200.7 [4]
DCP					Note 33
Voltametry [10], or			D3557-84(C)		
Colorimetric (Dithizone)		310B			

TABLE IB.—LIST OF APPROVED INORGANIC TEST PROCEDURES—Continued

Parameter, units and method	Reference (method No. or page)				
	EPA 1979	Std. methods 16th Ed.	ASTM	USGS [1]	Other
* * * *		*	*		*
13. Calcium—Total,[3] mg/L; Digestion[3] followed by:					
AA direct aspiration	215.1	303A	D511-84(B)	I-3152-84	
ICP					200.7 [4]
DCP, or					Note 33
Titrimetric (EDTA)	215.2	311C	D511-84(A)		
* * * *		*	*		*
19. Chromium—Total,[3] mg/L; Digestion [3] followed by:					
AA direct aspiration	218.1	303A	D1687-84(D)	I-3236-84	33.089 [2]
AA chelation-extraction	218.3	303B			
AA furnace	218.2	304			
ICP					200.7 [4]
DCP, or					Note 33
Colorimetric (Diphenylcarbazide)		312B	D1687-84(A)		
* * * *		*	*		*
20. Cobalt—Total,[3] mg/L; Digestion [3] followed by:					
AA direct aspiration	219.1	303A or B	D3558-84 (A or B)	I-3239-84 or I-3240-84	p. 37 [5]
AA furnace	219.2	304			
ICP					200.7 [4]
DCP					Note 33
* * * *		*	*		*
22. Copper—Total,[3] mg/L; Digestion [3] followed by:					
AA direct aspiration	220.1	303A or B	D1688-84 (D or E)	I-3270-84 or I-3271-84	33.089,[2] p. 37 [5]
AA furnace	220.2	304			
ICP					200.7 [4]
DCP or					Note 33
Colorimetric (Neocuproine), or		313B	D1688-84(A)		
(Bicinchoninate)					Note 18
* * * *		*	*		*
26. Gold—Total,[3] mg/L; Digestion [3] followed by:					
AA direct aspiration	231.1	303A			
AA furnace	231.2	304			
DCP					Note 33
* * * *		*	*		*
30. Iron—Total,[3] mg/L; Digestion [3] followed by:					
AA direct aspiration	236.1	303A or B	D1068-84 (C or D)	I-3381-84	33.089 [2]
AA furnace	236.2	304			
ICP					200.7 [4]
DCP or					Note 33
Colorimetric (Phenanthroline)		315B	D1068-84(A)		Note 21
* * * *		*	*		*
32. Lead—Total,[3] mg/L; Digestion [3] followed by:					
AA direct aspiration	239.1	303A or B	D3559-84(A or B)	I-3399-84	33.089 [2]
AA furnace	239.2	304			
ICP					200.7 [4]
DCP or					Note 33
Voltametry [10] or			D3559-85(C)		
Colorimetric (Dithizone)		316B			
* * * *		*	*		*
33. Magnesium—Total,[3] mg/L; Digestion [3] followed by:					
AA direct aspiration	242.1	303A	D511-84(B)	I-3447-84	33.089 [2]
ICP					200.7 [4]
DCP or					Note 33
Gravimetric		318B	D511-77(A)		
* * * *		*	*		*
34. Manganese—Total,[3] mg/L; Digestion [3] followed by:					
AA direct aspiration	243.1	303A or B	D858-84 (B or C)	I-3454-84	33.089 [2]
AA furnace	243.2	304			
ICP					200.7 [4]
DCP or					Note 33

TABLE IB.—LIST OF APPROVED INORGANIC TEST PROCEDURES—Continued

Parameter, units and method	Reference (method No. or page)				
	EPA 1979	Std. methods 16th Ed.	ASTM	USGS [1]	Other
Colorimetric (Persulfate), or		319B	D858-84(A)		33.126 [2]
(Periodate)					Note 22
* * * *		*	*		*
36. Molybdenum—Total,[3] mg/L; Digestion [3] followed by:					
AA direct aspiration,	246.1	303C		I-3490-84	
AA furnace,	246.2	304			
ICP, or					200.7 [4]
DCP					Note 33
* * * *		*	*		*
37. Nickel—Total,[3] mg/L; Digestion [3] followed by:					
AA direct aspiration,	249.1	303A or B	D1886-84 (C or D)	I-3499-84	
AA furnace	249.2	304			
ICP					200.7 [4]
DCP or					Note 33
Colorimetric (Heptoxime)		321B			
* * * *		*	*		*
47. Palladium—Total,[3] mg/L; Digestion [3] followed by:					
AA direct aspiration	253.1				p. S27 [9]
AA furnace	253.2				p. S28 [9]
DCP					Note 33
* * * *		*	*		*
51. Platinum—Total,[3] mg/L; Digestion [3] followed by:					
AA direct aspiration	255.1	303A			
AA furnace	255.2	304			
DCP					Note 33
* * * *		*	*		*
62. Silver—Total,[26] mg/L; Digestion [3] followed by:					
AA direct aspiration,	272.1	303A or B		I-3720-84	33.089 [2], p. 37 [8]
AA furnace	272.2	304			
Colorimetric (Dithizone)					319B [16]
ICP or					200.7 [4]
DCP					Note 33
* * * *		*	*		*
63. Sodium—Total,[3] mg/L; Digestion [3] followed by:					
AA direct aspiration,	273.1	303A		I-3735-84	33.107 [2]
ICP					200.7 [4]
DCP or					Note 33
Flame photometric		325B	D1428-82(A)		
* * * *		*	*		*
72. Titanium—Total,[3] mg/L; Digestion [3] followed by:					
AA direct aspiration	283.1	303C			
AA furnace	283.2	304			
DCP					Note 33
* * * *		*	*		*
74. Vanadium—Total,[3] mg/L; Digestion [3] followed by:					
AA direct aspiration	286.1	303C			
AA furnace	286.2	304			
ICP					200.7 [4]
DCP or					Note 33
Colorimetric (Gallic acid)		327B	D3373-84(A)		
* * * *		*	*		*
75. Zinc—Total,[3] mg/L; Digestion [3] followed by:					
AA direct aspiration	289.1	303A or B	D1691-84 (C or D)	I-3900-84	33.089 [2], p. 37 [8]
AA furnace	289.2	304			
ICP					200.7 [4]
DCP or					Note 33
Colorimetric (Dithizone) or		328C			
(Zincon)					Note 32
* * * *		*	*		*

[1] "Methods for Analysis of Inorganic Substances in Water and Fluvial Sediments," U.S. Department of the Interior, U.S. Geological Survey, Open-File Report 85-495, 1986, unless otherwise stated.

[2] "Official Methods of Analysis of the Association of Official Analytical Chemists," methods manual, 14th ed. (1985).

[3] For the determination of total metals the sample is not filtered before processing. A digestion procedure is required to solubilize suspended material and to destroy possible organic-metal complexes. Two digestion procedures are given in "Methods for Chemical Analysis of Water and Wastes, 1979." One (section 4.1.3) is a vigorous digestion using nitric acid. A less vigorous digestion using nitric and hydrochloric acids (section 4.1.4) is preferred; however, the analyst should be cautioned that this mild digestion may not suffice for all sample types. Particularly, if a colorimetric procedure is to be employed, it is necessary to ensure that all organo-metallic bonds be broken so that the metal is in a reactive state. In those situations, the vigorous digestion is to be preferred making certain that at no time does the sample go to dryness. Samples containing large amounts of organic materials would also benefit by this vigorous digestion. Use of the graphite furnace technique, inductively coupled plasma, as well as determinations for certain elements such as arsenic, the noble metals, mercury, selenium, and titanium require a modified digestion and in all cases the method write-up should be consulted for specific instruction and/or cautions.

NOTE: If the digestion included in one of the other approved references is different than the above, the EPA procedure must be used.

Dissolved metals are defined as those constituents which will pass through a 0.45 micron membrane filter. Following filtration of the sample, the referenced procedure for total metals must be followed. Sample digestion for dissolved metals may be omitted for AA (direct aspiration or graphite furnace) and ICP analyses provided the sample solution to be analyzed meets the following criteria:

a. has a low COD (<20)

b. is visibly transparent with a turbidity measurement of 1 NTU or less.

c. is colorless with no perceptible odor, and

d. is of one liquid phase and free of particulate or suspended matter following acidification.

* * * * * * *

[4] The full text of Method 200.7, "Inductively-Coupled Plasma Atomic Emission Spectrometric Method for Trace Element Analysis of Water and Wastes," is given at Appendix C of this Part 136.

[8] American National Standard on Photographic Processing, Effluents, Apr. 2, 1975. Available from ANSI, 1430 Broadway, New York, NY 10018.

[9] Selected Analytical Methods Approved and Cited by the United States Environmental Protection Agency." Supplement to the Fifteenth Edition of Standard Methods for the Examination of Water and Wastewater (1981).

[10] The use of normal and differential pulse voltage ramps to increase sensitivity and resolution is acceptable.

[16] The approved method is that cited in Standard Methods for the Examination of Water and Wastewater, 14th Edition, 1976.

* * * * * * *

[18] Copper, Biocinchoinate Method, Method 8506, Hach Handbook of Water Analysis, 1979, Hach Chemical Company, P.O. Box 389, Loveland, CO 80537.

* * * * * * *

[21] Iron, 1,10-Phenanthroline Method, Method 8008, 1980, Hach Chemical Company, P.O. Box 389, Loveland, CO 80537.

[22] Manganese, Periodate Oxidation Method, Method 8034, Hach Handbook of Wastewater Analysis, 1979, pages 2-113 and 2-117, Hach Chemical Company, Loveland, CO 80537.

* * * * * * *

[28] Approved methods for the analysis of silver in industrial wastewaters at concentrations of 1 mg/L and above are inadequate where silver exists as an inorganic halide. Silver halides such as the bromide and chloride are relatively insoluble in reagents such as nitric acid but are readily soluble in an aqueous buffer of sodium thiosulfate and sodium hydroxide to a pH of 12. Therefore, for levels of silver above 1 mg/L, 20 mL of sample should be diluted to 100 mL by adding 40 mL each of 2 M $Na_2S_2O_3$ and 2 M NaOH. Standards should be prepared in the same manner. For levels of silver below 1 mg/L the approved method is satisfactory.

* * * * * * *

[32] Zinc, Zincon Method, Method 8009, Hach Handbook of Water Analysis, 1979, pages 2-231 and 2-233, Hach Chemical Company, Loveland, CO 80537.

[33] "Direct Current Plasma (DCP) Optical Emission Spectrometric Method for Trace Elemental Analysis of Water and Wastes, Method AES0029," 1986. Beckman Instruments, Inc., Campus Drive at Jamboree Boulevard, Irvine, CA 97213.

[FR Doc. 87-19648 Filed 9-2-87; 8:45 a.m.]

BILLING CODE 6560-50-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 136

[FRL-3197-4(a)]

Guidelines Establishing Test Procedures for the Analysis of Pollutants

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed regulation.

SUMMARY: On October 26, 1984, the EPA published final and interim final rules revising Guidelines Establishing Test Procedures for the Analysis of Pollutants under the Clean Water Act, 49 FR 432341–43436. These rules are published at 40 CFR Part 136. The Virginia Electric Power Company and others filed a lawsuit challenging these regulations. A final Settlement Agreement was arrived at by the parties in which the Agency agreed to propose certain changes to the regulations and make certain clarifications in the **Federal Register**. Today's proposal and clarifications are a step in satisfying that agreement. This action proposes that the results of certain validation studies for the inductively coupled plasma, and the flame and furnace atomic absorption tests procedures be made a part of 40 CFR Part 136. EPA also proposes to amend the procedures for approving alternate methods by adding an opportunity for comments on the test procedures before they are approved for nationwide use. In addition, this action proposes to clarify EPA's views on the equivalency of methods approved under Part 136. Though not compelled by the settlement agreement, the option to preserve samples for oil and grease determinations with HC1 in place of H_2SO_4 is also proposed.

DATE: Comments on this proposal must be submitted on or before October 19, 1987.

ADDRESS: Send comments to Mr. Robert Graves, Environmental Monitoring and Support Laboratory, Office of Research and Development, U.S. Environmental Protection Agency, Cincinnati, Ohio 45268.

All supporting materials pertinent to the development of this proposal are included in the Public Docket located at Room 2404 EPA Headquarters, Washington, DC. The Public Docket is available to the public from 9:00 a.m. to 4:00 p.m. for inspection and copying. The materials included in the public docket are:

1. Settlement Agreement, *Virginia Electric Power Co.*, et al. v. *U.S. Environmental Protection Agency*, et al., No. 84–2227, 4th Cir., dated July 12, 1985.
2. "EPA Method Study 27, Method 200.7, Trace Metals by ICP" EPA 600/4–85–051.
3. "EPA Method Study 31, Trace Metals by Atomic Absorption (Furnace Techniques)" EPA 600/4–85–070.
4. "USEPA Method Study 7, Analyses for Trace Metals in Water by Atomic Absorption Spectroscopy (Direct Aspiration) and Colorimetry" EPA 600/4–86–025.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Graves, address above. Telephone number: (513) 569–7315.

SUPPLEMENTARY INFORMATION:

I. Authority and Background

This regulation is proposed under authority of sections 304(h) and 501(a) of the Clean Water Act, 33 U.S.C. 1251 et seq (the Federal Water Pollution Control Act Amendments of 1972 as amended by the Clean Water Act of 1977) (the "Act"). Section 304(h) of the Act requires the Administrator of the EPA to "promulgate guidelines establishing test procedures for the analysis of pollutants that shall include the factors which must be provided in any certification pursuant to section 401 of this Act or permit application pursuant to section 402 of this Act." Section 501(a) of the Act authorizes the Administrator to "prescribe such regulations as are necessary to carry out his functions under this Act."

EPA promulgated "Guidelines Establishing Test Procedures for the Analysis of Pollutants" in 40 CFR Part 136 on October 16, 1973 (38 FR 28758). These guidelines, which were amended on December 1, 1976 (41 FR 52780), provided test procedures for 115 well known pollutants and pollutant parameters, including metals and a number of organic compounds.

On October 26, 1984, the EPA promulgated regulations in the **Federal Register** (49 FR 43234) which further amended Part 136. These amendments approved gas chromatographic (GC), gas chromatographic/mass spectrometric (GC/MS), and high pressure liquid chromatographic (HPLC) methods for the analysis of the 111 toxic organic "priority" pollutants, an analytical method for carbonaceous biochemical oxygen demand (CBOD), a method for metals by inductively coupled plasma spectrophotometry (ICP), and mandatory sample container, preservation and holding time requirements. The test procedures for the organic pollutants included provisions for performance criteria that the laboratory must meet. These provisions were promulgated as an interim final rule. A correction notice was published on January 4, 1985, (50 FR 690–697). EPA also published technical amendments to those regulations in the **Federal Register** of June 30, 1986 (51 FR 23692).

The Virginia Electric Power Company and others (VEPCO) challenged the October 1984 regulations (*Virginia Electric Power Co.*, et al. v. *U. S. Environmental Protection Agency*, et al., No. 84–2227, [4th Cir. filed November 9, 1984]). In settling that challenge, EPA and the parties entered into a settlement agreement (July 12, 1985). In the settlement, EPA agreed to make available for comment certain studies assessing the performance of three analytical methods and to propose statements of precision and bias for these methods based on the studies. EPA also agreed to propose a change to 40 CFR 136.5 to allow an opportunity for notice and comment prior to final approval of new, alternate test methods for nationwide use. In addition, EPA agreed to propose a clarification in the preamble of these proposed regulations concerning the use of the term "equivalent" in approving test methods. The Agency further agreed to take final action on these proposals. The settlement agreement is a part of the public record for this rulemaking.

II. Proposed Precision and Accuracy Amendments to Analytical Methods

EPA agreed to propose accuracy (as recovery) and precision (as single-analyst and multilaboratory standard deviation) information for incorporation into three analytical methods for the analysis of metals: inductively coupled plasma (ICP), flame atomic absorption (FLAA), and graphite furnace atomic absorption (GFAA) test procedures. Publication of the precision and accuracy data is simply a publication of record support for EPA's choice of analytical methods. The data should indicate to the methods user what kind of performance to expect. However, EPA is not setting performance criteria by publication of this data and EPA does not intend that this information be used in enforcement actions to avoid liability based on Discharge Monitoring Reports. Variability factors are already routinely taken into account when effluent limitation guidelines are established or when permit limitations are set. See, e.g., *Student Public Interest Research Group* v. *Tenneco Polymers, Inc.*, 602F. Supp. 1394 (D.N.J. 1985); *SPIRG.* v. *American Cyanamid Co.*, 23 ERC 2044

(D.N.J. 1985); *SPIRG* v. *Georgia-Pacific*, 615F. Supp. 1419 (D.N.J. 1985) (all holding that " 'margin of analytic error' in test methods may not be taken into account to avoid liability based on self-reported exceedances)."

Both FLAA and GFAA test procedures have been approved methods since 1973 but the recovery and precision statements published for the methods were, for the most part, limited to data gathered by a single laboratory. The ICP test procedure included the results of a preliminary EPA multilaboratory study when approved in the 1984 final rule, but did not incorporate the recovery and precision results from the multi-laboratory study discussed below. The recovery and precision results from EPA's multilaboratory studies are now available for FLAA, GFAA, and ICP and are being proposed for incorporation into the currently approved EPA methods. In addition, although not part of the settlement agreement, the Agency proposes to incorporate recovery and precision statements into an approved EPA colorimetric procedure that was included in the same interlaboratory study as the FLAA methods.

1. ICP Method—The Reference Interlaboratory Study Is Described in the EPA Report, "EPA Method Study 27, Method 200.7 Trace Metals by ICP" (EPA 600/4-85-051)

This study was based upon Youden's non-replicative plan for collaborative tests of analytical methods. Five Youden pairs of spike materials were prepared. Five water types (3 industrial wastewaters, drinking water, and one surface water) were each spiked with three Youden pair concentrations of 27 elements (Aluminum, Antimony, Arsenic, Barium, Beryllium, Boron, Cadmium, Calcium, Chromium, Cobalt, Copper, Iron, Lead, Lithium, Magnesium, Manganese, Molybdenum, Nickel, Potassium, Selenium, Silicon, Silver, Sodium, Strontium, Thallium, Vanadium, and Zinc) and analyzed after both a "hard" and a "soft" digestion procedure. In addition, reagent water was spiked at all five concentrations with the 27 elements. The reagent water data were used as a reference against which all other matrix recovery data were compared. All samples were analyzed by Method 200.7, provided by the Environmental Monitoring and Support Laboratory in Cincinnati. Twelve laboratories participated in the study.

The study design and data treatment are essentially identical to that used in earlier studies of the 600-series methods for organic compounds. The statistical analyses included rejection of outliers, estimation of mean recovery, estimation of single-analyst and overall precisions, and tests for the effects of water type and digestion technique on recovery and precision. Mean recovery in the reference study was generally expressed as a linear regression function of the spike concentration. Precision was generally expressed as separate linear regression functions of the mean recovery that defined both overall and single-analyst precision of the method.

Low concentrations levels for aluminum, boron, and silica were affected in the reference study by contamination of the spiking material from the borosilicate glass ampules used in the study. Precision and recovery data were accordingly poorer for these elements at the lower concentrations than would have otherwise been expected. High endogenous levels of some of the elements in specific effluents made evaluation of data for precision and recovery difficult. This problem was inherent in the study design and the selection of "real world" effluents. The lowest concentration level selected for barium proved to be too low for a number of participating laboratories to detect.

In the reference ICP study, aluminum, barium, beryllium, boron, cobalt, copper, iron, magnesium, manganese, nickel, selenium, silver, strontium, vanadium, and zinc indicated matrix effects of some significance. Digestion method was shown to have an effect on recovery and/or on precision for many of the 27 elements studied. Soft digestion showed better results for nine of these elements. Five elements indicated variable advantages of digestion type for individual matrices, while two indicated better recovery or precision was achieved with hard digestion.

The reagent water matrix for the ICP method study was spiked at five concentration levels, although only three concentration levels were used at any one time to generate the regression equations in the final report. Since sample matrices were only spiked at three selected concentration levels, the same concentration levels from the reagent water data base were used to develop regression equations that were used to test for matrix effects. For the recovery and precision statements to be included in the ICP method, EPA is proposing that the data from all five reagent water concentrations be used to develop the equations.

EPA proposes to incorporate the recovery and precision statements into Method 200.7 by directly amending the language of section 13 of the method in Appendix C of 40 CFR Part 136.

2. GFAA Methods—The Reference Interlaboratory Study Is Described in the EPA Report, "EPA Method Study 31, Trace Metals by Atomic Absorption (Furnace Techniques)" (EPA 600/4-85-070)

This study also employed Youden's non-replicative plan for collaborative tests of analytical methods. Twelve Youden pairs of spike materials were prepared. Five water types (three industrial wastewaters, drinking water, and surface water) were each spiked with three Youden pair concentrations of 18 elements. In addition, reagent water was spiked at all concentrations (up to 12 different levels) with the 18 elements. The reagent water data were used as a reference against which all other matrix test data were compared. Ten laboratories participated in the study.

The elements and the EPA methods employed in the reference study were:

Aluminum (Method 202.2)
Antimony (Method 204.2)
Arsenic (Method 206.2)
Barium (Method 208.2)
Beryllium (Method 210.2)
Cadmium (Method 213.2)
Chromium (Method 218.2)
Cobalt (Method 219.2)
Copper (Method 220.2)
Iron (Method 236.2)
Lead (Method 239.2)
Manganese (Method 243.2)
Nickel (Method 249.2)
Selenium (Method 270.2)
Silver (Method 272.2)
Thallium (Method 279.2)
Vanadium (Method 286.2)
Zinc (Method 289.2)

As with the ICP study, the statistical analyses included rejection of outliers, estimation of mean recovery, estimation of single-analyst and overall precisions, and tests for the effects of water type on recovery and precision. Linear regression functions were generally used to express recovery as a function of the spike concentration and precision as functions of the mean spike recovery.

Aluminum, iron and zinc analyses were erratic with a high percentage of outliers due to contamination. High endogenous levels of some of the elements (e.g. manganese in the surface waters) led to high outlier rates at low-concentration spikes and made data evaluation of limited value. The lowest concentration levels studied for beryllium, cadmium, manganese and silver were erratic and may have been too low for some participating laboratories to detect. In the reference study, arsenic, beryllium, nickel,

selenium, silver, and thallium indicated matrix effects of some significance.

The reagent water matrix for the GFAA method study was spiked at up to 12 concentration levels, depending upon the element. As with the ICP study, the reference study developed a series of regression equations with the reagent water data to match the three concentrations added to the individual sample matrices used in testing for matrix effects. For the recovery and precision statement the Agency is proposing for inclusion in the GFAA methods, equations have been developed using results for all reagent water concentrations employed in the study.

The Agency has incorporated the interlaboratory method study results into a statement of recovery and precision for each GFAA method. These statements are proposed in today's action to be added to 40 CFR Part 136 as Appendix D and incorporated through footnote into Table IB. This action serves to incorporate these data into the approved methods until such time as the EPA manual of methods can be amended to permit these statements to be incorporated by reference.

3. FLAA Methods—The Reference Interlaboratory Study Is Described in the EPA Report, "USEPA Method Study 7, Analyses for Trace Metals in Water by Atomic Absorption Spectroscopy (Direct Aspiration) and Colorimetry" (EPA 600/4-86/025)

The reference study, originally conducted in 1972, employed three Youden pairs of spike materials. These materials were added to reagent water and to a natural water (river, lake, estuary, tap, wastewater, etc.) of the analyst's choice. The reagent-water data were used as a reference against which all other data were compared. A total of 116 laboratories participated, at least in part, in the method study.

The atomic-absorption and colorimetric methods used in the study were taken from the 1971 edition of the Agency's "Manual for Methods of Chemical Analysis of Water and Wastes." Elements and methods included in the study (along with method numbers for the equivalent methods in Table IB of this part) are:

Aluminum	FLAA	Method 202.1
Arsenic	Colorimetric (SDDC)	Method 206.4
Cadmium	FLAA	Method 213.1
Chromium	FLAA	Method 218.1
Copper	FLAA	Method 220.1
Iron	FLAA	Method 236.1
Lead	FLAA	Method 239.1
Manganese	FLAA	Method 243.1
Zinc	FLAA	Method 289.1

The low Youden concentration for the FLAA methods was selected to challenge direct aspiration detection limits. Analysts were instructed to use the extraction procedure involving chelation with ammonium pyrrolidine dithiocarbamate and extraction with methyl isobutyl ketone if problems with detection were encountered. Some participants employed alternate concentration techniques, such as evaporation, to improve their detection limits. Laboratories also selected their own level of participation, and total participants varied from element to element. At the conclusion of the study, statistical summaries of mean recovery and standard deviation in the water of choice were calculated for each spike concentration. These data were published in the 1974 edition of the EPA methods manual.

As part of the settlement agreement, the Agency has reprocessed the analytical data gathered in this study according to the procedures used for the ICP and GFAA method studies. These relatively modern techniques (patterned after the 1977 ASTM procedure D2777-77) were used for the rejection of outliers, estimation of mean recovery, estimation of single-analyst and overall precision, and testing for the effect of water type on recovery and precision. Some accommodations were made in the data processing due to the study design. For example, a computer software limitation restricted the size of the data sets to 50. Therefore, when more than 50 laboratories submitted data, participants were randomly selected from the total population until 50 data sets were obtained.

Laboratories that analyzed the low Youden concentration by direct aspiration FLAA produced very erratic data. The precision and recovery produced through sample concentration by chelation-extraction and sample concentration by evaporation were better but still somewhat disappointing. For the FLAA methods, only the middle and upper Youden concentrations were used to develop the statements of precision and recovery.

The Agency has incorporated the interlaboratory method study results into a statement of recovery and precision for each FLAA method, and for the arsenic colorimetric procedure. These statements are proposed to be added to 40 CFR Part 136 as Appendix D and incorporated through footnote into Table IB. As with the GFAA methods, this action serves to incorporate these data into the approved methods until such time as the referenced methods can themselves be amended.

III. Proposed Amendments to Approval of Alternate Test Procedures for Nationwide Use

Under Part 136, EPA has two procedures for approval of test procedures not already listed under Part 136 upon application from persons outside the Agency. Responsible persons or firms holding a discharge permit may apply for approval of a method for either "Regional" or "nationwide" use. The purpose of this program is to encourage the development of innovative analytical methods and to allow applicants to use these new test methods, where appropriate for a given pollutant or parameter. Sections 136.4 and 136.5 contain the application and approval requirements.

In the VEPCO settlement, EPA agreed to propose to modify the existing procedures for approval of alternate test procedures for nationwide use to allow opportunity for public notice and comment. Under the existing regulations (40 CFR 136.5(e)), the Director of the EPA Environmental Monitoring and Support Laboratory—Cincinnati (EMSL-CI) is to notify the applicant of his recommendation to the Administrator to approve or reject an application or specify additional information necessary to review the application. Alternate methods which the Administrator determines satisfy the applicable requirements of Part 136 are to be approved; notice of any final determination is to be submitted for publication in the **Federal Register** within 15 days after such determination. EPA agreed to propose a modification to this procedure to allow an opportunity for public notice and comment prior to final EPA acceptance of an alternate test method for nationwide use. The notice and comment opportunity is to extend to all the factual bases of EPA-proposed acceptance of the test method, including any performance data submitted by the applicant and any available EPA analysis of those data. VEPCO sought this proposal because they believed that affected industries should have an opportunity to submit their views on use of new test methods. EPA believes that public comment on proposed alternate methods will benefit both the public and the Agency.

In addition to proposing an opportunity for comment on the Administrator's intention to approve an application for nationwide use, EPA is proposing to delete the requirement that these determinations be submitted for

publication within 15 days; EPA is retaining the requirement that the final decision be published in the **Federal Register.**

IV. Clarification of Use of the Term "Equivalent" in Approving Test Methods

For each regulated water pollutant or parameter, the Administrator has approved an array of analytical methods which have been judged to provide analytical data of a quality that is acceptable under the Clean Water Act. In the past, the Agency has occasionally described certain Part 136 approved test procedures as "equivalent" (*see e.g.* 49 FR 43238 and 43247). VEPCO requested a clarification of use of this term. For any given parameter, the array of approved methods will not necessarily give the same precision, accuracy (recovery of spikes), or detection limits when repeated aliquots of samples are analyzed. Therefore, they are not necessarily statistically equivalent methods and have been designated "approved test procedures" in the Tables given in § 136.3 of 40 CFR Part 136. The approval of any array of methods allows NPDES permittees to select the analytical option which is best suited to their monitoring requirements and that will minimize their monitoring costs.

V. Preservation of Samples for Oil and Grease

The Agency has recognized a problem with the use of sulfuric acid as a preservative for oil and grease determinations in certain types of wastewater samples. Samples containing high concentrations of polyvalent metals-petroleum production brines, for example, will incur heavy precipitation upon acidification with sulfuric acid. The precipitation, which affects the reliability of the measurement can be avoided if hydrochloric acid is used instead of sulfuric acid. The Agency proposes to allow this optional preservation procedure.

VI. Regulatory Analysis

(a) Under Executive Order 12291, the Agency must judge whether a regulation is "major" and therefore subject to the requirement of a "Regulatory Impact Analysis." This regulation is not major for the following reasons: (1) It only prescribes analytical methods and sample handling requirements that ensure a uniform measure of pollutants across all wastewater discharges within minimum acceptance criteria. It does not require that analyses actually be made. The purpose is to ensure that the quality of the environmental monitoring data meet certain minimum standards.

(2) The impact of this regulation will be far less than $100 million.

(a) The regulation affects unit monitoring costs for other regulatory programs, e.g., effluent guidelines regulations and the implementation regulations of the National Pollutant Discharge Elimination System (NPDES), and the pretreatment programs. However, it does not impose those costs. In fact, the monitoring costs for other programs are considered in each other rulemaking. This is appropriate because total (rather than unit) monitoring costs are determined by the monitoring provisions of those other regulations.

(b) This regulation has deliberately provided approval of several analytical options for most compounds. This often allows NPDES permittees to select the option that is best suited to their particular monitoring requirements and that will minimize their monitoring costs.

(c) Further, through the equivalency provisions, these test procedure guidelines have been designated to encourage the development of innovative analytical methods by the private sector and to encourage the competitive viability of the instrument manufacturing industry. The equivalency provision also allows individual dischargers to gain approval of analytical systems of their own design that may further reduce their total monitoring costs.

(3) The impact of compliance with these regulations will not be concentrated on any particular sectors of American industry.

(b) Under the Regulatory Flexibility Act, 5 U.S.C. 601, et seq., EPA is required to determine whether a regulation will significantly affect a substantial number of small entities so as to require a regulatory analysis. The regulation requires no new reports beyond those already required. The analytical techniques approved here either can be handled by small facilities, or are widely available by contract at a reasonable price. Therefore, in accordance with 5 U.S.C. 605(b), I hereby certify that this rule will not have a significant adverse economic impact on a substantial number of small facilities.

(c) The equivalency information provision in this rule has 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. It is not effective until OMB approves it and a technical amendment to that effect will be published in the **Federal Register.**

VII. Request for Comments

EPA requests public analysis, comments and information on aspects of this proposal. Comment is specifically solicited on the amendment to the approval procedure for nationwide applications for alternate test procedures. EPA has attempted to provide a mechanism for public review and participation in the approval of such procedures, while also attempting to minimize unnecessary delays in obtaining these approvals.

List of Subjects in 40 CFR Part 136

Water pollution control.

Dated: August 14, 1987.

Lee M. Thomas,

Administrator.

In consideration of the preceding, EPA proposes to amend Chapter I, Subchapter D of Title 40 of the Code of Federal Regulations as follows:

PART 136—[AMENDED]

1. The authority citation for Part 136 continues to read as follows:

Authority: Secs. 301, 304(h), 307, and 501(a) Pub. L. 95–217, Stat. 1566, *et. seq.* (33 U.S.C. 1251, *et. seq.*) (The Federal Water Pollution Control Act Amendments of 1972 as amended by the Clean Water Act of 1977).

2. In § 136.3, Table IB is amended by revising the column headings and by adding a new footnote 34 to read as follows:

§ 136.3 Identification of test procedures.

* * * * *

TABLE IB—LIST OF APPROVED INORGANIC TEST PROCEDURES

Parameter, Units and Method	EPA 1979 [34]	Reference (Method No. or page)			
		Std. Methods	ASTM	USGS [1]	Other
* * *	*	*	*	*	*

[34] The precision and recovery statements for the atomic absorption direct aspiration and graphite furnace methods, and for the spectrophotometric SDDC method for arsenic that are detailed in Appendix D, Precision and Recovery Statements for Methods for Measuring Metals" of this Part 136 are incorporated by reference into the respective methods cited in this column.

3. In § 136.3, Table II, under Table IB–Inorganic Tests, by revising the entry 41, "Oil and grease", to read as follows:

§ 136.3 Identification of test procedures.

* * * * *

TABLE II.—REQUIRED CONTAINERS, PRESERVATION TECHNIQUES, AND HOLDING TIMES

Parameter	No./Name	Container [1]	Preservation [2 3]	Maximum holding time [4]
*	*	*	*	*
Table IB—Inorganic Tests:				
*	*	*	*	*
41.	Oil and Grease	G	Cool, 4 °C, HCl or H_2SO_4 to pH <2	28 days.
*	*	*	*	*

4. In § 136.5 by revising paragraph (e) to read as follows:

§ 136.5 Approval of alternate test procedures.

* * * * *

(e) *Approval for nationwide use.* (1) Within 60 days of the receipt by the Director of the Environmental Monitoring and Support Laboratory-Cincinnati (EMSL–CI) of an application for an alternate test procedure for nationwide use, the Director of EMSL–CI shall notify the applicant in writing whether the application is complete. If the application is incomplete, the applicant shall be informed of the information necessary to make the application complete.

(2) Within 90 days of the receipt of a complete package: EMSL–CI shall perform any analysis necessary to determine whether the alternate method satisfies the applicable requirements of this part; and the Director of EMSL–CI shall recommend to the Administrator that he/she approve or reject the application and shall also notify the applicant of such recommendation.

(3) As expeditiously as practicable, an alternate method determined by the Administrator to satisfy the applicable requirements of this Part shall be proposed by EPA for incorporation in subsection 136.3 of 40 CFR Part 136. EPA shall make available for review all the factual bases for its proposal, including any performance data submitted by the applicant and any available EPA analysis of those data.

(4) Following a period of public comment not to exceed 60 days, EPA shall, as expeditiously as practicable, publish in the **Federal Register** a final decision to approve or reject the alternate method.

5. In Appendix C to Part 136, by revising section 13.1, adding Reference 14.10, and revising Table 4 to read as follows:

Appendix C to Part 136—Inductively Coupled Plasma-Atomic Emission Spectrometric Method for Trace Element Analysis of Water and Wastes, Method 200.7

* * * * *

13. Precision and Accuracy

13.1 An interlaboratory study of metal analyses by this method was conducted by the Quality Assurance Branch (QAB) of the Environmental Monitoring and Support Laboratory—Cincinnati (EMSL-Cincinnati). Synthetic concentrates containing various levels of the twenty-five elements listed in Table 4 were added to reagent water, surface water, drinking water and three effluents. These samples were digested by both the total digestion procedure (9.3) and the total recoverable procedure (9.4). Results for both digestions for the twenty-five elements in reagent water are given in Table 4; results for the other matrices can be found in Reference 14.10.

14. References

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14.10 Maxfield R. and Minak B., "EPA Method Study 27, Method 200.7 Trace Metals by ICP," National Technical Information Service, Order No. PB 85–248–656, November 1983.

* * * * *

TABLE 4.—ICP PRECISION AND ACCURACY DATA

Analyte	Concentration μg/L	Total digestion (9.3) μg/L	Recoverable digestion (9.4) μg/L
Aluminum	69–4792	X=0.9273(C)+3.6 S=0.0559(X)+18.6 SR=0.0507(X)+3.5	X=0.9380(C)+22.1 S=0.0873(X)+31.7 SR=0.0481(X)+18.8

TABLE 4.—ICP PRECISION AND ACCURACY DATA—Continued

Analyte	Concentration µg/L	Total digestion (9.3) µg/L	Recoverable digestion (9.4) µg/L
Antimony	77-1406	X=0.7940(C)−17.0 S=0.1556(X)−0.6 SR=0.1081(X)+3.9	X=0.8908(C)+0.9 S=0.0982(X)+8.3 SR=0.0682(X)+2.5
Arsenic	69-1887	X=1.0437(C)−12.2 S=0.1239(X)+2.4 SR=0.0874(X)+6.4	X=1.0175(C)+3.9 S=0.1288(X)+6.1 SR=0.0643(X)+10.3
Barium	9-377	X=0.7683(C)+0.47 S=0.1819(X)+2.78 SR=0.1285(X)+2.55	X=0.8380(C)+1.68 S=0.2540(X)+0.30 SR=0.0826(X)+3.54
Beryllium	3-1906	X=0.9629(C)+0.05 S=0.0136(X)+0.95 SR=0.0203(X)−0.07	X=1.0177(C)−0.55 S=0.0359(X)+0.90 SR=0.0445(X)−0.10
Boron	19-5189	X=0.8807(C)+9.0 S=0.1150(X)+14.1 SR=0.0742(X)+23.2	X=0.9676(C)+18.7 S=0.1320(X)+16.0 SR=0.0743(X)+21.1
Cadmium	9-1943	X=0.9874(C)−0.18 S=0.0557(X)+2.02 SR=0.0300(X)+0.94	X=1.0137(C)−0.65 S=0.0585(X)+1.15 SR=0.0332(X)+0.90
Calcium	17-47170	X=0.9182(C)−2.6 S=0.1228(X)+10.1 SR=0.0189(X)+3.7	X=0.9658(C)+0.8 S=0.0917(X)+6.9 SR=0.0327(X)+10.1
Chromium	13-1406	X=0.9544(C)+3.1 S=0.0499(X)+4.4 SR=0.0009(X)+7.9	X=1.0049(C)−1.2 S=0.0698(X)+2.8 SR=0.0571(X)+1.0
Cobalt	17-2340	X=0.9209(C)−4.5 S=0.0436(X)+3.8 SR=0.0428(X)+0.5	X=0.9278(C)−1.5 S=0.0498(X)+2.6 SR=0.0407(X)+0.4
Copper	8-1887	X=0.9297(C)−0.30 S=0.0442(X)+2.85 SR=0.0128(X)+2.53	X=0.9647(C)−3.64 S=0.0497(X)+2.28 SR=0.0406(X)+0.96
Iron	13-9359	X=0.8829(C)+7.0 S=0.0683(X)+11.5 SR=−0.0046(X)+10.0	X=0.9830(C)+5.7 S=0.1024(X)+13.0 SR=0.0790(X)+11.5
Lead	42-4717	X=0.9699(C)−2.2 S=0.0558(X)+7.0 SR=0.0353(X)+3.6	X=1.0056(C)+4.1 S=0.0779(X)+4.6 SR=0.0448(X)+3.5
Magnesium	34-13868	X=0.9881(C)−1.1 S=0.0607(X)+11.6 SR=0.0298(X)+0.6	X=0.9879(C)+2.2 S=0.0564(X)+13.2 SR=0.0268(X)+8.1
Manganese	4-1887	X=0.9417(C)+0.13 S=0.0324(X)+0.88 SR=0.0153(X)+0.91	X=0.9725(C)+0.07 S=0.0557(X)+0.76 SR=0.0400(X)+0.82
Molybdenum	17-1830	X=0.9682(C)+0.1 S=0.0618(X)+1.6 SR=0.0371(X)+2.2	X=0.9707(C)−2.3 S=0.0811(X)+3.8 SR=0.0529(X)+2.1
Nickel	17-47170	X=0.9508(C)+0.4 S=0.0604(X)+4.4 SR=0.0425(X)+3.6	X=0.9869(C)+1.5 S=0.0526(X)+5.5 SR=0.0393(X)+2.2
Potassium	347-14151	X=0.8669(C)−36.4 S=0.0934(X)+77.8 SR=−0.0099(X)+144.2	X=0.9355(C)−183.1 S=0.0481(X)+177.2 SR=0.0329(X)+60.9
Selenium	69-1415	X=0.9363(C)−2.5 S=0.0855(X)+17.8 SR=0.0284(X)+9.3	X=0.9737(C)−1.0 S=0.1523(X)+7.8 SR=0.0443(X)+6.6
Silicon	189-9434	X=0.5742(C)−35.6 S=0.4160(X)+37.8 SR=0.1987(X)+8.4	X=0.9737(C)−60.8 S=0.3288(X)+46.0 SR=0.2133(X)+22.6
Silver	8-189	X=0.4466(C)+5.07 S=0.5055(X)−3.05 SR=0.2086(X)−1.74	X=0.3987(C)+8.25 S=0.5478(X)−3.93 SR=0.1836(X)−0.27
Sodium	35-47170	X=0.9581(C)+39.6 S=0.2097(X)+33.0 SR=0.0280(X)+105.8	X=1.0526(C)+26.7 S=0.1473(X)+27.4 SR=0.0884(X)+50.5
Thallium	79-1434	X=0.9020(C)−7.3 S=0.1004(X)+18.3 SR=0.0364(X)+11.5	X=0.9238(C)+5.5 S=0.2156(X)+5.7 SR=−0.0106(X)+48.0
Vanauium	13-4698	X=0.9615(C)−2.0 S=0.0618(X)+1.7 SR=0.0220(X)+0.7	X=0.9551(C)+0.4 S=0.0927(X)+1.6 SR=0.0472(X)+0.5

TABLE 4.—ICP PRECISION AND ACCURACY DATA—Continued

Analyte	Concentration µg/L	Total digestion (9.3) µg/L	Recoverable digestion (9.4) µg/L
Zinc	7-7076	X=0.9356(C)−0.30 S=0.0914(X)+3.75 SR=−0.0130(X)+10.07	X=0.9500(C)+1.82 S=0.0597(X)+6.50 SR=0.0153(X)+7.78

X=Mean Recovery, µg/L.
C=True Value for the Concentration, µg/L.
S=Multi-laboratory Standard Deviation, µg/L.
SR=Single-analyst Standard Deviation, µg/L.

6. In Part 136, by adding Appendix D to read as follows:

Appendix D to Part 136—Precision and Recovery Statements for Methods for Measuring Metals

Twenty-eight selected methods from "Methods for Chemical Analysis of Water and Wastes," EPA-600/4-79-020 (1979) have been subjected to interlaboratory method validation studies. The results of these studies have not yet been incorporated into the text of the methods. Until such time as the Agency is able to update the manual, the following precision and recovery statements are presented in this Appendix and incorporated into Part 136:

Method 202.1

For Aluminum, Method 202.1 (Atomic Absorption, direct aspiration) replace the Precision and Accuracy Section with the following:

Precision and Accuracy

An interlaboratory study on metal analyses by this method was conducted by the Quality Assurance Branch (QAB) of the Environmental Monitoring and Support Laboratory—Cincinnati (EMSL-Cincinnati). Synthetic concentrates containing various levels of this element were added to reagent water and a natural water or effluent of the analyst's choice. The digestion procedure was not specified. Results for the reagent water are given below. Results for other water types and study details are found in "USEPA Method Study 7, Analyses for Trace Methods in Water by Atomic Absorption Spectroscopy (Direct Aspiration) and Colorimetry", National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161, Order No. PB86-208709/AS, Winter, J.A. and Britton, P.W., June, 1986.

For a concentration range of 500-1205 µg/L

X=0.979(C)+6.16
S=0.066(X)+125
SR=0.086(X)+40.5

Where:

C=True Value for the Concentration, µg/L
X=Mean Recovery, µg/L
S=Multi-laboratory Standard Deviation, µg/L
SR=Single-analyst Standard Deviation, µg/L

Method 206.4

For Arsenic, Method 206.4 (Spectrophotometric-SDDC) add the following to the Precision and Accuracy Section:

Precision and Accuracy

An interlaboratory study on metal analyses by this method was conducted by the Quality Assurance Branch (QAB) of the Environmental Monitoring and Support Laboratory—Cincinnati (EMSL-Cincinnati). Synthetic concentrates containing various levels of this element were added to reagent water and a natural water or effluent of the analyst's choice. Results for the reagent water are given below. Results for other water types and study details are found in "USEPA Method Study 7, Analyses for Trace Methods in Water by Atomic Absorption Spectroscopy (Direct Aspiration) and Colorimetry", National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161, Order No. PB86-208709/AS, Winter, J.A. and Britton, P.W., June, 1986.

For a concentration range of 20-292 µg/L

X=0.850(C)−0.25
S=0.198(X)+ 5.93
SR=0.122(X)+3.10

Where:

C=True Value for the Concentration, µg/L
X=Mean Recovery, µg/L
S=Multi-laboratory Standard Deviation, µg/L
SR=Single-analyst Standard Deviation, µg/L

Method 213.1

For Cadmium, Method 213.1 (Atomic Absorption, direct aspiration) replace the Precision and Accuracy Section with the following:

Precision and Accuracy

An interlaboratory study on metal analyses by this method was conducted by the Quality Assurance Branch (QAB) of the Environmental Monitoring and Support Laboratory—Cincinnati (EMSL-Cincinnati). Synthetic concentrates containing various levels of this element were added to reagent water and a natural water or effluent of the analyst's choice. The digestion procedure was not specified. Results for the reagent water are given below. Results for other water types and study details are found in "USEPA Method Study 7, Analyses for Trace Methods in Water by Atomic Absorption Spectroscopy (Direct Aspiration) and Colorimetry", National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161, Order No. PB86-208709/AS, Winter, J.A. and Britton, P.W., June, 1986.

For a concentration range of 14-78 µg/L

X=0.919(C)+2.97
S=0.108(X)+5.08
SR=0.120(X)+0.89

Where:

C=True Value for the Concentration, µg/L
X=Mean Recovery, µg/L
S=Multi-laboratory Standard Deviation, µg/L

Method 218.1

For Chromium, Method 218.1 (Atomic Absorption, direct aspiration) replace the Precision and Accuracy Section with the following:

Precision and Accuracy

An interlaboratory study on metal analyses by this method was conducted by the Quality Assurance Branch (QAB) of the Environmental Monitoring and Support Laboratory—Cincinnati (EMSL-Cincinnati). Synthetic concentrates containing various levels of this element were added to reagent water and a natural water or effluent of the analyst's choice. The digestion procedure was not specified. Results for the reagent water are given below. Results for other water types and study details are found in "USEPA Method Study 7, Analyses for Trace Methods in Water by Atomic Absorption Spectroscopy (Direct Aspiration) and Colorimetry", National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161, Order No. PB86-208709/AS, Winter, J.A. and Britton, P.W., June, 1986.

For a concentration range of 74-407 µg/L

X=0.976(C)+3.94
S=0.131(X)+4.26
SR=0.052(X)+3.01

Where:

C=True Value for the Concentration, µg/L
X=Mean Recovery, µg/L
S=Multi-laboratory Standard Deviation, µg/L
SR=Single-analyst Standard Deviation, µg/L

Method 220.1

For Copper, Method 220.1 (Atomic Absorption, direct aspiration) replace the Precision and Accuracy Section with the following:

Precision and Accuracy

An interlaboratory study on metal analyses by this method was conducted by the Quality Assurance Branch (QAB) of the Environmental Monitoring and Support Laboratory—Cincinnati (EMSL-Cincinnati). Synthetic concentrates containing various levels of this element were added to reagent water and a natural water or effluent of the analyst's choice. The digestion procedure

was not specified. Results for the reagent water are given below. Results for other water types and study details are found in "USEPA Method Study 7, Analyses for Trace Methods in Water by Atomic Absorption Spectroscopy (Direct Aspiration) and Colorimetry", National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161, Order No. PB86-208709/AS, Winter, J.A. and Britton, P.W., June, 1986.

For concentration range 60-332 μg/L

X=0.963(C)+3.49
S=0.047(X)+12.3
SR=0.042(X)+4.60

Where:

C=True Value for the Concentration, μg/L
X=Mean Recovery, μg/L
S=Multi-laboratory Standard Deviation, μg/L
SR=Single-analyst Standard Deviation, μg/L

Method 236.1

For Iron, Method 236.1 (Atomic Absorption, direct aspiration) replace the Precision and Accuracy Section with the following:

Precision and Accuracy

An interlaboratory study on metal analyses by this method was conducted by the Quality Assurance Branch (QAB) of the Environmental Monitoring and Support Laboratory—Cincinnati (EMSL-Cincinnati). Synthetic concentrates containing various levels of this element were added to reagent water and a natural water or effluent of the analyst's choice. The digestion procedure was not specified. Results for the reagent water are given below. Results for other water types and study details are found in "USEPA Method Study 7, Analyses for Trace Methods in Water by Atomic Absorption Spectroscopy (Direct Aspiration) and Colorimetry", National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161, Order No. PB86-208709/AS, Winter, J.A. and Britton, P.W., June, 1986.

For concentration range 350-840 μg/L

X=0.999(C) − 2.21
S=0.022(X)+41.0
SR=0.019(X)+21.2

Where:

C=True Value for the Concentration, μg/L
X=Mean Recovery, μg/L
S=Multi-Laboratory Standard Deviation, μg/L
SR=Single-analyst Standard Deviation, μg/L

Method 239.1

For Lead, Method 239.1 (Atomic Absorption, direct aspiration) replace Precision and Accuracy Section with the following:

Precision and Accuracy

An interlaboratory study on metal analyses by this method was conducted by the Quality Assurance Branch (QAB) of the Environmental Monitoring and Support Laboratory—Cincinnati (EMSL-Cincinnati). Synthetic concentrates containing various levels of this element were added to reagent water and a natural water or effluent of the analyst's choice. The digestion procedure was not specified. Results for the reagent water are given below. Results for other water types and study details are found in "USEPA Method Study 7, Analyses for Trace Methods in Water by Atomic Absorption Spectroscopy (Direct Aspiration) and Colorimetry", National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161, Order No. PB86-208709/AS, Winter, J.A. and Britton, P.W., June, 1986.

For concentration range of 84-367 μg/L

X=0.961(C)+13.8
S=0.028(C)+33.9
SR=0.011(X)+16.1

Where:

C=True Value for the Concentration, μg/L
X=Mean Recovery, μg/L
S=Multi-laboratory Standard Deviation, μg/L
SR=Single-analyst Standard Deviation, μg/L

Method 243.1

For Manganese, Method 243.1 (Atomic Absorption, direct aspiration) replace Precision and Accuracy Section with the following:

Precision and Accuracy

An interlaboratory study on metal analyses by this method was conducted by the Quality Assurance Branch (QAB) of the Environmental Monitoring and Support Laboratory—Cincinnati (EMSL-Cincinnati). Synthetic concentrates containing various levels of this element were added to reagent water and a natural water or effluent of the analyst's choice. The digestion procedure was not specified. Results for the reagent water are given below. Results for other water types and study details are found in "USEPA Method Study 7, Analyses for Trace Methods in Water by Atomic Absorption Spectroscopy (Direct Aspiration) and Colorimetry", National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161, Order No. PB86-208709/AS, Winter, J.A. and Britton, P.W., June, 1986.

For concentration range 84-469 μg/L

X=0.987(C)−1.27
S=0.042(X)+8.95
SR=0.023(X)+4.90

Where:

C=True Value for the Concentration, μg/L
X=Mean Recovery, μg/L
S=Multi-laboratory Standard Deviation, μg/L
SR=Single-analyst Standard Deviation, μg/L

Method 289.1

For Zinc, Method 289.1 (Atomic Absorption, direct aspiration) replace the Precision and Accuracy Section with the following:

Precision and Accuracy

An interlaboratory study on metal analyses by this method was conducted by the Quality Assurance Branch (QAB) of the Environmental Monitoring and Support Laboratory—Cincinnati (EMSL-Cincinnati). Synthetic concentrates containing various levels of this element were added to reagent water and a natural water or effluent of the analyst's choice. The digestion procedure was not specified. Results for the reagent water are given below. Results for other water types and study details are found in "USEPA Method Study 7, Analyses for Trace Methods in Water by Atomic Absorption Spectroscopy (Direct Aspiration) and Colorimetry", National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161, Order No. PB86-208709/AS, Winter, J.A. and Britton, P.W., June, 1986.

For concentration range 56-310 μg/L

X=0.999(C)+0.033
S=0.078(X)+10.8
SR=0.049(X)+1.10

Where:

C=True Value for the Concentration, μg/L
X=Mean Recovery, μg/L
S=Multi-laboratory Standard Deviation, μg/L
SR=Single-analyst Standard Deviation, μg/L

Method 202.2

For Aluminum, Method 202.2 (Atomic Absorption, furnace technique) replace the Precision and Accuracy Section statement with the following:

Precision and Accuracy

An interlaboratory study on metal analyses by this method was conducted by the Quality Assurance Branch (QAB) of the Environmental Monitoring and Support Laboratory—Cincinnati (EMSL-Cincinnati). Synthetic concentrates containing various levels of this element were added to reagent water, surface water, drinking water and three effluents. These samples were digested by the total digestion procedure, 4.1.3 in this manual. Results for the reagent water are given below. Results for other water types and study details are found in "EPA Method Study 31, Trace Metals by Atomic Absorption (Furnace Techniques)," National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161, Order No. PB 86-121 704/AS, by Copeland, F.R. and Maney, J.P., January 1986.

For a concentration range of 0.46−125.0 μg/L

X=1.1579(C)−0.121
S=0.4286(X)−0.124
SR=0.2908(X)−0.082

Where:

C=True Value for the Concentration, μg/L
X=Mean Recovery, μg/L
S=Multi-laboratory Standard Deviation, μg/L
SR=Single-analyst Standard Deviation, μg/L

Method 204.2

For Antimony, Method 204.2 (Atomic Absorption, furnace technique) replace the Precision and Accuracy Section statement with the following:

Precision and Accuracy

An interlaboratory study on metal analyses by this method was conducted by the Quality Assurance Branch (QAB) of the Environmental Monitoring and Support Laboratory—Cincinnati (EMSL-Cincinnati). Synthetic concentrates containing various levels of this element were added to reagent water, surface water, drinking water and three effluents. These samples were digested by the total digestion procedure, 4.1.3 in this manual as modified by this method. Results for the reagent water are given below.

Results for other water types and study details are found in "EPA Method Study 31, Trace Metals by Atomic Absorption (Furnace Techniques)," National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161, Order No. PB 86-121 704/AS, by Copeland, F.R. and Maney, J.P., January 1986.

For a concentration range of 10.50-240.00 μg/L

X=0.7219(C)−0.986
S=0.3732(X)+0.854
SR=0.1874(X)+0.461

Where:

C=True Value for the Concentration, μg/L
X=Mean Recovery, μg/L
S=Multi-laboratory Standard Deviation, μg/L
SR=Single-analyst Standard Deviation, μg/L

Method 206.2

For Arsenic, Method 206.2 (Atomic Absorption, furnace technique) add the following to the existing Precision and Accuracy statement:

Precision and Accuracy

An interlaboratory study on metal analyses by this method was conducted by the Quality Assurance Branch (QAB) of the Environmental Monitoring and Support Laboratory—Cincinnati (EMSL-Cincinnati). Synthetic concentrates containing various levels of this element were added to reagent water, surface water, drinking water and three effluents. Results for the reagent water are given below. Results for other water types and study details are found in "EPA Method Study 31, Trace Metals by Atomic Absorption (Furnace Techniques)," National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161, Order No. PB 86-121 704/AS, by Copeland, F.R. and Maney, J.P., January 1986.

For a concentration range of 9.78-237.00 μg/L

X=0.9652(C)+2.112
S=0.1411(X)+1.873
SR=0.0464(X)+2.109

Where:

C=True Value for the Concentration, μg/L
X=Mean Recovery, μg/L
S=Multi-laboratory Standard Deviation, μg/L
SR=Single-analyst Standard Deviation, μg/L

Method 208.2

For Barium, Method 208.2 (Atomic Absorption, furnace technique) add the following to the existing Precision and Accuracy information:

Precision and Accuracy

An interlaboratory study on metal analyses by this method was conducted by the Quality Assurance Branch (QAB) of the Environmental Monitoring and Support Laboratory—Cincinnati (EMSL-Cincinnati). Synthetic concentrates containing various levels of this element were added to reagent water, surface water, drinking water and three effluents. These samples were digested by the total digestion procedure, 4.1.3 in this manual. Results for the reagent water are given below. Results for other water types and study details are found in "EPA Method Study 31, Trace Metals by Atomic Absorption (Furnace Techniques)," National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161, Order No. PB 86-121 704/AS, by Copeland, F.R. and Maney, J.P., January 1986.

For a concentration range of 56.50-437.00 μg/L

X=0.8268(C)+59.459
S=0.2466(X)+6.436
SR=0.1393(X)−0.428

Where:

C=True Value for the Concentration, μg/L
X=Mean Recovery, μg/L
S=Multi-laboratory Standard Deviation, μg/L
SR=Single-analyst Standard Deviation, μg/L

Method 210.2

For Beryllium, Method 210.2 (Atomic Absorption, furnace technique) replace the existing Precision and Accuracy statement with the following:

Precision and Accuracy

An interlaboratory study on metal analyses by this method was conducted by the Quality Assurance Branch (QAB) of the Environmental Monitoring and Support Laboratory—Cincinnati (EMSL-Cincinnati). Synthetic concentrates containing various levels of this element were added to reagent water, surface water, drinking water and three effluents. These samples were digested by the total digestion procedure, 4.1.3 in this manual. Results for the reagent water are given below. Results for other water types and study details are found in "EPA Method Study 31, Trace Metals by Atomic Absorption (Furnace Techniques)," National Technical Information Service, 5285 Port Royal Road, Springfield, Order No. PB 86-121 704/AS, by Copeland, F.R. and Maney, J.P., January 1986.

For a concentration range of 0.45-11.40 μg/L

X=1.0682(C)−0.158
S=0.2167(X)+0.090
SR=0.1096(X)+0.061

Where:

C=True Value for the Concentration, μg/L
X=Mean Recovery, μg/L
S=Multi-laboratory Standard Deviation, μg/L
SR=Single-analyst Standard Deviation, μg/L

Method 213.2

For Cadmium, Method 213.2 (Atomic Absorption, furnace technique) add the following to the existing Precision and Accuracy information:

Precision and Accuracy

An interlaboratory study on metal analyses by this method was conducted by the Quality Assurance Branch (QAB) of the Environmental Monitoring and Support Laboratory—Cincinnati (EMSL-Cincinnati). Synthetic concentrates containing various levels of this element were added to reagent water, surface water, drinking water and three effluents. These samples were digested by the total digestion procedure, 4.1.3 in this manual. Results for the reagent water are given below. Results for other water types and study details are found in "EPA Method Study 31, Trace Metals by Atomic Absorption (Furnace Techniques)," National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161, Order No. PB 86-121 704/AS, by Copeland, F.R. and Maney, J.P., January 1986.

For a concentration range of 0.43-12.50 μg/L

X=0.9826(C)+0.171
S=0.2300(X)+0.045
SR=0.1031(X)+0.116

Where:

C=True Value for the Concentration, μg/L
X=Mean Recovery, μg/L
S=Multi-laboratory Standard Deviation, μg/L
SR=Single-analyst Standard Deviation, μg/L

Method 218.2

For Chromium, Method 218.2 (Atomic Absorption, furnace technique) add the following to the existing Precision and Accuracy Section:

Precision and Accuracy

An interlaboratory study on metal analyses by this method was conducted by the Quality Assurance Branch (QAB) of the Environmental Monitoring and Support Laboratory—Cincinnati (EMSL-Cincinnati). Synthetic concentrates containing various levels of this element were added to reagent water, surface water, drinking water and three effluents. These samples were digested by the total digestion procedure, 4.1.3 in this manual. Results for the reagent water are given below. Results for other water types and study details are found in "EPA Method Study 31, Trace Metals by Atomic Absorption (Furnace Techniques)," National Technical Information Service, 5285 Port Royal Road, Springfield, Order No. PB 86-121 704/AS, by Copeland, F.R. and Maney, J.P., January 1986.

For a concentration range of 9.87-246.00 μg/L

X=0.9120(C)+0.234
S=0.1684(X)+0.852
SR=0.1469(X)+0.315

Where:

C=True Value for the Concentration, μg/L
X=Mean Recovery, μg/L
S=Multi-laboratory Standard Deviation, μg/L
SR=Single-analyst Standard Deviation, μg/L

Method 219.2

For Cobalt, Method 219.2, (Atomic Absorption, furnace technique) replace the Precision and Accuracy Section statement with the following:

Precision and Accuracy

An interlaboratory study on metal analyses by this method was conducted by the Quality Assurance Branch (QAB) of the Environmental Monitoring and Support Laboratory—Cincinnati (EMSL-Cincinnati). Synthetic concentrates containing various levels of this element were added to reagent water, surface water, drinking water and three effluents. These samples were digested by the total digestion procedure, 4.1.3 in this manual. Results for the reagent water are given below. Results for other water types and study details are found in "EPA Method

Study 31, Trace Metals by Atomic Absorption (Furnace Techniques)," National Technical Information Service, 5285 Port Royal Road, Springfield, Order No. PB 86-121 704/AS, by Copeland, F.R. and Maney, J.P., January 1986.

For a concentration range of 21.10-461.00 μg/L

X=0.8875(C)+0.859
S=0.2481(X) − 2.541
SR=0.0969(X)+0.134

Where:

C=True Value for the Concentration, μg/L
X=Mean Recovery, μg/L
S=Multi-laboratory Standard Deviation, μg/L
SR=Single-analyst Standard Deviation, μg/L

Method 220.2

For Copper, Method 220.2 (Atomic Absorption, furnace technique) replace the Precision and Accuracy Section statement with the following:

Precision and Accuracy

An interlaboratory study on metal analyses by this method was conducted by the Quality Assurance Branch (QAB) of the Environmental Monitoring and Support Laboratory—Cincinnati (EMSL-Cincinnati). Synthetic concentrates containing various levels of this element were added to reagent water, surface water, drinking water and three effluents. These samples were digested by the total digestion procedure, 4.1.3 in this manual. Results for the reagent water are given below. Results for other water types and study details are found in "EPA Method Study 31, Trace Metals by Atomic Absorption (Furnace Techniques)," National Technical Information Service, 5285 Port Royal Road, Springfield, Order No. PB 86-121 704/AS, by Copeland, F.R. and Maney, J.P., January 1986.

For a concentration range of 0.30-245.00 μg/L

X=0.9253(C)+0.010
S=0.2735(X) − 0.058
SR=0.2197(X) − 0.050

Where:

C=True Value for the Concentration, μg/L
X=Mean Recovery, μg/L
S=Multi-laboratory Standard Deviation, μg/L
SR=Single-analyst Standard Deviation, μg/L

Method 236.2

For Iron, Method 236.2 (Atomic Absorption, furnace technique) replace the Precision and Accuracy Section statement with the following:

Precision and Accuracy

An interlaboratory study on metal analyses by this method was conducted by the Quality Assurance Branch (QAB) of the Environmental Monitoring and Support Laboratory—Cincinnati (EMSL-Cincinnati). Synthetic concentrates containing various levels of this element were added to reagent water, surface water, drinking water and three effluents. These samples were digested by the total digestion procedure, 4.1.3 in this manual. Results for the reagent water are given below. Results for other water types and study details are found in "EPA Method Study 31, Trace Metals by Atomic Absorption (Furnace Techniques)," National Technical Information Service, 5285 Port Royal Road, Springfield, VA, Order No. PB 86-121 704/AS, by Copeland, F.R. and Maney, J.P., January 1986.

For a concentration range of 0.37-455.00 μg/L

X=1.4494(C)−0.229
S=0.3611(X)−0.079
SR=0.3715(X)−0.161

Where:

C=True Value for the Concentration, μg/L
X=Mean Recovery, μg/L
S=Multi-laboratory Standard Deviation, μg/L
SR=Single-analyst Standard Deviation, μg/L

Method 239.2

For Lead, Method 239.2 (Atomic Absorption, furnace technique) add the following to the existing Precision and Accuracy Section:

Precision and Accuracy

An interlaboratory study on metal analyses by this method was conducted by the Quality Assurance Branch (QAB) of the Environmental Monitoring and Support Laboratory—Cincinnati (EMSL-Cincinnati). Synthetic concentrates containing various levels of this element were added to reagent water, surface water, drinking water and three effluents. These samples were digested by the total digestion procedure, 4.1.3 in this manual. Results for the reagent water are given below. Results for other water types and study details are found in "EPA Method Study 31, Trace Metals by Atomic Absorption (Furnace Techniques)," National Technical Information Service, 5285 Port Royal Road, Springfield, VA, Order No. PB 86-121 704/AS, by Copeland, F.R. and Maney, J.P., January 1986.

For a concentration range of 10.40-254.00 μg/L

X=0.9430(C)−0.504
S=0.2224(X)+0.507
SR=0.1931(X)−0.378

Where:

C=True Value for the Concentration, μg/L
X=Mean Recovery, μg/L
S=Multi-laboratory Standard Deviation, μg/L
SR=Single-analyst Standard Deviation, μg/L

Method 243.2

For Manganese, Method 243.2 (Atomic Absorption, furnace technique) replace the Precision and Accuracy Section statement with the following:

Precision and Accuracy

An interlaboratory study on metal analyses by this method was conducted by the Quality Assurance Branch (QAB) of the Environmental Monitoring and Support Laboratory—Cincinnati (EMSL-Cincinnati). Synthetic concentrates containing various levels of this element were added to reagent water, surface water, drinking water and three effluents. These samples were digested by the total digestion procedure, 4.1.3 in this manual. Results for the reagent water are given below. Results for other water types and study details are found in "EPA Method Study 31, Trace Metals by Atomic Absorption (Furnace Techniques)," National Technical Information Service, 5285 Port Royal Road, Springfield, VA, Order No. PB 86-121 704/AS, by Copeland, F.R. and Maney, J.P., January 1986.

For a concentration range of 0.42-666.00 μg/L

X=1.0480(C)+1.404
S=0.2001(X)+1.042
SR=0.1333(X)+0.680

Where:

C=True Value for the Concentration, μg/L
X=Mean Recovery, μg/L
S=Multi-laboratory Standard Deviation, μg/L
SR=Single-analyst Standard Deviation, μg/L

Method 249.2

For Nickel, Method 249.2 (Atomic Absorption, furnace technique) replace the Precision and Accuracy Section statement with the following:

Precision and Accuracy

An interlaboratory study on metal analyses by this method was conducted by the Quality Assurance Branch (QAB) of the Environmental Monitoring and Support Laboratory—Cincinnati (EMSL-Cincinnati). Synthetic concentrates containing various levels of this element were added to reagent water, surface water, drinking water and three effluents. These samples were digested by the total digestion procedure, 4.1.3 in this manual. Results for the reagent water are given below. Results for other water types and study details are found in "EPA Method Study 31, Trace Metals by Atomic Absorption (Furnace Techniques)," National Technical Information Service, 5285 Port Royal Road, Springfield, Order No. PB 86-121 704/AS, by Copeland, F.R. and Maney, J.P., January 1986.

For a concentration range of 26.20-482.00 μg/L

X=0.8812(C)+2.426
S=0.2475(X)+1.896
SR=0.1935(X) − 1.315

Where:

C=True Value for the Concentration, μg/L
X=Mean Recovery, μg/L
S=Multi-laboratory Standard Deviation, μg/L
SR=Single-analyst Standard Deviation, μg/L

Method 270.2

For Selenium, Method 270.2 (Atomic Absorption, furnace technique) add the following to the existing Precision and Accuracy Section:

Precision and Accuracy

An interlaboratory study on metal analyses by this method was conducted by the Quality Assurance Branch (QAB) of the Environmental Monitoring and Support Laboratory—Cincinnati (EMSL-Cincinnati). Synthetic concentrates containing various levels of this element were added to reagent water, surface water, drinking water and three effluents. Results for the reagent water are given below. Results for other water

types and study details are found in "EPA Method Study 31, Trace Metals by Atomic Absorption (Furnace Techniques)," National Technical Information Service, 5285 Port Royal Road, Springfield, Order No. PB 86-121 704/AS, by Copeland, F.R. and Maney, J.P., January 1986.

For a concentration range of 10.00-246.00 μg/L

X=0.9564(C)+0.476
S=0.1584(X)+0.878
SR=0.0772(X)+0.547

Where:

C=True Value for the Concentration, μg/L
X=Mean Recovery, μg/L
S=Multi-laboratory Standard Deviation, μg/L
SR=Single-analyst Standard Deviation, μg/L

Method 272.2

For Silver, Method 272.2 (Atomic Absorption, furnace technique) add the following to the existing Precision and Accuracy Section:

Precision and Accuracy

An interlaboratory study on metal analyses by this method was conducted by the Quality Assurance Branch (QAB) of the Environmental Monitoring and Support Laboratory—Cincinnati (EMSL-Cincinnati). Synthetic concentrates containing various levels of this element were added to reagent water, surface water, drinking water and three effluents. These samples were digested by the total digestion procedure, 4.1.3 in this manual. Results for the reagent water are given below. Results for other water types and study details are found in "EPA Method Study 31, Trace Metals by Atomic Absorption (Furnace Techniques)," National Technical Information Service, 5285 Port Royal Road, Springfield, Order No. PB 86-121 704/AS, by Copeland, F.R. and Maney, J.P., January 1986.

For a concentration range of 0.45-56.50 μg/L.

X=0.9470(C)+0.181
S=0.1805(X)+0.153
SR=0.1417(X)+0.039

Where:

C=True Value for the Concentration, μg/L
X=Mean Recovery, μg/L
S=Multi-laboratory Standard Deviation, μg/L
SR=Single-analyst Standard Deviation, μg/L

Method 279.2

For Thallium, Method 279.2 (Atomic Absorption, furnace technique) replace the Precision and Accuracy Section statement with the following:

Precision and Accuracy

An interlaboratory study on metal analyses by this method was conducted by the Quality Assurance Branch (QAB) of the Environmental Monitoring and Support Laboratory—Cincinnati (EMSL-Cincinnati). Synthetic concentrates containing various levels of this element were added to reagent water, surface water, drinking water and three effluents. These samples were digested by the total digestion procedure, 4.1.3 in this manual. Results for the reagent water are given below. Results for other water types and study details are found in "EPA Method Study 31, Trace Metals by Atomic Absorption (Furnace Techniques)," National Technical Information Service, 5285 Port Royal Road, Springfield, Order No. PB 86-121 704/AS, by Copeland, F.R. and Maney, J.P., January 1986.

For a concentration range of 10.00-252.00 μg/L.

X=0.8781(C)-0.715
S=0.1112(X)+0.669
SR=0.1005(X)+0.241

Where:

C=True Value for the Concentration, μg/L
X=Mean Recovery, μg/L
S=Multi-laboratory Standard Deviation, μg/L
SR=Single-analyst Standard Deviation, μg/L

Method 286.2

For Vanadium, Method 286.2 (Atomic Absorption, furnace technique) replace the Precision and Accuracy Section statement with the following:

Precision and Accuracy

An interlaboratory study on metal analyses by this method was conducted by the Quality Assurance Branch (QAB) of the Environmental Monitoring and Support Laboratory—Cincinnati (EMSL-Cincinnati). Synthetic concentrates containing various levels of this element were added to reagent water, surface water, drinking water and three effluents. These samples were digested by the total digestion procedure, 4.1.3 in this manual. Results for the reagent water are given below. Results for other water types and study details are found in "EPA Method Study 31, Trace Metals by Atomic Absorption (Furnace Techniques)," National Technical Information Service, 5285 Port Royal Road, Springfield, Order No. PB 86-121 704/AS, by Copeland, F.R. and Maney, J.P., January 1986.

For a concentration range of 1.36-982.00 μg/L.

X=0.8486(C)+0.252
S=0.3323(X)-0.428
SR=0.1195(X)-0.121

Where:

C=True Value for the Concentration, μg/L
X=Mean Recovery, μg/L
S=Multi-laboratory Standard Deviation, μg/L
SR=Single-analyst Standard Deviation, μg/L

Method 289.2

For Zinc, Method 289.2 (Atomic Absorption, furnace technique) replace the Precision and Accuracy Section statement with the following:

Precision and Accuracy

An interlaboratory study on metal analyses by this method was conducted by the Quality Assurance Branch (QAB) of the Environmental Monitoring and Support Laboratory—Cincinnati (EMSL-Cincinnati. Synthetic concentrates containing various levels of this element were added to reagent water, surface water, drinking water and three effluents. These samples were digested by the total digestion procedure, 4.1.3 in this manual. Results for the reagent water are given below. Results for other water types and study details are found in "EPA Method Study 31, Trace Metals by Atomic Absorption (Furnace Techniques)," National Technical Information Service, 5285 Port Royal Road, Springfield, Order No. PB 86-121 704/AS, by Copeland, F.R. and Maney, J.P., January 1986.

For a concentration range of 0.51-189.0 μg/L

X=1.6710(C)+1.485
S=0.6740(X)-0.342
SR=0.3895(X)-0.384

Where:

C=True Value for the Concentration, μg/L
X=Mean Recovery, μg/L
S=Multi-laboratory Standard Deviation, μg/L
SR=Single-analyst Standard Deviation, μg/L

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Part VI

Environmental Protection Agency

40 CFR Part 86

Amendments to Regulations Governing Test Procedures for Light-Duty Vehicles and Light-Duty Trucks and Selective Enforcement Auditing of New Light-Duty Vehicles, Light-Duty Trucks and Heavy-Duty Engines; Notice of Proposed Rulemaking

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 86

[FRL-3218-5]

Amendments to Regulations Governing Test Procedures for Light-Duty Vehicles and Light-Duty Trucks and Selective Enforcement Auditing of New Light-Duty Vehicles, Light-Duty Trucks and Heavy-Duty Engines

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: EPA is proposing several technical and procedural amendments to the regulations at 40 CFR Part 86, Subparts B, G and K. These regulations govern the Federal test procedure (FTP) for new gasoline-fueled and diesel-fueled light-duty vehicles (LDVs) and light-duty trucks (LDTs), and the Selective Enforcement Auditing (SEA) of new LDVs, LDTs and heavy-duty engines (HDEs). The main purpose of these amendments is to delete from the SEA requirements of Subpart K the mandatory reporting of manufacturers' LDT and HDE internal quality assurance emission test data. It is expected that the data will still be submitted voluntarily to EPA. Another purpose is to ensure a common basis for diesel hydrocarbon measurements during the FTP for LDVs and LDTs as specified in Subpart B. In addition, these amendments are intended to clarify specific aspects of the existing regulations and to improve the efficiency of the LDV, LDT and HDE SEA program.

Each amendment and the reason for its proposal are described in the accompanying chart. The more significant amendments are described in detail in the **SUPPLEMENTARY INFORMATION** section.

DATES: A public hearing will be scheduled if a request is received by September 24, 1987. If a request is received, EPA will hold a hearing on Oct. 2, 1987 from 10:00 a.m. to 4:00 a.m. at EPA, North Conference Room 1, Waterside Mall, 401 M Street SW., Washington, DC 20460. All written comments should be submitted on or before November 2, 1987, to the address indicated below.

EPA proposes to make these amendments effective 30 days after the date of promulgation of the final rule in the **Federal Register.**

ADDRESSES: Send written comments to: Public Docket EN-86-17, Central Docket Section, Environmental Protection Agency, Room 4, South Conference Center (LE-131), Waterside Mall, 401 M Street, SW., Washington, DC 20460. If possible, a copy of the written comments also should be submitted to the EPA contact listed below.

Copies of materials relevant to this rulemaking proceeding are contained in Public Docket EN-86-17 at the Central Docket Section of the U.S. Environmental Protection Agency, Room 4, South Conference Center (LE-131), Waterside Mall, 401 M Street, SW., Washington DC 20460, and are available for public inspection between 8:00 a.m. and 3:00 p.m., Monday through Friday. As provided in 40 CFR Part 2, a reasonable fee may be charged for copying services.

FOR FURTHER INFORMATION CONTACT: Mr. Stephen Sinkez or Mr. Sean Conley, Manufacturers Operations Division (EN-340-F), Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. Phone (202) 382-4104.

SUPPLEMENTARY INFORMATION

I. Most Significant Amendments

A. Manufacturer's Test Data (§ 86.1005-84(c))

EPA's SEA regulations, at 40 CFR Part 86, Subpart K, mandate the submission of manufacturers' internal quality audit data from their emission testing programs on 1984 and later model year production LDTs and HDEs. In addition, 40 CFR § 86.1005-84(c), requires that the submissions be in a standard format on an Automatic Data Processing (ADP) storage device if available. The most significant changes proposed to Subpart K would delete both of these requirements.

Manufacturers' internal quality audit data provides EPA with some additional assurance that manufacturers are producing engines and vehicles in compliance with applicable emission regulations. Prior to the promulgation in 1980 of § 86.1005-84(c), some manufacturers conducting internal quality audits had been submitting their data voluntarily to EPA. However, since the promulgation of § 86.1005-84(c), manufacturers have been required to submit their data. EPA has never enforced this requirement. While the submission of emissions test data is critical to EPA's SEA program implementation, EPA does not believe that the current SEA program would be impaired by deleting the requirement that manufacturers submit their emissions test data, given that manufacturers will probably continue to submit the data voluntarily. Of course, EPA may still exercise the authority of section 208 of the Clean Air Act to require the submission of specific data in any given case should a manufacturer not submit the data voluntarily and should EPA determine the information is needed to determine compliance with the Act or Subpart K.

EPA will attempt to work with the manufacturers in setting up a voluntary ADP program with the anticipation that, in the long term, this system of voluntarily submitting data will be efficient and cost effective for both EPA and the manufacturers.

B. Heated Flame-Ionization Detector Procedures (§ 86.111-82 and § 86.121-82)

Regulations at 40 CFR Part 86, Subpart B, set forth the procedures required to be followed in setting up an exhaust gas analytical system for testing exhaust hydrocarbon (HC) emissions from LDVs and LDTs. The regulations require the use of a Heated Flame-Ionization Detector (HFID) in testing for HC emissions from diesel-fueled LDVs and LDTs, while allowing the use of a non-heated Flame-Ionization Detector (FID) for testing gasoline-fueled LDVs and LDTs. This notice proposes to expressly extend the procedures used to optimize and calibrate the FID to the HFID. Current optimization and calibration requirements specify the FID without expressly mentioning the HFID.

The Agency is proposing these procedures to clarify the Agency's intent with respect to HFID settings and to ensure a common basis for diesel hydrocarbon measurements. The Agency recently became aware that some confusion exists in the industry concerning the allowable HFID procedures. It is proposed that the HFID be optimized and calibrated following the procedure specified in this proposal unless an alternative method is approved by the Agency.

In addition, certain language incorporating standard industry practices is proposed to clarify the official HFID calibration procedure by including an additional description of the "overflow" zero and span system.

II. Less Significant Amendments

In addition to the more significant amendments discussed in the previous section, EPA is proposing several less significant technical and procedural amendments. One proposed amendment would allow the use of precision blending devices (gas dividers) to obtain required calibration gas concentrations. Other amendments are intended to clarify specific aspects of the existing regulations and to improve the efficiency with which the LDV, LDT and

HDE SEA program will be conducted in the future.

Each amendment contained in this NPRM and the reason for its proposal are described in the chart at the end of this preamble.

Administrative Designation

Under Executive Order 12291, EPA must judge whether a rule it intends to propose or issue is "major" and therefore subject to the requirement to prepare a Regulatory Impact Analysis (RIA). The Agency has determined that this regulation is not "major" for the following reasons:

(1) The proposed amendments will not result in an annual effect on the economy of $100 million or more. The majority of these amendments are administrative or technical in nature and will have no measurable cost impact.

(2) Because of the limited cost impact, this proposal will not, if finalized, result in a major increase in costs or prices for consumers, individual industries, Federal, state, or local governments, or geographic regions.

(3) Due to its limited cost impact and its applicability to all domestic and foreign manufacturers, EPA does not expect this proposal to have any significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of U.S. manufacturers to compete with foreign manufacturers in domestic or export markets.

Because of its "non-major" classification, the Agency has not prepared an RIA to accompany this proposal.

Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, EPA is required to perform a preliminary regulatory flexibility analysis (PRIA) of any proposed regulation unless the Administrator certifies that the regulation will not have a significant impact on a substantial number of small entities. Since these proposed amendments will affect only motor vehicle and engine manufacturers, none of which are small entities, and will not significantly affect any manufacturer's compliance cost, I certify that this rule will not have a significant economic impact on a substantial number of small entities. Accordingly, the Agency has not prepared a regulatory flexibility analysis to accompany this proposal.

Office of Management and Budget Review

As required by Executive Order 12291, this Notice of Proposed Rulemaking has been reviewed by the Office of Management and Budget (OMB). Any written OMB comments to EPA and EPA's response to those comments are available for inspection in the public docket for this rulemaking.

Paperwork Reduction Act

The Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*, provides that reporting and recordkeeping requirements be approved by OMB before they can be imposed on the public. The information collection requirements in this proposed rule have been submitted to OMB. Comments on these requirements should be submitted to the Office of Information and Regulatory Affairs of OMB marked: Attention Desk Officer for EPA. The final rule package will respond to any OMB or public comments on the information collection provisions.

List of Subjects in 40 CFR Part 86

Administrative practice and procedure, Labeling, Motor vehicle pollution, Reporting and recordkeeping requirements.

Dated: August 25, 1987.

A. James Barnes,

Acting Administrator.

EXPLANATION OF PROPOSED AMENDMENTS AND REVISIONS

Section	Paragraph	Change	Reason
86.111-82	(b)(3) (ii), (iii), (iv), (v)	Adds additional description of the "overflow" zero and span system.	Provides clarification.
86.114-79	(a)(7)	Prescribes requirements for using precision blending devices.	Allows blending devices to be used without prior approval of Administrator, makes regulation consistent with standard industry practice.
86.121-82	(a), (b)	Includes HFID in the section on hydrocarbon analyzer calibration.	Ensures common basis for diesel HC measurement.
86.601		Redesignate as 86.601-84	Provides model year designation.
86.602		Redesignate as 86.602-84	Do.
86.603		Redesignate as 86.603-88	Do.
	(c)(1)	Provides for specification of the number of test vehicles to be selected per day.	Provides clarification, ensures expeditious audit performances.
86.604		Redesignate as 86.604-84	Provides model year designation.
86.605		Redesignate as 86.605-88	Do.
	(a)(2)(ix)	Adds requirement of maintaining a paper copy of driver's trace.	EPA needs to be able to verify the proper conduct of the test.
	(f)	Remove	Updated language regarding business confidentiality claims appears in 86.615.
86.606		Redesignate as 86.606-84	Provides model year designation.
86.607		Redesignate as 86.607-84	Do.

EXPLANATION OF PROPOSED AMENDMENTS AND REVISIONS—Continued

Section	Paragraph	Change	Reason
86.608		Redesignate as 86.608-88	Do.
	(a)(2)(ii)	Deletes requirement of advance approval for optional test fuel temperature measurement and fuel tank drainage procedures so long as equivalent method is used.	Reduces paperwork and administrative burden.
	(c) (1), (2), (3)	Prescribes manner of optional mileage accumulation for SEA test vehicles.	Reinstates and clarifies inadvertently deleted provisions, ensures expeditious audit performance.
86.609		Redesignate as 86.609-84	Provides model year designation.
86.610		Redesignate as 86.610-84	Do.
86.612		Redesignate as 86.612-84	Do.
86.614		Redesignate as 86.614-84	Do.
86.615		Redesignate as 86.615-84	Do.
Table of Contents of Part 86.	Title of Subpart K	Adds Light Duty Trucks to title	Makes title more accurate.
86.1003-84		Redesignate as 86.1003-88	Updates model year designation based on proposed changes.
	(c)(1)	Provides for specification of the number of test vehicles or engines to be selected per day.	Provides clarification, ensures expeditious audit performances.
86.1005-84		Redesignate as 86.1005-88	Updates model year designation based on proposed changes.
	(a)(1)(ii)	Updates regulatory citations	To make consistent with current regulations.
	(a)(2)(vi) (A), (B), (C), (D)	Updates regulatory citations	To make consistent with current regulations.
	(a)(2)(viii)	Adds requirement of maintaining paper copy of driver's trace.	EPA needs to be able to verify the proper conduct of the test.
	(c), (d), (e), (f)	Remove (c), which had required submission of internal quality control audit data, and redesignate (d), (e) and (f) as (c), (d) and (e).	Voluntary submission of internal audit data is adequate.
	(g)	Remove	Updated language regarding business confidentiality claims appears in 86.1015.
86.1008-84		Redesignate as 86.1008-88	Updates model year designation based on proposed changes.
	(a)(4)(ii)	Deletes requirement of advance approval for optional test fuel temperature measurement and fuel tank drainage procedures so long as equivalent method is used.	Reduces paperwork and administrative burden.
	(c) (1), (2), (3)	Prescribes manner of optional service and mileage accumulation for SEA test engines and vehicles.	Reinstates inadvertently deleted provisions, clarifies manner of accumulation, ensures expeditious audit performances.
	(g) (1), (2), (3), (4)	Prescribes rates of testing for SEA test vehicles.	Reinstates inadvertently deleted provision, ensures expeditious audit performances.

PART 86—[AMENDED]

For the reasons set forth in this preamble, Part 86, Subparts B, G and K, Chapter I of Title 40, Code of Federal Regulations, are proposed to be amended as follows:

1. The authority citation for Part 86 continues to read as follows:

Authority: Secs. 206(b), 208(a), 301(a), Clean Air Act, as amended, 42 U.S.C. 7525(b), 7542(a), 7601(a).

1a. Section 86.111-82 is amended by revising paragraph (b)(3) to read as follows:

§ 86.111-82 Exhaust gas analytical system.

* * * * *

(b) * * *

(3) For diesel vehicles a continuous hydrocarbon sample shall be measured using a heated analyzer train as shown in Figure B82-3 (or B82-4). The train shall include a heated probe, a heated continuous sampling line, a heated particulate filter and a heated hydrocarbon instrument (HFID) complete with heated pump, filter and flow control system.

(i) The response time of this instrument shall be less than 1.5 seconds for 90 percent of full scale response.

(ii) The continuous HC sample system may use an "overflow" zero and span system; see § 86.140-82(b)(4). In this type of system (figures B82-3A and B82-4A), zero or span gas is introduced into the heated sample line at a flow rate that exceeds the sample flow rate to the HFID. The excess gas overflows the sample probe into the dilution tunnel. This method prevents calibration gases from entering the HFID at a different rate than sample gas. In addition to zero and span checks, it may also be used to calibrate the HC analyzer per § 86.121-82(b). The overflow gas flow rate into the sample line shall be between 190 percent and 210 percent of the HFID

flow rate with the CVS blower operating. A lower flow rate may be used if it has been experimentally shown to produce equivalent results and current documentation is maintained. The overflow gases shall enter the heated sample line as close as practicable to the outside surface of the dilution tunnel.

(iii) No other analyzers may draw a sample from the continuous HC sample probe, line or system, unless a common sample pump is used for all analyzers and the single sample line system design reflects good engineering practice.

(iv) Sample transport time from sampling point to inlet of instrument shall be less than 4 seconds.

(v) The sample line and filter shall be heated to maintain a sample gas temperature of 357 ± 10 °F (191 ± 6 °C) before the filter and before the HFID.

* * * * *

2. Section 86.114–79 is amended by revising paragraph (a)(7) to read as follows:

§ 86.114–79 Analytical gases.

(a) * * *

(7) The use of precision blending devices (gas dividers) to obtain the required calibration gas concentrations is acceptable, provided that the calibration curves they produce name a calibration gas within 2 percent of its certified concentration. This mid-range verification shall be performed at between 25 and 50 percent of the full scale concentration of the range and shall be included with each gas calibration incorporating a blending device.

* * * * *

3. Section 86.121–82 is amended by revising the introductory text, paragraph (a) introductory text, paragraph (a)(3), and the introductory text of paragraph (b) to read as follows:

§ 86.121–82 Hydrocarbon analyzer calibration.

The hydrocarbon analyzers shall receive the following initial and periodic calibration. The HFID shall be operated at a temperature of 375 ± 10 °F (191 ± 6 °C).

(a) *Initial and periodic optimization of FID and HFID response.*

Prior to its introduction into service and at least annually thereafter, the FID and HFID hydrocarbon analyzers shall be adjusted for optimum hydrocarbon response. Alternate methods yielding equivalent results may be used, if approved in advance by the Administrator.

* * * * *

(3) With the fuel and air flow rates set at the manufacturer's recommendations, determine the analyzer response from the difference between the span-gas response and the zero-gas response. Incrementally adjust the fuel flow above and below the manufacturer's specification. Record the span and zero response at these fuel flows. A plot of the difference between the span and zero response versus fuel flow will be similar to the one shown in Fig. B87–11. Adjust the fuel-flow rate to the highest setting that produces the maximum analyzer response.

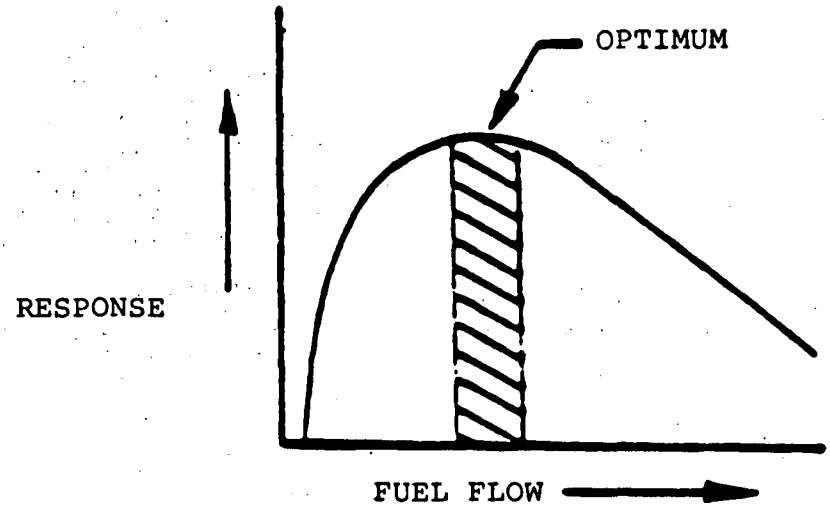

FIGURE N87-9: RESPONSE VS. FUEL FLOW

* * * * *

(b) *Initial and periodic calibration.* Prior to its introduction into service and monthly thereafter the FID and HFID hydrocarbon analyzers shall be calibrated on all normally used instrument ranges. Use the same flow rate as when analyzing samples.

* * * * *

§ 86.601 [Redesignated as § 86.601–84]

4. Section 86.601 is redesignated as § 86.601–84.

§ 86.602 [Redesignated as § 86.602–84]

5. Section 86.602 is redesignated as § 86.602–84.

6. Section 86.603 is redesignated as § 86.603–88. In the newly redesignated § 86.603–88, paragraph (c)(1) is revised to read as follows:

§ 86.603–88 Test orders.

* * * * *

(c)(1) The test order will specify the vehicle configuration selected for testing, the time and location at which vehicles must be selected, and the procedure by which vehicles of the specified configuration must be selected. The test order may specify the number of vehicles to be selected per day and

may include alternative configurations (primary, secondary, etc.) to be selected for testing in the event that vehicles of the first specified configuration are not available for testing because those vehicles are not being manufactured at the specified assembly plant, not being manufactured during the specified time, or not being stored at the specified assembly plant or associated storage facility. If the first specified configuration is not being manufactured at a rate of at least four vehicles per day over the expected duration of the audit, the Assistant Administrator for Air and Radiation or his designated representative may select vehicles of a primary alternate configuration for testing in lieu of the first specified configuration. Likewise, vehicles of a secondary alternate configuration may be selected in lieu of vehicles of the first specified configuration or primary alternate configuration. In addition, the test order may include other directions or information essential to the administration of the required testing.

* * * * *

§ 86.604 [Redesignated as § 86.604-84]

7. Section 86.604 is redesignated as § 86.604-84.

8. Section 86.605 is redesignated as § 86.605-88. In the newly redesignated § 86.605-88, paragraph (f) is removed, and paragraph (a)(2)(ix) is added to read as follows:

§ 86.605-88 Maintenance of records; submittal of information.

(a) * * *

(2) * * *

(ix) A paper copy of the driver's trace for each test.

* * * * *

§ 86.606 [Redesignated as § 86.606-84]

9. Section 86.606 is redesignated as § 86.606-84.

§ 86.607 [Redesignated as § 86.607-84]

10. Section 86.607 is redesignated as § 86.607-84.

11. Section 86.608 is redesignated as § 86.608-88. In the newly redesignated § 86.608-88, paragraph (a)(2)(ii) is revised and paragraphs (c)(1), (c)(2), and (c)(3) are added to read as follows:

§ 86.608-88 Test procedures.

(a) * * *

(2) * * *

(ii) The manufacturer may measure the temperature of the test fuel at other than the approximate mid-volume of the fuel tank, as specified in § 86.131(a), and may drain the test fuel from other than the lowest point of the tank, as specified in § 86.131(b), provided an equivalent method is used. Equivalency documentation shall be maintained by the manufacturer and shall be made available to the Administrator upon request.

* * * * *

(c) * * *

(1) Mileage accumulation must be performed in a manner which is consistent with the new vehicle break-in instructions contained in the applicable vehicle owner's manual. In the absence of such instructions, mileage accumulation must be performed in a manner consistent with normal owner usage.

(2) The manufacturer shall accumulate mileage at a minimum rate of 300 miles during each 24 hour period, unless otherwise provided by the Administrator.

(3) Mileage accumulation shall be performed on a sufficient number of test vehicles during each 24 hour period to assure that the number of vehicles tested per day fulfills the requirements of paragraph (g) of this section.

* * * * *

§ 86.609 [Redesignated as § 86.609-84]

11. Section 86.609 is redesignated as § 86.609-84.

§ 86.610 [Redesignated as § 86.610-84]

12. Section 86.610 is redesignated as § 86.610-84.

§ 86.612 [Redesignated as § 86.612-84]

13. Section 86.612 is redesignated as § 86.612-84.

§ 86.614 [Redesignated as § 86.614-84]

14. Section 86.614 is redesignated as § 86.614-84.

§ 86.615 [Redesignated as § 86.615-84]

15. Section 86.615 is redesignated as § 86.615-84.

16. Part 86 is amended by revising the title of Subpart K to read as follows:

Subpart K—Selective Enforcement Auditing of New Heavy-Duty Engines and Light-Duty Trucks

17. Section 86.1003-84 is redesignated as § 86.1003-88. In the newly redesignated § 86.1003-88, paragraph (c)(1) is revised to read as follows:

§ 86.1003-88 Test orders.

* * * * *

(c)(1) The test order will specify the engine or vehicle configuration selected for testing, the manufacturer's vehicle or engine assembly plant or associated storage facility from which the engines or vehicles must be selected, the time and location at which engines or vehicles must be selected, and the procedure by which engines or vehicles of the specified configuration must be selected. The test order may specify the number of vehicles or engines to be selected per day. Heavy-duty engine manufacturers will be required to select a minimum of four engines per day unless an alternate selection procedure is approved pursuant to § 86.1007-84(a) or unless total production of the specified configuration is less than four engines per day. If total production of the specified configuration is less than four engines per day, the manufacturer will select the actual number of engines produced per day.

* * * * *

18. Section 86.1005-84 is redesignated as § 86.1005-88. In the newly redesignated § 86.1005-88, paragraphs (c) and (g) are removed, and paragraphs (a)(1)(ii) and (a)(2)(vi) (A), (B), (C), and (D) are revised, paragraph (a)(2)(viii) is added, and paragraphs (d), (e) and (f) are redesignated as paragraphs (c), (d) and (e), respectively, to read as follows:

§ 86.1005-88 Maintenance of records; submittal of information.

(a) * * *

(1) * * *

(ii) If testing heavy-duty diesel engines, the equipment requirements specified in §§ 86.1306-84, 86.1506-84, 86.884-8 and 86.884-9 of this part;

* * * * *

(2) * * *

(vi) * * *

(A) If testing heavy-duty gasoline engines, the record requirements specified in §§ 86.1344-88 and 86.1542-84 of this part;

(B) if testing heavy-duty diesel engines, the record requirements specified in §§ 86.1344-88 and 86.1542-84 and 86.884-10 of this part;

(C) If testing light-duty gasoline-fueled trucks, the record requirements specified in §§ 86.142-82 and 86.1542-84 of this part; and

(D) If testing light-duty diesel trucks, the record requirements specified in § 86.142-82 of this part; and

* * * * *

(viii) A paper copy of the driver's trace for each test.

* * * * *

19. Section 86.1008-84 is redesignated as §86.1008-88. In the newly redesignated § 86.1008-88, paragraphs (a)(4)(ii) and (c) are revised, and paragraphs (g)(1), (g)(2), (g)(3) and (g)(4) are added to read as follows:

§ 86.1008-88 Test procedures.

(a) * * *

(4) * * *

(ii) The manufacturer may measure the temperature of the test fuel at other than the approximate mid-volume of the fuel tank, as specified in paragraph (a) of § 86.131, and may drain the test fuel from other than the lowest point of the fuel tank, as specified in paragraph (b) of § 86.131, provided an equivalent method is used. Equivalent documentation shall be maintained by the manufacturer and shall be made available to the Administrator upon request.

* * * * *

(c) Prior to performing exhaust emission testing on an SEA test engine, the manufacturer may accumulate on each engine a number of hours of service equal to the greater of 125 hours or the number of hours the manufacturer accumulated during certification on the emission-data engine corresponding to the configuration specified in the test order. Prior to performing exhaust emission testing on an SEA test vehicle, the manufacturer may accumulate a number of miles equal to the greater of 4,000 miles or the number of miles the manufacturer accumulated during certification on the emission-data vehicle corresponding to the configuration specified in the test order.

(1) Service or mileage accumulation must be performed in a manner which is consistent with the new vehicle break-in instructions contained in the applicable vehicle owner's manual. In the absence of such instructions, service or mileage accumulation must be performed in a manner consistent with normal owner usage.

(2) The manufacturer shall accumulate service at a minimum rate of 16 hours or mileage at a minimum rate of 300 miles during each 24-hour period, unless otherwise provided by the Administrator.

(3) Service or mileage accumulation shall be performed on a sufficient number of test engines or vehicles during each 24-hour period to assure that the number of engines or vehicles tested per day fulfills the requirements of paragraph (g) of this section.

* * * * *

(g) * * *

(1) Heavy-duty engine manufacturers with projected sales for the United States market for that year of 30,000 or greater shall complete emission testing at their testing facility on a minimum of two engines per 24 hour period, including voided tests.

(2) Heavy-duty engine manufacturers with projected sales for the United States market for that year of less than 30,000 shall complete emission testing at their testing facility on a minimum of one engine per 24 hour period, including voided tests.

(3) Light-duty truck manufacturers shall complete emission testing on a minimum of four vehicles per 24-hour period, including voided tests.

(4) The Administrator may approve a lower daily rate of conducting emission tests based upon a request by a manufacturer accompanied by a satisfactory justification.

* * * * *

[FR Doc. 87-19915 Filed 9-2-87; 8:45 am]

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federal register

Thursday
September 3, 1987

Part VII

Department of Defense

Department of the Air Force

Meeting of the USAF Scientific Advisory Board; Notice

DEPARTMENT OF DEFENSE

Department of the Air Force

USAF Scientific Advisory Board; Meeting

September 1, 1987.

The USAF Scientific Advisory Board Ad Hoc Committee on Peacekeeper Inertial Measuring Unit (IMU) Testing and Production will meet on September 18, September 24–25, and September 29–30, 1987, at the Pentagon, Washington, DC from 8:00 a.m. to 5:00 p.m. each day. The purpose of these meetings is to review, discuss and evaluate the effectiveness of the IMU testing and production programs.

These meetings will involve discussions of classified defense matters listed in section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at 202–697–4811.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

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