

Federal Register

Tuesday
April 29, 1986

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

Selected Subjects

Administrative Practice and Procedure

Centers for Disease Control
Legal Services Corporation

Aliens

Immigration and Naturalization Service

Crop Insurance

Federal Crop Insurance Corporation

Endangered and Threatened Species

Fish and Wildlife Service

Flood Insurance

Federal Emergency Management Agency

Government Property

Defense Department

Hazardous Waste

Environmental Protection Agency

Marine Resources

National Oceanic and Atmospheric Administration

Radio Broadcasting

Federal Communications Commission

Reporting and Recordkeeping Requirements

Federal Home Loan Bank Board

Savings and Loan Associations

Federal Home Loan Bank Board

Veterinarians

Animal and Plant Health Inspection Service

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Selected Subjects

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Questions and requests for specific information may be directed to the telephone numbers listed under INFORMATION AND ASSISTANCE in the READER AIDS section of this issue.

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

Wilderness Areas

Land Management Bureau

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

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

WHO: The Office of the Federal Register.

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

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

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

WASHINGTON, DC

WHEN: May 15; at 9 am.

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

RESERVATIONS: Laurence Davey, 202-523-3517

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Rules and Regulations

Federal Register

Vol. 51, No. 82

Tuesday, April 29, 1986

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

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

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 417

[Docket No. 0081A]

Sugarcane Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) hereby revises and reissues the Sugarcane Crop Insurance Regulations (7 CFR Part 417), effective for the 1987 and succeeding crop years. The intended effect of this rule is to: (1) Change to mandatory "Actual Production History" (APH) basis by removing the Premium Adjustment Table and Providing for cancellation for not furnishing records; (2) clarify that acreage will not be insured when planted with another crop; (3) change the method of calculating the insured's share of any indemnity on crops transferred before harvest; (4) add a provision to insure acreage cut for seed by written agreement; (5) add a provision to insure by written agreement acreage grown for a third or succeeding year from stubble; (6) change the method of computing indemnities when acreage, share, or practice is underreported; (7) provide continuous protection for stubble cane; (8) change the notice of loss provision to make it more applicable to seed cane; (9) shorten the length of time an insured has to give notice when claiming an indemnity; (10) change the unit of measure for sugarcane; (11) clarify the method of appraising stubble acreage; (12) add a definition of "Loss ratio"; (13) change the filing date for contract changes; and (14) delete the definition for "Standard sugarcane." The authority

for the promulgation of this rule is contained in the Federal Crop Insurance Act, as amended.

EFFECTIVE DATE: May 31, 1986.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC, 20250, telephone (202) 447-3325.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Department Regulation No. 1512-1. This action constitutes a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is December 1, 1990.

Merritt W. Sprague, Manager, FCIC, (1) has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (a) An annual effect on the economy of \$100 million or more; (b) major increases in costs or prices for consumers, individual industries, federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) certifies that this action will not increase the federal paperwork burden for individuals, small businesses, and other persons.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR 3015, Subpart V, published at 48 FR 29115, June 24, 1983.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

On Thursday, February 13, 1986, FCIC published a Notice of Proposed Rulemaking in the Federal Register at 51 FR 5341, to revise and reissue the Sugarcane Crop Insurance Regulations (7 CFR Part 417), effective for the 1987 and succeeding crop years. The public was given 60 days in which to submit written comments on the proposed rule but none were received. The Notice of Proposed Rulemaking defined "County" to include all land identified by an ASCS farm serial number for the county but physically located in another county. This definition was in error and, therefore, the final rule retains the present definition. The Notice of Proposed rulemaking also defined "ASCS". Since the "County" definition is unchanged, there is no need for the "ASCS" definition and it has been removed.

Therefore, with the exception of minor changes in language and format, the proposed rule, as discussed above, is adopted as a final rule. The principal changes in the sugarcane policy are:

1. Section 2.—Add a clause to change the method of calculating the insured's share of an indemnity on crops transferred before harvest. This limits indemnities to the insurable interest at the time of loss.

Specify that insurance will apply on seed cane cut for seed, if FCIC agrees, in writing, to insure such acreage.

Add a provision that acreage grown for a third or succeeding year from stubble is not insured unless FCIC agrees in writing to insure such acreage.

Specify that acreage will not be insured when planted with another crop. This change is made to be consistent with other crop policies.

2. Section 5.—Remove the Premium Adjustment Table. The crop will be insured on an actual production history (APH) basis, and coverages will, therefore, reflect the actual production history of the crop on the unit. Insureds with good loss experience who are now receiving a premium discount are protected since they may retain a discount under the present schedule through the 1991 crop year or until their loss experience causes them to lose the advantage, whichever is earlier.

Remove the provisions for the transfer of insurance experience and for premium computation when participation has not been continuous. Deletion of the Premium Adjustment

Table eliminates the need for these provisions.

3. Section 7.—add a provision to provide continuous protection for stubble cane.

4. Section 8.—Change the "notice of probable loss" provision to make it applicable to seed cane.

Shorten from 30 days to 10 days the time an insured has to give notice of loss when claiming an indemnity. This will allow FCIC to determine indemnities in a more timely fashion.

5. Section 9.—When acres are underreported, the production from all acres will count against the reported acres in calculating indemnities. This change will reduce the indemnities when acres are underreported and will reduce the complexity of calculations.

Change the unit of measure from "tons" to "pounds" to more closely conform to industry practice.

6. Section 15.—Add a clause to cancel the contract if production history is not furnished by the cancellation date. An exception will be allowed if the insured can show, prior to the cancellation date, that records are unavailable due to conditions beyond the insured's control. This clause is required by the change to mandatory APH.

7. Section 16.—Change the date for filing contract changes from May 31 to June 30.

8. Section 17.—Add a definition of "Loss ratio."

Delete the "Standard sugarcane" definition since it is no longer used in subsection 9.e.(2).

List of Subjects in 7 CFR Part 417

Crop insurance, Sugarcane.

Final Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation hereby revises and reissues the Sugarcane Crop Insurance Regulations (7 CFR Part 417), effective for the 1987 and succeeding crop years, to read as follows:

PART 417—SUGARCANE CROP INSURANCE REGULATIONS

Subpart—Regulations for the 1987 and Succeeding Crop Years

Sec.

- 417.1 Availability of sugarcane crop insurance.
417.2 Premium rates, production guarantees, coverage levels, and prices at which indemnities shall be computed.
417.3 OMB control numbers.
417.4 Creditors.

Sec.

- 417.5 Good faith reliance on misrepresentation.
417.6 The contract.
417.7 The application and policy.

Authority: Secs. 506, 516, Pub. L. 75-430, 52 Stat. 73, 77, as amended (7 U.S.C. 1506, 1516).

Subpart—Regulations for the 1987 and Succeeding Crop Years

§ 417.1 Availability of sugarcane crop insurance.

Insurance shall be offered under the provisions of this subpart on sugarcane in counties within the limits prescribed by and in accordance with the provisions of the Federal Crop Insurance Act, as amended. The counties shall be designated by the Manager of the Corporation from those approved by the Board of Directors of the Corporation.

§ 417.2 Premium rates, production guarantees, coverage levels, and prices at which indemnities shall be computed.

(a) The Manager shall establish premium rates, production guarantees, coverage levels, and prices at which indemnities shall be computed for sugarcane which will be included in the actuarial table on file in applicable service offices for the county and which may be changed from year to year.

(b) At the time the application for insurance is made, the applicant will elect a coverage level and price at which indemnities will be computed from among those levels and prices set by the actuarial table for the crop year.

§ 417.3 OMB control numbers.

OMB control numbers are contained in Subpart H of Part 400, Title 7 CFR.

§ 417.4 Creditors.

An interest of a person in an insured crop existing by virtue of a lien, mortgage, garnishment, levy, execution, bankruptcy, involuntary transfer or other similar interest shall not entitle the holder of the interest to any benefit under the contract.

§ 417.5 Good faith reliance on misrepresentation.

Notwithstanding any other provision of the sugarcane crop insurance contract, whenever:

(a) An insured under a contract of crop insurance entered into under these regulations, as a result of a misrepresentation or other erroneous action or advice by an agent or employee of the Corporation:

- (1) Is indebted to the Corporation for additional premiums; or
- (2) Has suffered a loss to a crop which is not insured or for which the insured is not entitled to an indemnity because of failure to comply with the terms of the

insurance contract, but which the insured believed to be insured, or believed the terms of the insurance contract to have been complied with or waived; and

(b) The Board of Directors of the Corporation, or the Manager in cases involving not more than \$100,000.00, finds that:

(1) An agent or employee of the Corporation did in fact make such misrepresentation or take other erroneous action or give erroneous advice;

(2) Said insured relied thereon in good faith; and

(3) To require the payment of the additional premiums or to deny such insured's entitlement to the indemnity would not be fair and equitable, such insured shall be granted relief the same as if otherwise entitled thereto.

Requests for relief under this section must be submitted to the Corporation in writing.

§ 417.6 The contract.

The insurance contract shall become effective upon the acceptance by the Corporation of a duly executed application for insurance on a form prescribed by the Corporation. The contract shall cover the sugarcane crop as provided in the policy. The contract shall consist of the application, the policy, and the county actuarial table. Changes made in the contract shall not affect its continuity from year to year. The forms referred to in the contract are available at the applicable service offices.

§ 417.7 The application and policy.

(a) Application for insurance on a form prescribed by the Corporation must be made by any person to cover such person's share in the sugarcane crop as landlord, owner-operator, or tenant if the person wishes to participate in the program. The application shall be submitted to the Corporation at the service office on or before the applicable sales closing date on file in the service office.

(b) The Corporation may discontinue the acceptance of any application or applications in any county upon its determination that the insurance risk is excessive. The Manager of the Corporation is authorized in any crop year to extend the sales closing date for submitting applications in any county, by placing the extended date on file in the applicable service offices and publishing a notice in the **Federal Register** upon the Manager's determination that no adverse selectivity will result during the

extended period. However, if adverse conditions should develop during such period, the Corporation will immediately discontinue the acceptance of applications.

(c) In accordance with the provisions governing changes in the contract contained in previous policies and regulations issued by FCIC, a contract in the form provided for in this subpart will come into effect as a continuation of a sugarcane contract issued under such prior regulations, without the filing of a new application.

(d) The application for the 1987 and succeeding crop years is found at Subpart D of Part 400—General Administrative Regulations (7 CFR 400.37, 400.38) and may be amended from time to time for subsequent crop years. The provisions of the Sugarcane Crop Insurance Policy for the 1987 and succeeding crop years are as follows:

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

Sugarcane—Crop Insurance Policy

(This is a continuous contract. Refer to Section 15.)

AGREEMENT TO INSURE: We will provide the insurance described in this policy in return for the premium and your compliance with all applicable provisions.

Throughout this policy, "you" and "your" refer to the insured shown on the accepted Application and "we," "us," and "our" refer to the Federal Crop Insurance Corporation.

Terms and Conditions

1. Causes of loss.

a. The insurance provided is against unavoidable loss of production resulting from the following causes occurring within the insurance period:

(1) Adverse weather conditions;

(2) Fire;

(3) Insects;

(4) Plant disease;

(5) Wildlife;

(6) Earthquake;

(7) Volcanic eruption; or

(8) If applicable, failure of the irrigation water supply due to an unavoidable cause occurring after insurance attaches;

unless those causes are excepted, excluded, or limited by the actuarial table or subsection 9.e.(7).

b. We will not insure against any loss of production due to:

(1) The neglect, mismanagement, or wrongdoing of you, any member of your household, your tenants, or employees;

(2) The failure to follow recognized good sugarcane farming practices;

(3) The failure or breakdown of irrigation equipment or facilities;

(4) The failure to follow recognized good sugarcane irrigation practices;

(5) The impoundment of water by any governmental, public, or private dam or reservoir project; or

(6) Any cause not specified in subsection 1.a. as an insured loss.

2. Crop, acreage, and share insured.

a. The crop insured will be sugarcane grown for processing for sugar, grown on insured acreage, and for which a guarantee and premium rate are set by the actuarial table.

b. The acreage insured for each crop year will be plant and stubble cane grown on insurable acreage as designated by the actuarial table and in which you have a share, as reported by you or as determined by us, whichever we elect.

c. The insured share is your share as landlord, owner-operator, or tenant in the insured sugarcane at the time insurance attaches. However, only for the purpose of determining the amount of indemnity, your share will not exceed your share on the earlier of:

(1) The time of loss; or

(2) The beginning of harvest.

d. We do not insure any acreage:

(1) Cut for seed unless we agree, in writing, to insure such acreage;

(2) If the farming practices carried out are not in accordance with the farming practices for which the premium rates have been established;

(3) Which is irrigated and an irrigated practice is not provided by the actuarial table unless you elect to insure the acreage as nonirrigated by reporting it as insurable under section 3;

(4) Which is destroyed, it is practical to replant to sugarcane, and such acreage is not replanted;

(5) Initially planted after the final planting date set by the actuarial table;

(6) Planted to a type or variety of sugarcane not established as adapted to the area or excluded by the actuarial table; or

(7) Planted with another crop.

e. If insurance is provided for an irrigated practice, you must report as irrigated only the acreage for which you have adequate facilities and water, at the time insurance attaches, to carry out a good sugarcane irrigation practice.

f. Acreage which is planted for the development or production of hybrid seed or for experimental purposes is not insured unless we agree, in writing, to insure such acreage.

g. We may limit the insured acreage to any acreage limitation established under any Act of Congress, if we advise you of the limit prior to the time insurance attaches.

3. Report of acreage, share, and practice.

You must report on our form:

a. All the acreage of sugarcane in the county in which you have a share;

b. The practice; and

c. Your share at the time insurance attaches.

You must designate separately any acreage that is not insurable. You must report if you do not have a share in any sugarcane in the county. This report must be submitted annually on or before the reporting date established by the actuarial table. All indemnities may be determined on the basis of information you submit on this report. If you do not submit this report by the reporting date, we may elect to determine, by unit, the

insured acreage, share, and practice or we may deny liability on any unit. Any report submitted by you may be revised only upon our approval.

4. Production guarantees, coverage levels, and prices for computing indemnities.

a. The production guarantees, coverage levels, and prices for computing indemnities are contained in the actuarial table.

b. Coverage level 2 will apply if you do not elect a coverage level.

c. You may change the coverage level and price election on or before the sales closing date set by the actuarial table for submitting applications for the crop year.

5. Annual premium.

a. The annual premium is earned and payable on the date insurance attaches. The amount is computed by multiplying the production guarantee times the price election, times the premium rate, times the insured acreage, times your share at the time insurance attaches.

b. Interest will accrue at the rate of one and one-half percent (1½%) simple interest per calendar month, or any part thereof, on any unpaid premium balance starting on the first day of the month following the first premium billing date.

c. If you are eligible for a premium reduction in excess of 5 percent based on your insuring experience through the 1985 crop year under the terms of the experience table contained in the sugarcane policy in effect for the 1986 crop year, you will continue to receive the benefit of that reduction subject to the following conditions:

(1) No premium reduction will be retained after the 1991 crop year;

(2) The premium reduction will not increase because of favorable experience;

(3) The premium reduction will decrease because of unfavorable experience in accordance with the terms of the policy in effect for the 1986 crop year;

(4) Once the loss ratio exceeds .80, no further premium reduction will apply; and

(5) Participation must be continuous.

6. Deductions for debt.

Any unpaid amount due us may be deducted from any indemnity payable to you or from any loan or payment due under any Act of Congress or program administered by the United States Department of Agriculture or its Agencies.

7. Insurance period.

a. Insurance attaches on:

(1) Plant cane at the time of planting unless otherwise provided for by the actuarial table; and

(2) Stubble cane on the first day following harvest for the first or second crop year cane from stubble on the unit, except when stubble has been damaged by conditions occurring before harvest in the previous crop year and we notify you, in writing, by:

(a) January 31 following harvest in Louisiana; or

(b) April 30 following harvest in all other States.

b. Insurance ends at the earliest of:

(1) Total destruction of the sugarcane on the unit;

(2) Final harvest;

(3) Final adjustment of a loss; or

(4) The following dates immediately following the normal starting of harvest:

- (a) Louisiana..... January 31;
 (b) all other states..... April 30.

8. Notice of damage or loss.

a. In case of damage or probable loss:

(1) You must give us written notice if:

(a) During the period before harvest, the sugarcane on any unit is damaged and you decide not to further care for or harvest any part of it;

(b) You want our consent to put the acreage to another use; or

(c) After consent to put acreage to another use is given, additional damage occurs.

Insured acreage may not be put to another use until we have appraised the sugarcane and given written consent. You must notify us when such acreage is put to another use.

(2) You must give us notice of probable loss at least 15 days before the beginning of harvest:

(a) If you anticipate a loss on any unit; and
 (b) For any acreage which is insured as seed cane.

(3) If probable loss is determined within 15 days prior to or during harvest, immediate notice must be given and a representative sample of the unharvested sugarcane (at least 10 feet wide and the entire length of the field) must remain unharvested for a period of 15 days from the date of notice, unless we give you written consent to harvest the sample.

(4) In addition to the notices required by this section, if you are going to claim an indemnity on any unit, you must give us notice not later than 10 days after the earliest of:

(a) Total destruction of the sugarcane on the unit;

(b) Harvest of the unit; or

(c) The calendar date for the end of the insurance period.

b. You must obtain written consent from us before you destroy any of the sugarcane which is not to be harvested.

c. If an indemnity is to be claimed on any unit, you must leave intact the stalks on unharvested acreage and the stubble on harvested acreage until inspected by us.

d. We may reject any claim for indemnity if you fail to comply with any of the requirements of this section or section 9.

9. Claim for indemnity

a. Any claim for indemnity on a unit must be submitted to us on our form not later than 60 days after the earliest of:

(1) Total destruction of the sugarcane on the unit;

(2) Harvest of the unit; or

(3) The calendar date for the end of the insurance period.

b. We will not pay any indemnity unless you:

(1) Establish the total production of sugar on the unit and that any loss of production has been directly caused by one or more of the insured causes during the insurance period; and

(2) Furnish all information we require concerning the loss.

c. The indemnity will be determined on each unit by:

(1) Multiplying the insured acreage by the production guarantee;

(2) Subtracting therefrom the total production of sugar to be counted (see subsection 9.e.);

(3) Multiplying the remainder by the price election; and

(4) Multiplying this result by your share.

d. If the information reported by you under section 3 of this policy results in a lower premium than the actual premium determined to be due, the production guarantee on the unit will be computed on the information reported, but all production from insurable acreage, whether or not reported as insurable, will count against the production guarantee.

e. The total production (in pounds of sugar) to be counted for a unit will include all harvested and appraised production.

(1) Sugar production to count from acreage damaged by freeze within the insurance period which adversely affects the boiling house operation and cannot be processed for sugar will be determined by dividing the dollar amount received from the mill for the damaged sugarcane by the price per pound of raw sugar. The applicable price of raw sugar will be the local market price on the earlier of:

(a) The day the loss is adjusted; or

(b) The day such sugar is sold.

(2) Appraised production to be counted will include:

(a) Any appraisal under subsection 9.e.(3) and 9.e.(4);

(b) Unharvested production on harvested acreage and potential production lost due to uninsured causes;

(c) Not less than the guarantee for any acreage which is abandoned or put to another use without our prior written consent or damaged solely by an uninsured cause; and

(d) Any appraised production on unharvested acreage.

Appraisals and harvested production not processed for sugar will be given in pounds of sugar.

(3) We may make an appraisal of not less than the production guarantee per acre on any harvested acreage on which the stubble is destroyed prior to our inspection.

(4) Except for acreage on which insurance attached the first day following harvest of the previous crop, an appraisal for inadequate stand will be made on any stubble acreage, at the time of inspection, if the product of the number of plants per acre multiplied by 2, multiplied by the factor (percentage of sugar) shown by the actuarial table does not equal the per acre guarantee. The per acre appraisal for inadequate stand will be the difference between the appraised production and the production guarantee.

(5) Any appraisal we have made on insured acreage for which we have given written consent to be put to another use will be considered production to count unless such acreage is:

(a) Not put to another use before harvest of sugarcane becomes general in the county and reappraised by us;

(b) Further damaged by an insured cause and reappraised by us; or

(c) Harvested.

(6) The amount of production of any unharvested sugarcane may be determined on the basis of field appraisals conducted after the end of the insurance period.

(7) If you elect to exclude hail and fire as insured causes of loss and the sugarcane is damaged by hail or fire, appraisals will be made in accordance with Form FCI-78, "Request to Exclude Hail and Fire".

f. You must not abandon any acreage to us.

g. Any suit against us for an indemnity must be brought in accordance with the provisions of 7 U.S.C. 1508(c). You must bring suit within 12 months of the date notice of denial of the claim is received by you.

h. An indemnity will not be paid unless you comply with all policy provisions.

i. We have a policy of paying your indemnity within 30 days of our approval of your claim, or entry of a final judgment against us. We will, in no instance, be liable for the payment of damages, attorney's fees, or other charges in connection with any claim for indemnity, whether we approve or disapprove such claim. We will, however, pay simple interest computed on the net indemnity ultimately found to be due by us or by a final judgment from and including the 61st day after the date you sign, date, and submit to us the properly completed claim for indemnity form if the reason for our failure to timely pay is not due to your failure to provide information or other material necessary for the computation or payment of the indemnity. The interest rate will be that established by the Secretary of the Treasury under Section 12 of the Contract Disputes Act of 1978 (41 U.S.C. 611), and published in the Federal Register semiannually on or about January 1 and July 1. The interest rate to be paid on any indemnity will vary with the rate announced by the Secretary of the Treasury.

j. If you die, disappear, or are judicially declared incompetent, or if you are an entity other than an individual and such entity is dissolved after insurance attaches for any crop year, any indemnity will be paid to the persons determined to be beneficially entitled thereto.

k. If you have other fire insurance, fire damage occurs during the insurance period, and you have not elected to exclude fire insurance from this policy, we will be liable for loss due to fire only for the smaller of the amount:

(1) Of indemnity determined pursuant to this contract without regard to any other insurance; or

(2) By which the loss from fire exceeds the indemnity paid or payable under such other insurance.

For the purpose of this section, the amount of loss from fire will be the difference between the fair market value of the production on the unit before the fire and after the fire.

10. Concealment or fraud.

We may void the contract on all crops insured without affecting your liability for premiums or waiving any right, including the right to collect any amount due us if, at any time, you have concealed or misrepresented any material fact or committed any fraud relating to the contract. Such voidance will

be effective as of the beginning of the crop year with respect to which such act or omission occurred.

11. Transfer of right to indemnity on insured share.

If you transfer any part of your share during the crop year, you may transfer your right to an indemnity. The transfer must be on our form and approved by us. We may collect the premium from either you or your transferee or both. The transferee will have all rights and responsibilities under the contract.

12. Assignment of indemnity.

You may assign to another party your right to an indemnity for the crop year, only on our form and with our approval. The assignee will have the right to submit the loss notices and forms required by the contract.

13. Subrogation. (Recovery of loss from a third party.)

Because you may be able to recover all or a part of your loss from someone other than us, you must do all you can to preserve any such right. If we pay you for your loss, then your right of recovery will at our option belong to us. If we recover more than we paid you plus our expenses, the excess will be paid to you.

14. Records and access to farm.

You must keep, for two years after the time of loss, records of the harvesting, storage, shipment, sale, or other disposition of all sugar produced on each unit, including separate records showing the same information for production from any uninsured acreage. Failure to keep and maintain such records may, at our option, result in cancellation of the contract prior to the crop year to which the records apply, assignment of production to units by us, or a determination that no indemnity is due. Any person designated by us will have access to such records and the farm for purposes related to the contract.

15. Life of contract: Cancellation and termination.

a. This contract will be in effect for the crop year specified on the application and may not be canceled by you for such crop year. Thereafter, the contract will continue in force for each succeeding crop year unless canceled or terminated as provided in this section.

b. This contract may be canceled by either you or us for any succeeding crop year by giving written notice on or before the cancellation date preceding such crop year.

c. Prior to the cancellation date you must:

(1) Furnish to us satisfactory production records for the crop year or the contract will be canceled for the next crop year; or

(2) Show to our satisfaction that the records are not available because of conditions beyond your control, such as fire, flood or other natural disaster. (If this subsection (2) applies, the Field Actuarial Office may assign a yield for the year for which the records are unavailable.)

d. This contract will terminate as to any crop year if any amount due us on this or any other contract with you is not paid on or before the termination date preceding such crop year for the contract on which the amount is due. The date of payment of the amount due if deducted from:

(1) An indemnity, will be the date you sign the claim; or

(2) Payment under another program administered by the United States Department of Agriculture, will be the date both such other payment and setoff are approved.

e. The cancellation and termination dates are September 30.

f. If you die or are judicially declared incompetent, or if you are an entity other than an individual and such entity is dissolved, the contract will terminate as of the date death, judicial declaration, or dissolution. If such event occurs after insurance attaches for any crop year, the contract will continue in force through the crop year and terminate at the end thereof. Death of a partner in a partnership will dissolve the partnership unless the partnership agreement provides otherwise. If two or more persons having a joint interest are insured jointly, death of one of the persons will dissolve the joint entity.

g. The contract will terminate if no premium is earned for 5 consecutive years.

16. Contract changes.

We may change any terms and provisions of the contract from year to year. If your price election at which indemnities are computed is no longer offered, the actuarial table will provide the price election which you are deemed to have elected. All contract changes will be available at your service office by June 30 preceding the cancellation date. Acceptance of changes will be conclusively presumed in the absence of notice from you to cancel the contract.

17. Meaning of terms.

For the purpose of sugarcane crop insurance:

a. "Actuarial table" means the forms and related material for the crop year approved by us which are available for public inspection in your service office, and which show the production guarantees, coverage levels, premium rates, prices for computing indemnities, practices, insurable and uninsured acreage, and related information regarding sugarcane insurance in the county.

b. "County" means the county shown on the application and any additional land located in a local producing area bordering on the county, as shown by the actuarial table.

c. "Crop year" means the period from planting for plant cane and the day following harvest for stubble cane until the end of the insurance period and is designated by the calendar year in which the sugarcane harvest normally begins in the county.

d. "Harvest" means the cutting and removing of sugarcane from the field.

e. "Insurable acreage" means the land classified as insurable by us and shown as such by the actuarial table.

f. "Insured" means the person who submitted the application accepted by us.

g. "Loss ratio" means the ratio of indemnity to premium.

h. "Person" means an individual, partnership, association, corporation, estate, trust, or other legal entity, and wherever applicable, a State or a political subdivision or agency of a State.

i. "Plant cane" (see definition of sugarcane).

j. "Service office" means the office servicing your contract as shown on the

application for insurance or such other approved office as may be selected by you or designated by us.

k. "Stubble cane" (see definition of sugarcane).

l. "Sugarcane" means either:

(1) Sugarcane the initial year planted (plant cane); or

(2) Sugarcane growing from the stubble left to produce another crop from previously harvested sugarcane (stubble cane).

m. "Tenant" means a person who rents land from another person for a share of the sugarcane or a share of the proceeds therefrom.

n. "Unit" means all insurable acreage of sugarcane in the county on the date insurance attaches for the crop year:

(1) In which you have a 100 percent share; or

(2) Which is owned by one entity and operated by another entity on a share basis.

Land rented for cash, a fixed commodity payment, or any consideration other than a share in the sugarcane on such land will be considered as owned by the lessee. Land which would otherwise be one unit may be divided according to applicable guidelines on file in your service office. Units will be determined when the acreage is reported.

Errors in reporting units may be corrected by us to conform to applicable guidelines when adjusting a loss. We may consider any acreage and share thereof reported by or for your spouse or child or any member of your household to be your bona fide share or the bona fide share of any other person having an interest therein.

18. Descriptive headings.

The descriptive headings of the various policy terms and conditions are formulated for convenience only and are not intended to affect the construction of meaning of any of the provisions of the contract.

19. Determinations.

All determination required by the policy will be made by us. If you disagree with our determinations, you may obtain reconsideration of or appeal those determinations in accordance with the Appeal Regulations, (7 CFR Part 400—Subpart J).

20. Notices.

All notices required to be given by you must be in writing and received by your service office within the designated time unless otherwise provided by the notice requirement. Notices required to be given immediately may be by telephone or in person and confirmed in writing. Time of the notice will be determined by the time of our receipt of the written notice.

Done in Washington, DC, on April 15, 1986.

Edward Hews,

Acting Manager, Federal Crop Insurance Corporation.

[FR Doc. 86-9488 Filed 4-28-86; 8:45 am]

BILLING CODE 3410-08-M

Agricultural Marketing Service**7 CFR Ch. X**

[Docket Nos. AO-160-A64, etc.]

Milk in the Middle Atlantic and Other Marketing Areas; Order Amending Orders*Correction*

In FR Doc. 86-8421 beginning on page 12830 in the issue of Wednesday, April 16, 1986, make the following corrections:

1. On page 12831, third column, in the heading for "PART 1011", insert "VALLEY" after "TENNESSEE".

2. On page 12834, second column, in the heading for "PART 1135", first line, "SOUTHERN" should read "SOUTHWESTERN".

BILLING CODE 1505-01-M

FEDERAL HOME LOAN BANK BOARD**12 CFR Part 505d****Information Collection Requirements; Correction**

AGENCY: Federal Home Loan Bank Board.

ACTION: Final rule; technical correction.

SUMMARY: On January 2, 1985, the Federal Home Loan Bank Board ("Board") adopted a regulation relating to the information collection requirements contained in the Board's regulation regarding earnings-based accounts (50 FR 7). Because of a typographical error, the citation reference to the Board's earnings-based accounts regulation was incorrect. The amendment referred to 12 CFR 563.10. The correct reference should read 12 CFR 563.3-10. This action corrects that error. For the convenience of the public, the Board is republishing the entire text of section 505d.1(b), as amended by its action today.

EFFECTIVE DATE: April 29, 1986.

FOR FURTHER INFORMATION CONTACT:

Carol J. Rosa, Paralegal Specialist, Regulations and Legislation Division, Office of General Counsel, (202) 377-6464; or Colleen Devine, Chief, Management Analysis Staff, Administration Office, (202) 377-6025, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552.

Pursuant to 12 CFR 508.11 and 508.14, the Board finds that, because of the minor, technical nature of this corrective amendment, notice and public procedure are unnecessary, as is the 30-day delay of the effective date.

List of Subjects in 12 CFR Part 505d

Reporting and recordkeeping requirements.

Accordingly, the Board hereby amends Part 505d, Subchapter A, Chapter V, Title 12, *Code of Federal Regulations*, as set forth below.

SUBCHAPTER A—GENERAL**PART 505d—INFORMATION COLLECTION REQUIREMENTS UNDER THE PAPERWORK REDUCTION ACT**

1. The authority citation for Part 505d is revised to read as follows:

Authority: Pub. L. 96-511, 94 Stat. 2812, 44 U.S.C. 3501, *et seq.*; 5 CFR 1320.7(f)(2), 1320.14(e).

2. On Page 7 in the Federal Register of January 2, 1985, the references to "§ 563.10" and corrected to read "§ 563.3-10." As corrected, § 505d.1(b) is revised to read as follows:

§ 505d.1 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

* * * * *

(b) *Display.*

12 CFR section where identified and described	Current OMB control No.
523.13(b).....	3068-0031
523.29(c).....	3068-0031
545.1-1(f).....	3068-0031
545.6-13(c).....	3068-0031
545.16.....	3068-0031
545.20.....	3068-0031
545.24(a)(e).....	3068-0031
545.29.....	3068-0031
552.11.....	3068-0031
563.3-10.....	3068-0511
563.9(b).....	3068-0031
563.9-3(c).....	3068-0031
563.17-2(a).....	3068-0031
563.17-3(e).....	3068-0031
563.23-1(f).....	3068-0031
563.23-3(b).....	3068-0031
563.25(c), (f).....	3068-0031
563.39-1(f).....	3068-0031
563b.4(a)(3)(ii).....	3068-0031
563c.10(c).....	3068-0031

By the Federal Home Loan Bank Board.

Jeff Sconyers,
Secretary.

[FR Doc. 86-9531 Filed 4-28-86; 8:45 am]

BILLING CODE 6720-01-M

12 CFR Part 563**Net-Worth Requirements of Insured Institutions**

Date: April 21, 1986.

AGENCY: Federal Home Loan Bank Board.

ACTION: Final rule.

SUMMARY: The Federal Home Loan Bank Board ("Board"), as the operating head of the Federal Savings and Loan Insurance Corporation ("FSLIC"), is amending § 563.13(b)(2) of its regulations to terminate the Board's

delegation of authority to the Principal Supervisory Agents ("PSA"s) to permit "de novo" institutions whose accounts are insured by the FSLIC ("insured institutions") to change their net-worth requirements from the "de novo" requirement under § 563.13(b)(2) to the standard requirement imposed on all insured institutions by § 563.13(b)(1). The Board will exercise this authority on a case-by-case basis to ensure a uniform national policy consistent with the Board's continuing review of the industry's capital requirements and financial soundness.

EFFECTIVE DATE: April 29, 1986.

FOR FURTHER INFORMATION CONTACT: John F. Connolly, Attorney, Office of General Counsel, (202-377-6455), Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: The Board initially adopted higher net-worth requirements for "de novo" insured institutions in the "de novo" regulation because of these institutions' lack of supervisory track records and their potential for excessive leverage of capital in order to exercise risky new asset powers. Board Res. No. 83-653, 48 FR 54320 (December 2, 1983) ("de novo regulation"). The net-worth regulation incorporated these higher requirements with little discussion. See Board Res. No. 85-79-B, 50 FR 6891 (February 19, 1985) ("net-worth regulation"). Section 563.13(b)(2)(i) requires most "de novo" institutions, those institutions applying for a Federal charter or Federal insurance whose businesses were not conducted previously under any charter, to have initial capital of \$3 million and to maintain net worth in an amount equal to the institution's contingency factor (§ 563.13(g)(5)) plus seven percent of liabilities through its first full year, decreasing to six percent in the second year, and to five percent in the third year. Section 563.13(b)(2)(ii), however, provides that "de novo" institutions (1) whose applications for a Federal charter or Federal insurance were received prior to November 3, 1983, but not approved before December 2, 1983; (2) who choose to have their applications processed in accordance with § 571.6(a)(2); and (3) who do not additionally meet the community size (an area with a population of less than 50,000) and investment standards of § 571.6(a)(3), must maintain minimum net worth of at least seven percent of liabilities plus the contingency factor through their first three full years of operation.

Both § 563.13(b)(2)(i) and (b)(2)(ii), although requiring different levels of net

worth for the first three years, provide that after that time:

Upon the approval of the Principal Supervisory Agent pursuant to paragraph (b)(2)(iii) of this section, the minimum net worth [for "de novo" institutions] shall be equal to the amount specified by paragraph (b)(1) of this section.

[50 FR at 6909.]

A "de novo" institution authorized by its PSA to convert to the standard net-worth calculation under paragraph (b)(1) of this section would combine its base factor computed on its level of liabilities at the end of the prior year, its contingency (also required for "de novo" institutions during their first three years), any amortization factor (generally inapplicable), plus its growth factor on new liabilities. An institution's base factor, as defined under § 563.13(g)(2), is the institution's minimum required amount of net worth calculated as of the last day of the preceding calendar year, excluding its contingency factor and before reduction for qualifying balances. Since a "de novo" institution's minimum required amount of net worth in its third year or later would be five or seven percent, its base factor would incorporate this capital requirement on existing liabilities. Such an institution would be required to continue to satisfy its contingency factor. The amortization factor would generally be inapplicable to such an institution since "de novo" institutions have never been authorized to use the five year averaging or twenty-year phase-in techniques. Finally, the most significant change for such an institution would be that the sliding-scale growth factor of from 2.35 to 5 percent would apply to its marginal growth instead of a straight 5 or 7 percent of liabilities.

Board's Capitalization Concerns

The Board has been concerned for a number of years about the inadequate level of capital of insured institutions, particularly rapidly growing institutions. In the "de novo" regulation and the net-worth regulation, the Board also addressed the risks of excessive leverage of minimal capital and the scant protection afforded to depositors and to the FSLIC by such minimal capital. The Board also noted that the use of institutions' expanded asset powers to engage in higher risk/yield activities, which many "de novo" institutions could undertake from inception, requires reliance on adequate capital buffers. Furthermore, the Board has stressed that in addition to serving a loss absorption function, adequate capital helps to ensure prudent risk-taking activity by the owners and

managers of insured institutions. If shareholders have significant levels of their own capital at risk, rather than simply looking to FSLIC deposit insurance to absorb the loss and rescue depositors, those stockholders have great incentive to carefully analyze management's risk-taking activity.

In light of the great value of adequate capital, the Board is continuing to study the adequacy of the industry's capital base and the industry's financial problems, particularly focusing on the rapid growth, high leverage, and diverse asset powers of insured institutions. The industry's ratio of net worth to total assets was 5.26 percent in December 1980, but fell to 3.86 percent under regulatory accounting principles by 1983. Adoption of the net-worth regulation plus the improved interest-rate environment helped to stop this slide and to increase the industry's ratio of regulatory net worth to total assets from 3.88 percent (as of January 1, 1985) to 4.38 percent (as of December 31, 1985). Nonetheless, the Board, particularly in light of the expiration of the current net-worth regulation on January 1, 1987, continues to study the industry's capital needs, credit risk, interest-rate risk, and overall financial health.

The Amended Regulation

The Board is hereby terminating its delegation of authority to the Principal Supervisory Agents under § 563.13(b)(2) and will exercise this authority directly in order to ensure a uniform national policy consistent with the Board's continuing review of the industry's capital requirements and financial soundness. This amendment eliminates the PSA level of review, which could be appealed to the FSLIC if the PSA refused to allow an institution to change to the § 563.13(b)(1) standard. It should be noted, however, that this PSA review process did not guarantee or presume that a PSA would permit a "de novo" institution to change to the computation method under § 563.13(b)(1). To the contrary the regulation expressly contemplated that PSA review would result in denial if, for example, the agent raised supervisory objections to the "probable effect of such reduction on the institution's safe and sound operating condition." 50 FR 6910. By its action today, the Board is simply centralizing this discretionary authority to facilitate a uniform national policy consistent with the Board's continuing review of the industry's capital requirements. The Board will evaluate each approval request based on its ongoing assessment of the industry's capital needs and its review of an individual "de novo" institution's net-

worth level and supervisory record. The relatively low number and dispersed timing of the potential applications by "de novo" institutions to shift to the net-worth calculation method under § 563.13(b)(1) will prevent an excessive review burden for the Board or inordinate delay for applying institutions.

Pursuant to 12 CFR 508.11 and 508.14, the Board finds that because this amendment is a technical change regarding a rule of Board organization, procedure, or practice, notice and public procedure are unnecessary, as is the 30-day delay of the effective date.

List of Subjects in 12 CFR 563

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

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

SUBCHAPTER D—FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION

PART 563—OPERATIONS

1. The authority citation for Part 563 is revised to read as follows:

Authority: 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. 5A, 47 Stat. 727, as amended by sec. 1, 64 Stat. 256, as amended, sec. 17, 47 Stat. 736, as amended (12 U.S.C. 1464); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); sec. 202, 96 Stat. 1469; sec. 409, 94 Stat. 160; 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 FR 4981, 3 CFR, 1943-48 Comp. p. 1071 unless otherwise noted.

2. Amend § 563.13 by revising paragraph (b)(2) to read as follows:

§ 563.13 Regulatory Net-Worth requirement.

• • • • •
(b) *minimum required amount*—(1)

(2) *Exceptions for de novo institutions.*

(i) The minimum net-worth requirement for "de novo" institutions shall be an amount equal to the sum of the contingency factor plus seven percent of liabilities of the institution, which shall decline by 100 basis points for each year following the beginning of the first full fiscal year until equal to five percent; thereafter, upon the approval of the Board, such a "de novo" institution's minimum net-worth shall be equal to the

amount specified by paragraph (b)(1) of this section.

(ii) "De novo" institutions which elect to have their applications for insurance of accounts processed in accordance with the policy set forth in § 571.6(a)(2) of this Subchapter but which do not additionally qualify under § 571.6(a)(3), shall have, for the period between commencement of operations and the beginning of the first full fiscal year and for three years following the beginning of the first full fiscal year, minimum net worth equal to the sum of the contingency factor plus seven percent of all liabilities; thereafter, upon the approval of the Board, such a "de novo" institution's minimum net-worth shall be equal to the amount specified by paragraph (b)(1) of this section.

§ 563.13 [Amended]

3. Amend § 563.13 by removing the authority citation located at the end of this section.

By the Federal Home Loan Bank Board.

Jeff Sconyers,

Secretary.

[FR Doc. 86-9530 Filed 4-28-86; 8:45 am]

BILLING CODE 6720-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 941

[Docket No. 40564-6005]

Fagatele Bay National Marine Sanctuary Regulations

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

ACTION: Final rule and notice of designation.

SUMMARY: This publication includes the final designation of the Fagatele Bay National Marine Sanctuary (Sanctuary) and the final regulations for the Sanctuary. The final designation includes description of: The effect of designation, the area, special characteristics of the area, scope of the regulations, relation of the designation to other regulatory programs, procedures for alterations to the designation and funding. The final regulations define which activities are allowed and which are prohibited within the Sanctuary, the procedures by which persons may obtain permission to conduct activities otherwise prohibited, and the penalties for committing prohibited acts without a

permit. The purpose of designating the Sanctuary is to protect and preserve an example of a pristine tropical marine habitat and coral reef terrace ecosystem of exceptional biological productivity, to expand public awareness and understanding of tropical marine environments, to expand scientific knowledge of marine ecosystems; to improve resource management techniques, and to regulate uses within the Sanctuary to ensure the health and well-being of the ecosystem and its associated flora and fauna.

EFFECTIVE DATE: July 31, 1986. [The expiration of 60 days of continuous session of Congress from date of this publication—see discussion below].

FOR FURTHER INFORMATION CONTACT: Dr. Nancy Foster, Chief, or William Thomas, Assistant Project Manager, Sanctuary Programs Division, Office of Ocean and Coastal Resource Management, National Ocean Service, NOAA, 3300 Whitehaven Street, NW., Washington, D.C. 20235. (202/634-4236).

SUPPLEMENTARY INFORMATION: Title III of the Marine Protection, Research and Sanctuaries Act of 1972 has been amended twice—once in 1980 and once in 1984 (Pub. L. 92-532 as amended by Pub. L. 96-332 and Pub. L. 98-498, 16 U.S.C. 1431-1439, hereinafter referred to as the Act). The Fagatele Bay National Marine Sanctuary was designated entirely under the process set forth in the 1980 amendments. Thus, initial references in this discussion will be to the current Act and the [bracketed] references to the 1980 provisions followed during the Fagatele Bay designation. Section 303(a) of the Act [section 302(a) of Pub. L. 96-332] authorizes the Secretary of Commerce to designate discrete areas of the marine environment as national marine sanctuaries for the purpose of protecting their conservation, recreational, historical, research, educational, or aesthetic qualities which give them national significance. Section 302(a) of the Act [section 302(f)(2) of Pub. L. 96-332] directs the Secretary to issue necessary and reasonable regulations to control any activities permitted within a designated marine sanctuary. The responsibility for administering the provisions of the Act and its authority has been delegated to the Assistant Administrator for Ocean Services and Coastal Zone Management within the National Ocean Service, National Oceanic and Atmospheric Administration, U.S. Department of Commerce (the Assistant Administrator).

In March 1982, a proposal nominating Fagatele Bay, American Samoa, as a

candidate for marine sanctuary designation, was submitted to the National Oceanic and Atmospheric Administration (NOAA). The recommendation submitted by Governor Peter T. Coleman of American Samoa cited, among other benefits of marine sanctuary designation, the development and implementation of a comprehensive management plan that would serve to: (1) Protect the Bay's natural resources and pristine character; (2) create and enhance public awareness and understanding of the need to protect marine resources; (3) expand scientific examination of marine ecosystems associated with the high islands found in the Pacific, especially coral reefs that have been infested by the crown-of-thorns starfish, and apply scientific knowledge to the development of improved resource management techniques; and (4) allow uses of the sanctuary that are compatible with the sanctuary designation, giving highest priority to nondestructive traditional and public recreational uses.

In April 1982, NOAA placed the nominated area on the List of Recommended Areas (LRA) and, after preliminary public and agency consultation, further declared the area an Active Candidate. After preparation and distribution of an Issue Paper by NOAA's Office of Coastal Zone Management in May 1982, a public workshop was held in American Samoa to solicit additional comments on the feasibility of further considering the site as a national marine sanctuary.

Based on the workshop results and in consultation with other Federal agencies and the American Samoa Government, a decision was made to proceed to the next step toward designation—development of a draft environmental impact statement and sanctuary management plan (DEIS) for the proposed sanctuary. The DEIS, which contained an analysis of the draft regulations, was distributed on October 27, 1983. A public hearing was held in American Samoa on January 18, 1984 to receive testimony on the DEIS. Comments on the DEIS were accepted until January 20, 1984. The major concern voiced by persons testifying at the public hearing was that the proposed boundary and restrictions on commercial fishing may adversely affect some commercial fishermen who use the outer portion of the bay to fish when other waters may be too rough. After consultation with the American Samoa Development Planning Office and the Office of Marine Resources, the boundary of the sanctuary was divided into zones, allowing commercial fishing

in the outer half of the bay. These changes were reflected in the draft regulations. There were no other substantive written or verbal comments generated by the public hearing. Comments received by the NOAA on the DEIS were reviewed and, where appropriate, were incorporated into the final environmental impact statement and management plan (FEIS).

The draft regulations were published on December 4, 1984 (49 FR 47415) and comments were accepted until February 4, 1985. One reviewer noted the lack of definitions and suggested that certain definitions be added. Thus, the following terms have been included in the final regulations and defined: "benthic community", "commercial fishing", "cultural resources", "designation", "director", "the management plan", "permit", "permittee", "persons", "the Sanctuary", "sanctuary manager", and "Secretary". There were no other major comments.

Inasmuch as the Secretary was proposed under the Act as amended in 1980 (Pub. L. 96-332), Congress determined that it would not be necessary for these regulations and Notice of Designation to be transmitted to and reviewed by Congress under the new amendments to the Act (Pub. L. 98-498) (See House Report No. 98-187, 98th Congress, 1st Session, page 24; exempting from the new Congressional review procedures any proposed sanctuary for which the public comment period on the Draft Environmental Impact Statement has closed prior to the effective date of the 1984 amendments to the Act). Hence, the Congressional review provisions of the Act as amended in 1980, Pub. L. 96-332, apply to the designation of the Sanctuary.

Accordingly, these implementing regulations and Notice of Designation shall be transmitted to Congress, and to the Governor of American Samoa, and shall take effect on July 31, 1986, the expiration of a review period of sixty (60) days of continuous session of Congress beginning on April 30, 1986, unless the Governor of American Samoa certifies to the Secretary before the end of the 60-day period beginning from the date of this publication that the designation or any of its terms is unacceptable.

Although the 1980 amendments to the Act provided a procedure for Congressional disapproval of the regulations through adoption of a concurrent resolution by both Houses of Congress, the Supreme Court has since held that such disapproval procedures are unconstitutional (*INS v. Chada*, 462 U.S. 919, 103 S. Ct. 2764(1983)). NOAA will follow the ruling in *INS v. Chada* in

this final rule making and treat the Congressional disapproval procedure of Pub. L. 96-332 as a "report and wait" provision. NOAA will publish a notice of the effective date of these final regulations on July 31, 1986.

Other Matters

(A) Classification Under Executive Order 12291

Executive Order 12291 (E.O. 12291) defines a "major rule" as "any regulation that is likely to result in: (1) An annual effect on the economy of \$100,000,000 or more; (2) a major increase in cost or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete in domestic or export markets." The major activities supported by the area within the proposed sanctuary consist of small-scale recreational and subsistence activities.

Most of the activities in the proposed sanctuary are not affected by sanctuary regulations; the economic impacts on affected activities are minor and the regulations do not restrict recreational activities. Because the impact of the regulations on economic interests is minor or because the activities are not regulated at all, the Assistant Administrator has determined that this is not a "major rule" under E.O. 12291.

(B) Regulatory Flexibility Act Analysis

A Regulatory Flexibility Analysis is not required for this notice of rulemaking. These regulations set forth which activities are allowed and which are prohibited in the proposed Fagatele Bay National Marine Sanctuary; the procedures by which persons may obtain permits for activities otherwise prohibited; and the penalties for committing prohibited acts without a permit. These rules do not directly affect "small government jurisdictions" as defined by Pub. L. 96-354, the Regulatory Flexibility Act, and the rules will have no effect on small business. For the same reasons, the General Counsel has certified to the Small Business Administration that the regulations will not have a significant economic impact on a substantial number of small entities within the area of the proposed sanctuary under the Regulatory Flexibility Act.

(C) Paperwork Reduction Act of 1980 (Pub. L. 96-511)

This rule contains a collection of information requirement subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). The collection has been approved by the Office of Management and Budget under control number 0648-0141.

The Designation Document

The Act and NOAA's general marine sanctuary regulations (15 CFR Part 922, 44 FR 44831, July 31, 1979) provide that the management system for a marine sanctuary will be established by two documents, a Designation Document and the regulations issued pursuant to sections 303(a) and 304 of the Act. The Designation Document will serve as a constitution for the Sanctuary, establishing among other things the purposes of the Sanctuary, the types of activities that may be subject to regulation within it, and the extent to which other regulatory programs will continue to be effective. Thus the Designation Document for the Fagatele Bay National Marine Sanctuary as published in the Final Environmental Impact Statement (Notice of Availability, 49 FR 28613, 6/13/84) is as follows:

Final Designation Document

Designation of the Fagatele Bay National Marine Sanctuary

Preamble

Under the authority of the Marine Protection, Research and Sanctuaries Act of 1972, Pub. L. 92-532, (the Act) certain waters off American Samoa are hereby designated a National Marine Sanctuary for the purposes of preserving and protecting this unique and fragile ecosystem.

Article 1. Effect of Designation

The designation of the Fagatele Bay National Marine Sanctuary (the Sanctuary) described in Article 2, establishes the basis for cooperative management of the area by the Territory of American Samoa (Territory) and the National Oceanic and Atmospheric Administration (NOAA).

Within the area designated as the Sanctuary, the Act authorizes promulgation of such regulations as are reasonable and necessary to protect the values of the Sanctuary. Article 4 of the Designation lists those activities which may require regulation, but the listing of any activity does not by itself prohibit or restrict it. Restrictions or prohibitions may be accomplished only through

regulation, and additional activities may be regulated only by amending Article 4.

Article 2. Description of the Area

The Sanctuary consists of 163 acres, (.25 square miles) of bay area off the southwest coast of Tutuila Island, American Samoa. The precise boundaries are defined by regulations.

Article 3. Special Characteristics of the Area

The Sanctuary contains a unique and vast array of tropical marine organisms, including corals and a diverse tropical reef ecosystem with endangered and threatened species, such as the hawksbill and green sea turtles, and marine mammals like the Pacific bottlenose dolphin. The area provides exceptional scientific value as an ecological, recreational, and aesthetic resource and unique educational and recreational experiences.

Article 4. Scope of Regulation

Section 1. *Activities Subject to Regulation.* In order to protect the distinctive values of the Sanctuary, the following activities may be regulated within the Sanctuary to the extent necessary to ensure the protection and preservation of the coral and other marine values of the area:

- a. Taking or otherwise damaging natural resources.
- b. Discharging or depositing any substance.
- c. Disturbing the benthic community.
- d. Removing or otherwise harming cultural or historical resources.

Section 2. *Consistency with International Law.* The regulations governing the activities listed in Section 1 of this Article will apply to foreign flag vessels and persons not citizens of the United States only to the extent consistent with recognized principles of international law, including treaties and international agreements to which the United States is signatory.

Section 3. *Emergency Regulations.* Where essential to prevent immediate, serious, and irreversible damage to the ecosystem of the area, activities other than those listed in Section 1 may be regulated within the limits of the Act on an emergency basis for an interim period not to exceed 120 days, during which an appropriate amendment of this Article will be proposed in accordance with the procedures specified in Article 6.

Article 5. Relation to Other Regulatory Programs

Section 1. *Other Programs.* (a) NOAA

may adopt all regulatory programs pertaining to fishing, including any regulations promulgated by the American Samoa Government and all permits, licenses, and other authorizations issued pursuant thereto under the following conditions:

(1) No alteration or modification of any Sanctuary regulation shall become effective without the written concurrence of both the Territory and NOAA; and

(2) The Territory shall be responsible for enforcing all Sanctuary regulations to ensure protection for the values of the Sanctuary. NOAA will engage in enforcement activities only if requested by the Territory or if there has been significant failure to provide adequate enforcement as determined under this Section.

(b) Where the Territory shall propose any alteration or modification of the regulations described in Article 4, such alteration or modification shall be submitted to NOAA for agreement and simultaneous proposal in the **Federal Register**. Such alteration or modification shall be finally adopted unless, based on the comments received on the **Federal Register** notice and after consultation with the Territory, NOAA determines that the regulations with the proposed amendments do not provide reasonable and necessary protection for the values of the Sanctuary.

(c) Should NOAA preliminary determine that there has been significant failure to provide adequate enforcement, it shall notify the Territory of this deficiency and suggest appropriate remedial action. If, after consultation, NOAA and the Territory are unable to agree that a deficiency exists or on an appropriate remedial action, NOAA may issue a final determination in writing specifying the deficiency and the appropriate action together with the reasons therefore. No less than sixty (60) days prior to issuing a final determination that calls for NOAA to take enforcement action, NOAA shall submit the proposed determination to the Governor of American Samoa. If the Governor finds that NOAA enforcement is unnecessary to protect the values of the Sanctuary, the Governor shall inform NOAA of his objections within thirty (30) days after receipt of the proposed determinations and NOAA shall give such finding presumptive weight in making its final determination.

(d) All applicable regulatory programs will remain in effect, and all permits, licenses, and other authorizations issued pursuant thereto will be valid within the Sanctuary unless inconsistent with any

regulation implementing Article 4. The Sanctuary regulations will set forth any certification procedures.

Section 2. *Defense Activities.* The regulation of those activities listed in Article 4 shall not prohibit any activity conducted by the Department of Defense that is essential for national defense or because of emergency. Such activities shall be conducted consistently with such regulations to the maximum extent practicable. All other activities of the Department of Defense are subject to Article 4.

Article 6. Alteration to this Designation

(a) This designation may be altered only in accordance with the same procedures by which it has been made, including public hearings, consultation with interested Federal and Territorial agencies and the Western Pacific Regional Fishery Management Council, and approval by the Governor of American Samoa and the President of the United States.

Article 7. Funding

In the event that a reduction in the funds available to administer the Sanctuary necessitates a reduction in the level of enforcement provided by the Territory, the resulting reduced level of enforcement shall not, by itself, constitute a basis for finding deficiency under Article 5, Section 1.

[End of Designation Document]

Before any additional activities may be regulated on other than an emergency basis, the Designation must be amended through the entire designation procedure including public hearings.

List of Subjects in 15 CFR Part 941

Administrative practice and procedure, Environmental protection, Marine resources, Natural resources.

Dated: April 23, 1986.

Paul M. Wolff,

Assistant Administrator for Ocean Services and Coastal Zone Management.

Federal Domestic Assistance Catalog Number 11.429, Marine Sanctuary Program

Accordingly, 15 CFR Part 941 is added as follows:

PART 941—FAGATELE BAY NATIONAL MARINE SANCTUARY REGULATIONS

- Sec.
- 941.1 Authority.
 - 941.2 Purpose.
 - 941.3 Scope of regulations.
 - 941.4 Boundaries.
 - 941.5 Definitions.

- Sec.
 941.6 Management and enforcement.
 941.7 Allowed activities.
 941.8 Activities prohibited or controlled.
 941.9 Other authorities.
 941.10 Penalties for commission of prohibited acts.
 941.11 Permit procedures and criteria.
 941.12 Appeal of permit action.
 Authority: Title III of Pub. L. 98-498, 16 U.S.C. 1431-1439. (Pub. L. 92-592 as amended by Pub. L. 96-332 and Pub. L. 98-498)

§ 941.1 Authority.

The Sanctuary has been designated by the Secretary of Commerce pursuant to the authority of section 303(a) of the Marine Protection, Research and Sanctuaries Act of 1972, (the Act), 16 U.S.C. 1433; (Pub. L. 98-498). The following regulations are issued pursuant to Title III of the Act.

§ 941.2 Purpose.

The purpose of designating the Fagatele Bay National Marine Sanctuary is to protect a unique deepwater terrace formation and a coral reef ecosystem representative of the warm water tropical Pacific Islands in its natural state and to regulate uses within the Sanctuary to ensure the health and integrity of the ecosystem and its associated flora and fauna.

§ 941.3 Scope of regulations.

The provisions of this Part apply only to the area defined by regulation as the Fagatele Bay National Marine Sanctuary (the Sanctuary). Neither these provisions nor any permit issued under its authority shall be construed to relieve a person from any other requirements imposed by statute or regulation of the Territory of American Samoa or of the United States. In addition, no statute or regulation of the Territory of American Samoa shall be construed to relieve a person from the restrictions, conditions, and requirements contained in this Part.

§ 941.4 Boundaries.

The Sanctuary is a 163-acre (.25 sq. mi.) coastal embayment formed by a collapsed volcanic crater on the island of Tutuila, American Samoa. The site is divided into two Subzones, A and B, and includes Fagatele Bay in its entirety up to mean high high water (MHHW). The seaward boundaries are defined by straight lines between the following points, as approved by the NOAA Charting Services Branch, and the American Samoa Department of Public Works:

Point	Pt. No.	Sub-zone	Latitude	Longitude
Fagatele Point	1-1	A	14°22'15" S	170°46'5" W
Matautulua Benchmark	1-2	A	14°22'18" S	170°45'35" W
Fagatele Point	2-1	B	14°22'15" S	170°46'5" W
Steps Point	2-2	B	14°22'44" S	170°45'27" W

§ 941.5 Definitions.

- (a) "Administrator" means the Administrator of the National Oceanic and Atmospheric Administration (NOAA).
 (b) "Assistant Administrator" means the Assistant Administrator for Ocean Services and Coastal Zone Management, National Ocean Service, National Oceanic and Atmospheric Administration, or his or her successor, or designee.
 (c) "Benthic Community" means the assemblage of organisms, substrate, and structural formations found at or near the bottom that is periodically or permanently covered by water.
 (d) "Commercial Fishing" means any activity that results in the sale or trade for intended profit of fish, shellfish, algae, or corals.
 (e) "Cultural Resources" means any historical or cultural feature, including archaeological sites, historic structures, shipwrecks, and artifacts.
 (f) "Designation" means the action taken by the Secretary of Commerce, to

prescribe, through a Designation Document and implementing rules and regulations, the terms for establishing the Sanctuary.

(g) "Director" means Director of the Development Planning Office, Territory of American Samoa or the head of any successor agency.

(h) "The Management Plan" means the document that outlines the day-to-day operations of the Fagatele Bay National Marine Sanctuary and includes but is not limited to provisions for Research, Interpretation, Surveillance and Enforcement, and Administration.

(i) "Permit" means any document issued under Federal or territorial authority, signed by an authorized official, and specifying the permitted actions.

(j) "Permittee" means any person issued a valid permit as defined in (i) above and pursuant to the requirements of these regulations.

(k) "Persons" means any private individual, partnership, corporation, or other entity; or any officer, employee,

agent, department, agency or instrumentality of the Federal Government, or any State or local unit of government.

(l) "The Sanctuary" means the Fagatele Bay National Marine Sanctuary.

(m) "Sanctuary Manager" means the person hired by NOAA to manage and operate the Sanctuary.

(n) "Secretary" means the Secretary of Commerce, or his or her successor or designee.

§ 941.6 Management and enforcement.

The National Oceanic and Atmospheric Administration (NOAA) has primary responsibility for the management of the Sanctuary pursuant to the Act. The American Samoa Development Planning Office (DPO) will assist NOAA in the administration of the Sanctuary, and act as the lead agency, in conformance with the Designation Document, these regulations, and the terms and provisions of any grant or cooperative agreement. In accordance with § 922.32(b) of the National Marine Sanctuary Program Regulations, 15 CFR Part 922, NOAA may act to deputize enforcement agents of the American Samoa Government (ASG) to enforce these regulations. If NOAA chooses to exercise this provision, a memorandum of understanding shall be executed between NOAA and the ASG or the person(s) or entity authorized to act on their behalf. Prosecution of violations will be carried out by NOAA in accordance with § 941.10 of these regulations.

§ 941.7 Allowed activities.

All activities except those specifically prohibited by § 941.8 may be carried out within the Sanctuary subject to all prohibitions, restrictions, and conditions imposed by other authorities.

§ 941.8 Activities prohibited or controlled.

(a) Unless permitted by the Assistant Administrator in accordance with § 941.11, or as may be necessary for national defense, or to respond to an emergency threatening life, property or the environment, the following activities are prohibited or controlled in Subzones A and B of the Sanctuary. All prohibitions and controls will be applied consistently with international law. Refer to § 941.10 for penalties for commission of prohibited acts.

(1) *Taking and Damaging Natural Resources.* (i) No person shall gather, take, break, cut, damage, destroy, or possess any invertebrate, coral, bottom formation, or marine plant.

(ii) No person shall take, gather, cut, damage, destroy, or possess any crown-of-thorns starfish (*Acanthaster planci*).

(iii) No person shall possess or use poisons, electrical charges, explosives, or similar environmentally destructive methods.

(iv) No person shall possess or use spearguns, including such devices known as Hawaiian slings, pole spears, arbalettes, pneumatic and spring-loaded spearguns, bows and arrows, bang sticks, or any similar taking device.

(v) No person shall possess or use seines, trammel nets, or any fixed net.

(vi) There shall be a rebuttable presumption that any items listed in these paragraphs found in the possession of a person within the Sanctuary have been used, collected, or removed from within the Sanctuary.

(2) *Operation of Vessels.* (i) No vessel shall approach closer than 200 feet to a vessel displaying a dive flag except at a maximum speed of three knots.

(ii) All vessels from which diving operations are being conducted shall fly in a conspicuous manner the international code flag alpha "A."

(iii) All vessels shall be operated to avoid striking or otherwise causing damage to the natural features of the Sanctuary.

(3) *Discharges.* No person shall litter, deposit, or discharge any materials or substances of any kind into the waters of the Sanctuary.

(4) *Disturbance of the Benthic Community.* Disturbance of the benthic community by dredging, filling, dynamiting, bottom trawling, or any alteration of the seabed shall be prohibited.

(5) *Removing or Damaging Cultural Resources.* No person shall remove, damage, or tamper with any historical or cultural resource within the boundaries of the Sanctuary.

(6) *Taking of Sea Turtles.* No person shall ensnare, entrap, or fish any sea turtle while it is listed as a threatened or endangered species as defined by the Endangered Species Act of 1973, as amended, 16 U.S.C. 1531 *et seq.*

(7) *Use of Dangerous Weapons.* Except for law enforcement purposes, no person shall use or discharge explosives or weapons of any description within the Sanctuary boundaries. Distress signaling devices, necessary and proper for safe vessel operation, and knives generally used by fishermen and swimmers are not considered weapons for purposes of this subsection.

(8) *Other Prohibitions.* No person shall mark, deface, or damage in any

way, or displace or remove or tamper with any signs, notices, or placards, whether temporary or permanent, or with any monuments, stakes, posts, or other boundary markers related to the Sanctuary.

(b) In addition to those activities prohibited or controlled in accordance with § 941.8(a), the following activities are prohibited or controlled in *Subzone A*:

(1) *Taking and Damaging Natural Resources.* (i) No person shall possess or use fishing poles, handlines, or trawls.

(ii) Commercial fishing shall be prohibited.

(c) The prohibitions in this section are not based on any claim of territoriality and will be applied to foreign persons and vessels only in accordance with recognized principles of international law, including treaties, conventions, and other international agreements to which the United States is signatory.

§ 941.9 Other Authorities.

No license, permit or other authorization issued pursuant to any other authority may validly authorize any activity prohibited by § 941.8 unless such activity meets the criteria stated in § 941.11(a), (c) and (d), and is specifically authorized by the Assistant Administrator.

§ 941.10 Penalties for commission of prohibited acts.

Section 307 of the Act, 16 U.S.C. 1437, authorizes the assessment of a civil penalty of not more than \$50,000.00 for each violation of any regulation issued pursuant to the Act, and further authorizes a proceeding *in rem* against any vessel used in violation of any such regulation. NOAA will apply to all enforcement matters under the Act the consolidated civil procedure regulations set forth at 15 CFR Part 904.

§ 941.11 Permit procedures and criteria.

(a) Under special circumstances an activity otherwise prohibited by § 941.8 of these regulations may be allowed by permit. The activity must be conducted for research or educational purposes designed to enhance understanding of the Sanctuary environment or to improve resource management decisionmaking. The activity must also be judged not to cause long-term or irreparable harm to the resources of the Sanctuary. A permit may be granted by the Assistant Administrator of NOAA in consultation with the Development and Planning Office.

(b) Any person in possession of a

valid permit issued by the Assistant Administrator in accordance with this section may conduct the specified activity in the Sanctuary if such activity is:

- (1) Related to research involving Sanctuary resources;
 - (2) To further the educational value of the Sanctuary; or
 - (3) For salvage or recovery operations.
- (c) Permit applications shall be addressed to the Assistant Administrator for Ocean Services and Coastal Zone Management, ATTN: Sanctuary Programs Division, National Ocean Service, National Oceanic and Atmospheric Administration, 3300 Whitehaven Street, NW., Washington, D.C. 20235. An application shall include a description of all proposed activities, the equipment, methods, and personnel involved, and a timetable for completion of the proposed activity. Copies of all other required licenses or permits shall be attached.

(This information collection has been approved by the Office of Management and Budget under control number 0648-0141)

(d) In considering whether to grant a permit, the Assistant Administrator shall evaluate such matters as:

- (1) The general professional and financial responsibility of the applicant;
- (2) The appropriateness of the methods being proposed for the purpose(s) of the activity;
- (3) The extent to which the conduct of any permitted activity may diminish or enhance the value of the Sanctuary as a source of recreation, education, or scientific information; and
- (4) The end value of the activity.

(e) In addition to meeting the criteria in § 941.11(a) and (c), the applicant also must demonstrate to the Assistant Administrator that:

- (1) The activity shall be conducted with adequate safeguards for the environment; and
- (2) The environment shall be returned to, or will regenerate to, the condition which existed before the activity occurred.

(f) In considering an application submitted pursuant to this Section, the Assistant Administrator shall seek and consider the views of the Sanctuary Manager and Director. The Assistant Administrator also may seek and consider the views of any other person or entity, within or outside of the Territorial Government, and may hold a public hearing, as he or she deems appropriate.

(g) The Assistant Administrator may,

at his or her discretion, grant a permit which has been applied for pursuant to this section, in whole or in part, and subject the permit to such condition(s) as the Assistant Administrator deems necessary. A permit granted for research related to the Sanctuary may include, but is not limited to, the following conditions:

(1) The Assistant Administrator, Director, or their designated representatives may observe any activity permitted by this section;

(2) Any information obtained in the research site shall be made available to the public; and

(3) The submission of one or more reports of the status of such research activity may be required.

(h) A permit granted pursuant to this section is non-transferrable.

(i) The Assistant Administrator may amend, suspend, or revoke a permit granted pursuant to this section, in whole or in part, temporarily or indefinitely if, in his/her view, the permittee has acted in violation of the terms of the permit or regulations, or for other good cause shown. Any such action shall be communicated in writing to the applicant or permit holder and shall set forth the reason(s) for the action taken. The permittee in relation to whom such action has been taken may appeal the action to the Administrator as provided for in § 941.12.

§ 941.12 Appeal of permit action.

(a) Except for permit actions which are imposed for enforcement reasons and covered by the procedures at Subpart D of 15 CFR Part 904, an applicant for a permit, the permittee, or any other interested person (hereafter Appellant) may appeal the granting, denial, conditioning or suspension of any permit under § 941.11 to the Administrator of NOAA. In order to be considered by the Administrator, such appeal must be in writing, must state the action(s) appealed and the reason(s) therefor, and must be submitted within 30 days of the action(s) by the Assistant Administrator. The Appellant may request an informal hearing on the appeal.

(b) Upon receipt of an appeal authorized by this section, the Administrator may request the Appellant to submit such additional information and in such form as will allow action upon the appeal. The Administrator shall decide the appeal using the criteria set out in § 941.11 (a), (c) and (d) and any information relative to the application on file, any information provided by the Appellant, and such other consideration as is

deemed appropriate. The Administrator shall notify the Appellant of the final decision and the reason(s) therefor in writing, normally within 30 days of the date of the receipt of adequate information required to make the decision.

(c) If a hearing is requested, or if the Administrator determines that one is appropriate, the Administrator may grant an informal hearing before a Hearing Officer appointed for that purpose. The Appellant and any other interested persons may appear personally or by counsel at the hearing and submit material and present arguments as determined appropriate by the Hearing Officer. Within 30 days of the last day of the hearing, the Hearing Officer shall recommend a decision in writing to the Administrator.

(d) The Administrator may adopt the Hearing Officer's recommended decision, in whole or in part, or may reject or modify it. In any event, the Administrator shall notify the interested persons of his or her decision, and the reason(s) therefor in writing within 30 days of receipt of the recommended decision of the Hearing Officer. The Administrator's decision shall constitute final action by NOAA for purposes of the Administrative Procedure Act, 5 U.S.C. 551 *et seq.*

(e) Any time limit prescribed in this Section may be extended by the Administrator for good cause for a period not to exceed 30 days, either upon his or her own motion or upon written request from the Appellant, permit applicant or permittee stating the reason(s) therefor.

[FR Doc. 86-9511 Filed 4-28-86; 8:45 am]

BILLING CODE 3510-08-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Part 404

Social Security Benefits; Payments to Divorced Spouses

Correction

In FR Doc. 86-7759 beginning on page 11910 in the issue of Tuesday, April 8, 1986, make the following correction:

On page 11910, second column, in the "DATES" paragraph, the last line should have read "submitted by June 9, 1986."

BILLING CODE 1505-01-M

Food and Drug Administration

21 CFR Part 882

[Docket No. 84N-0362]

Neurological Devices; Effective Date of Requirement for Premarket Approval; Implanted Diaphragmatic/Phrenic Nerve Stimulator

Correction

In FR Doc. 86-7722, beginning on page 12100 in the issue of Tuesday, April 8, 1986, make the following correction: On page 12100, in the third column, in the paragraph headed "7. Tissue toxicity", the next to last word in the first line should read "stimulator".

BILLING CODE 1505-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing, Federal Housing Commissioner

24 CFR Parts 201, 203, and 234

[Docket No. N-86-1599; FR-2221]

Mortgage Insurance; Changes to the Maximum Mortgage Limits for Single Family Residences, Condominiums and Manufactured Homes and Lots

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

ACTION: Notice of revisions to FHA maximum mortgage limits for high-cost areas.

SUMMARY: This Notice amends the listing of areas eligible for "high-cost" mortgage limits under certain of HUD's insuring authorities under the National Housing Act by adding the limits of nineteen designated high-cost areas to the list. Mortgage limits are adjusted in an area when the Secretary determines that middle- and moderate-income persons have limited housing opportunities because of high prevailing housing sales prices.

DATE: Effective Date: April 29, 1986.

FOR FURTHER INFORMATION CONTACT:

For single family: Brian Chappelle, Director, Single Family Development Division, Room 9270; telephone (202) 755-8720. For manufactured homes: Christopher Peterson, Director, Office of Title I Insured Loans, Room 9160; telephone (202) 755-6880; 451 Seventh Street, SW., Washington, DC 20410. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

Background

The National Housing Act (NHA) (12 U.S.C. 1710-1749) authorizes HUD to insure mortgages for single family residences (from one- to four-family structures), condominiums, manufactured homes, manufactured home lots, and combination manufactured homes and lots. The NHA, as amended by the Housing and Community Development Amendments of 1980 and the Housing and Community Development Amendments of 1981, permits HUD to increase the maximum mortgage limits under most of these programs to reflect regional differences in the cost of housing. In addition, sections 2(b) and 214 of the NHA provide for special high-cost limits for insured mortgages in Alaska, Guam and Hawaii.

The Housing and Urban-Rural Recovery Act of 1983 (Pub. L. 98-181, November 30, 1983) (the 1983 Act) further amended HUD's insuring authority. Of particular interest here are: (1) The authorization to insure condominiums in high-cost areas at the same levels as the high-cost limits for one-family residences insured under section 203(b) of the National Housing Act; and (2) the authorization to increase maximum loan limits under the Title I loan insurance program for combination manufactured home and lot loans and for individual lot loans in high-cost areas, so long as the percentage increase in the maximum loan limit does not exceed the percentage increase made to a one-family residence in the area authorized under section 203(b) of the NHA.

The Department implemented these provisions of the 1983 Act in related documents published in the *Federal Register* on April 11, 1984 (see 49 FR 14332, 14335, 14336), effective May 22, 1984. These documents amended the Department's rules to codify the procedure of announcing high-cost mortgage limits for single-family residences, condominiums, combination manufactured homes and lots and manufactured home lots by notice in the *Federal Register* (see the April 11, 1984 documents, amending 24 CFR 201.1504, 203.18b, 203.29, 234.27, and 234.49). In addition, the documents codified the procedure whereby a party may request an alternative mortgage limit (see the same sections cited above).

On May 22, 1984, the Department published a revised list of areas eligible for "high-cost" mortgage limits, which contained several new features (see 49 FR 21520). First, there was no separate

listing for condominium units, since these limits are now the same as those for other one-family residences. Second, the listing included instructions on how to compute the high-cost limits for combination manufactured homes and lots and individual lots, and specified the special high-cost amounts for manufactured homes, combination manufactured homes and lots and individual lots insured in Alaska, Guam and Hawaii. And, third, it made changes to the list based on a new definition of "metropolitan area".

On December 6, 1984 (49 FR 47657), May 8, 1985 (50 FR 19341), July 24, 1985 (50 FR 30154), November 6, 1985 (50 FR 45993), January 7, 1986 (51 FR 596), and January 10, 1986 (51 FR 1249), the Department published amendments to the "high-cost" mortgage amounts that added additional areas and further increased the limits of several previously designated high-cost areas.

This Document

Today's document adds Hartford County, Connecticut; Chittenden County, New Hampshire; Rockingham County, New Hampshire; Broward County, Florida; the Knoxville, Tennessee MSA, which includes the Counties of Anderson, Blount, Grainger, Knox, Jefferson, Sevier, and Union; and the Nashville, Tennessee MSA, which includes the Counties of Cheatham, Davison, Dickson, Robertson, Rutherford, Summer, Williamson, and Wilson to the list of high-cost areas.

These amendments to the high-cost areas appear in two parts. Part I explains high-cost limits for mortgages insured under Title I of the National Housing Act. Part II lists any changes for single family residences insured under sections 203(b), and 234(c) of the National Housing Act.

Accordingly, the Commissioner hereby amends the list of high-cost mortgage limits by adding the limits for Hartford County, Connecticut; Chittenden County, New Hampshire; Rockingham County, New Hampshire; Broward County, Florida; the Knoxville, Tennessee MSA, which includes the Counties of Anderson, Blount, Grainger, Knox, Jefferson, Sevier, and Union; and the Nashville, Tennessee MSA, which includes the Counties of Cheatham, Davison, Dickson, Robertson, Rutherford, Summer, Williamson, and Wilson, as set forth in Part II of the following Table:

National Housing Act High Cost Mortgage Limits

I. Title I: Method of Computing Limits

A. Section 2(b)(1)(D), Combination

manufactured home and lot (excluding Alaska, Guam and Hawaii): To determine the high-cost limit for a combination manufactured home and lot loan, multiply the dollar amount in the "one family" column of Part II of this list by .80. For example Hartford County, Connecticut, has a one-family limit of \$90,000. The combination home and lot loan limit for Hartford County is \$90,000 \times .80, or \$72,000.

B. Section 2(b)(1)(E): Lot only (excluding Alaska, Guam and Hawaii): To determine the high-cost limit for a lot loan, multiply the dollar amount in the "one-family" column of Part II of this list by .20. For example, Hartford County, Connecticut, has a one-family limit of \$90,000. The lot only loan limit for Hartford County, is \$90,000 \times .20, or \$18,000.

C. Section 2(b)(2). Alaska, Guam and Hawaii limits: The maximum dollar limits for Alaska, Guam and Hawaii may be 140% of the statutory loan limits set out in section 2(b)(1).

Accordingly, the dollar limits for Alaska, Guam, and Hawaii are as follows:

1. For manufactured homes: \$56,700. (\$40,500 \times 140%).
2. For combination manufactured homes and lots: \$75,600. (\$54,000 \times 140%).
3. For lots only: \$18,900. (\$13,500 \times 140%).

II. Title II: Updating of FHA Sections 203(b), 234(c) and 214 Area-Wide Mortgage Limits

REGION I				
Market area designation and local jurisdictions	1-family and condo unit	2-family	3-family	4-family
HUD FIELD OFFICE Hartford, CT				
Hartford County.....	\$90,000	\$101,300	\$122,650	\$142,650
Manchester, NH				
Chittenden County.....	73,050	82,250	99,950	115,350
Rockingham County.....	90,000	101,300	122,650	142,650
REGION IV				
Coral Gables, FL				
Broward County.....	87,400	98,400	119,600	138,000
Knoxville, TN				
Knoxville, TN MSA: Anderson County, Blount County, Grainger County, Knox County, Jefferson County, Sevier County, Union County.....	74,100	83,450	101,400	117,000

REGION I—Continued

Market area designation and local jurisdictions	1-family and condo unit	2-family	3-family	4-family
Nashville, TN Nashville, TN MSA: Cheatham County, Davidson County, Dickson County, Robertson County, Rutherford County, Sumner County, Williamson County, Wilson County.....	86,700	97,650	118,650	136,950

Dated: April 23, 1986.

Silvio J. DeBartolomeis,

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

[FR Doc. 86-9552 Filed 4-28-86; 845 am]

BILLING CODE 4210-27-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 51

[AD FRL 2927-9]

Air Quality Implementation Plans; Stack Height Regulations; Petitions Denied

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of denial of petitions for reconsideration.

SUMMARY: On July 8, 1985 (50 FR 27892), EPA published revisions to rules required under section 123 of the Clean Air Act (Act) to ensure that the degree of emission limitation required for the control of any air pollutant under an applicable State implementation plan (SIP) is not affected by that portion of any stack height which exceeds good engineering practice (GEP) height, or by any other dispersion technique. The American Electric Power Service Corporation (AEP), the Consolidation Coal Company (Consol), and the Ormet Corporation (Ormet) have petitioned the Administrator to reconsider certain portions of the stack height regulations pertaining to the Kammer power plant in West Virginia. The EPA is denying the petitions on the grounds that the petitioners did not submit any new information warranting reconsideration of the rules, and that EPA's previous decisions were correct.

DATE: This determination is effective April 29, 1986.

FOR FURTHER INFORMATION CONTACT: Mr. Eric Ginsburg, MD-15, Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone (919) 541-5540.

SUPPLEMENTARY INFORMATION:**Docket Statement**

The petitions for reconsideration, EPA's detailed responses, provided in a support document for this notice, and all pertinent information concerning the development of the stack height rules have been filed in Docket No. A-83-49. The docket is open for inspection by the public between the hours of 8:00 a.m. and 4:00 p.m., Monday through Friday, at the EPA Central Docket Section (LE-131), West Tower Lobby, Gallery One, 401 M Street, SW., Washington, DC 20460. Background documents normally available to the public, such as Federal Register notices and Congressional Committee reports, are not included in the docket. A reasonable fee may be charged for copying documents.

Background

Section 123 of the Act requires EPA to promulgate rules to assure that the degree of emission limitation required for the control of any air pollutant under an applicable SIP is not affected by stack heights exceeding GEP height or by any other dispersion technique.

The EPA originally promulgated regulations to implement section 123 requirements on February 8, 1982, at 47 FR 5864. Those regulations were challenged by the Sierra Club Legal Defense Fund, Inc.; the Natural Resources Defense Council, Inc.; and the Commonwealth of Pennsylvania; and on October 11, 1983, the U.S. Court of Appeals for the D.C. Circuit remanded portions of the regulations for reconsideration, reversing two portions, and unholding certain others [*Sierra Club v. EPA*, 719 F.2d 436 (1983)]. The EPA proposed revisions to the stack height rules on November 9, 1984 (49 FR 44878). A public hearing was held on January 8, 1985, after which EPA provided several additional opportunities for supplemental and rebuttal comments. The EPA promulgated final revisions to the rules on July 8, 1985 (50 FR 27892). The final rules contain changes made in response to comments submitted on the proposal.

In September 1985, Ormet, AEP, and Consol filed petitions for reconsideration of these rules. The petition from Ormet and AEP were submitted pursuant to section

307(d)(7)(B) of the Act.¹ However, in the event that EPA found that the rules were not covered by section 307(d), the petitioners requested that EPA treat their petitions as petitions for amendment, repeal, or revision under the Administrative Procedure Act, 5 U.S.C. section 553(e). Consol did not identify a statutory basis for its petition.

Section 307(d) applies only to certain enumerated EPA actions, which do not include the promulgation of regulations under section 123. See section 307(d)(1). Therefore, EPA has decided to treat the petitions as petitions for revision of a rule under section 3(e) of the Administrative Procedure Act, 5 U.S.C. 553(e), which establishes a general right to petition for issuance, amendment or repeal of an agency rule. The standard of review for a petition for revision is whether the petitioner has presented new information that warrants reconsideration of the rule. See generally *Oljato Chapter of Navajo Tribes v. Train*, 515 F.2d 654 (D.C. Cir. 1975). Under this standard, EPA has concluded that these petitioners have presented no new information warranting revision of the stack height rules.

Petitions for Reconsideration

None of the petitions present new factual information. Instead, the petitioners object to certain provisions of the rules, and to modifications thereto, which were made in response to public comments addressing the notice of proposed rulemaking. Particularly, the petitioners object to the application of these provisions to the Kammer power plant in West Virginia, a facility that is owned by the Ohio Power Company, a subsidiary of AEP. In essence, petitioners are challenging EPA's decision to adopt certain parts of its proposed rules and to change others without providing additional opportunity to comment.

The EPA is not required to reconsider its rules in light of such claims. If petitions for revision were to be granted on such grounds, EPA would be required to repropose its rules every time it modified a proposal in response to comments. The Administrative Procedure Act does not require such a result.

¹ Section 307(d)(7)(B) provides that the Administrator shall convene a proceeding to reconsider certain actions enumerated in section 307(d)(1) if a person raising an objection can demonstrate that (1) it was impracticable to raise such objection during the comment period or that grounds for the objection arose after the comment period, and (2) the objection is of central relevance to the rule.

Moreover, in this rulemaking EPA provided a 30-day extension of the initial comment period and an additional 75-day period for submission of supplemental and rebuttal comments on the proposal. The purpose of this supplemental period was to allow members of the public to address issues raised by other commenters during the comment period and at the public hearing on January 8, 1985. Accordingly, EPA believes that petitioners have had ample opportunity to respond to all comments on the proposal, including the comments that persuaded EPA to modify certain parts of the proposal. With the exception of Ormet, which did not comment on the proposed revisions, the petitioners have presented essentially the same comments that were provided during the public comment period.

Nevertheless, EPA has examined the merits of the petitions and has concluded that petitioners' arguments do not warrant reconsideration of this rulemaking. All of the modifications cited by petitioners are logical outgrowths of comments submitted during the comment period on the proposal. None were based on any new factual information that had not been subject to public scrutiny.

A summary of the petitioners' objections and EPA's responses is provided below. Additionally, EPA has prepared a support document containing responses to petitioners' major contentions. This document has been placed in Docket A-83-49. Copies can be obtained from the Central Docket Section or by writing to Mr. Eric Ginsburg at the address given above.

Presumptive Emission Limit for Credit Exceeding Formula GEP

The final regulations require that sources undertake demonstrations to justify credit for stack height exceeding the height determined by formulae provided in 40 CFR 51.1(ii)(2). In so doing, the sources are required to meet an emission limit that is equivalent to the new source performance standards (NSPS), unless demonstrated to be infeasible on a case-by-case basis. Further discussion of the basis for this requirement is contained in the preamble to the regulations and in the response to comments document contained in Docket A-83-49.

The petitioners argue that the presumptive NSPS emission limit should be eliminated on the following grounds:

- No authority is provided under section 123 to adopt such a limit.
- The limit was not subject to adequate public notice and opportunity for comment, and

—The EPA has not properly considered the retroactivity analysis prescribed by the court in *Sierra Club v. EPA* in applying the limit retroactively.

The EPA disagrees with all three of these arguments. While specifying an emission limit such as the presumptive NSPS limit is not required by the Act in so many words, its adoption is consistent with and pursuant to the instructions from the U.S. Court of Appeals in its decision to remand the definition of "excessive concentrations" to EPA. The use of a technology-based emission limit, specifically including NSPS, in fluid modeling demonstrations was, in fact, discussed in the November 9, 1984, proposal. While that notice proposed the use of several alternative emission rates, comments received during the initial and supplemental comment periods convinced EPA that there were serious flaws in two of the three alternatives. Comments were received during the comment periods which addressed the use of NSPS as a prerequisite emission control requirement for credit above formula GEP, and which either supported or opposed the use of minimum emission control requirements as a general prerequisite for stack height credit. Finally, EPA has previously described the basis for its decision to apply the presumptive NSPS limit retroactively in both the preamble to the regulations and in the response to comments document, and the petitioners have introduced no additional information that was not presented during the comment periods.

Definition of "Nearby" Applied to Terrain.

In response to the court decision, EPA adopted a definition of the term "nearby" which restricted the amount of downwash credit that may be obtained based on the effects of upwind terrain features. This definition was first proposed on November 9, 1984, and was adopted in the final rule without change.

Petitioners have argued that EPA has misinterpreted the court decision on this subject and has ignored the factual record concerning terrain-induced downwash in adopting its restriction. These objections merely repeat arguments made during the initial and supplemental comment periods, providing no additional information that would lead EPA to conclude that revision of the regulations is warranted.

The petitioners have interpreted the "nearby" definition to be a technical term that was intended by the court and Congress to grant credit for any significant downwash. In fact, both the legislative history of section 123 and the court decision clearly show that

"nearby" was to be strictly construed to limit the extent to which credit for objects far away from the source might frustrate congressional intent to control air pollution through constant emission controls rather than increased dispersion.

Conclusion

For the reasons described above, I have determined that the petitions for reconsideration filed by Ormet, AEP, and Consol present no new information warranting the reopening of stack height rule revisions promulgated on July 8, 1985. Accordingly, the petitions are denied.

Although the requirements of section 307(d) do not apply, under section 307(b)(1) of the Act, judicial review of this action is available only by the filing of a petition for review in the United States Court of Appeals for the District of Columbia Circuit within 60 days of today's date.

Dated: April 21, 1986.

Lee M. Thomas,
Administrator.

[FR Doc. 86-9404 Filed 4-28-86; 8:45 am]
BILLING CODE 6560-50-M

40 CFR Parts 60 and 61

[A-3-FRL-3009-3; Docket No. AM703MD]

New Source Performance Standards and National Emissions Standards for Hazardous Air Pollutants, Revision of the State of Maryland's Delegation of Authority

AGENCY: Environmental Protection Agency.

ACTION: Delegation of Authority.

SUMMARY: This Notice changes the Maryland Air Management Administration's (AMA) Delegation of Authority for NSPS and NESHAP. On May 10, 1985, EPA delegated to the AMA the authority to receive delegation of future NSPS and NESHAP standards upon promulgation in the *Federal Register*. Maryland will now automatically receive delegation of authority to implement and enforce any future NSPS or NESHAP standards on the effective date as published in the *Maryland Register* for that standard.

EFFECTIVE DATE: January 23, 1986.

ADDRESSES: Information relating to this Information Notice can be obtained at the following office:

U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, PA 19107, Attn: Esther Steinberg (3AM21).

FOR FURTHER INFORMATION CONTACT:

Michael Giuranna of EPA, Region III, Air Programs Branch, at (215) 597-9189.

SUPPLEMENTARY INFORMATION: The Maryland AMA was originally delegated authority to implement and enforce the NSPS program on September 15, 1978 (44 FR 69362) and the NESHAP program on January 28, 1980 (45 FR 13192). Those delegations required the AMA to submit a new request for delegation for any standard not included in the original delegation. On May 10, 1985 (50 FR 34140), EPA revise Maryland's delegation so that the AMA would receive automatic delegation of future NSPS and NESHAP standards upon promulgation of such standards in the *Federal Register*. However, this caused a delay in implementing and enforcing new NSPS or NESHAP standards because a new standard would not be enforceable by Maryland until the standard was promulgated in the *Maryland Register*, the effective date of the standard being 60 days after publication. Furthermore, State promulgation could be up to a year after promulgation in the *Federal Register*. On January 9, 1986, EPA sent a letter to the Maryland AMA informing them that we intended to revise their NSPS/NESHAP delegation so that they would automatically receive delegation of NSPS and NESHAP standards upon promulgation in the *Maryland Register*. Maryland replied in a letter of January 23, 1986, that a regulation does not become enforceable by them until the effective date published in the *Maryland Register*. Therefore, they suggested we revise their delegation to enable Maryland to receive delegation on the effective date.

This Notice informs the public that as of January 23, 1986, Maryland's delegated authority to enforce NSPS and NESHAP standards has been revised. Recognizing Maryland's regulatory adoption procedures, delegation to Maryland will now occur automatically on the effective date for specific NSPS and NESHAP regulations as published in the *Maryland Register*.

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

Authority: Sections 111(c) and 112(d), Clean Air Act (42 U.S.C. 7411(c) and 7412(d)).

Dated: April 9, 1986.

James M. Seif,

Regional Administrator.

[FR Doc. 86-9519 Filed 4-28-86; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 261

[SW-FRL-3009-9]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste

AGENCY: U.S. Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) today is granting final exclusions for the solid wastes generated at three particular generating facilities from the lists of hazardous wastes contained in 40 CFR 261.31 and 261.32, as well as denying an exclusion to a petitioner for the waste generated at his particular facility. This action responds to delisting petitions received by the Agency under 40 CFR 260.20 and 260.22 to exclude wastes on a "generator-specific" basis from the hazardous waste lists. The effect of this action is to exclude certain wastes generated at these facilities from listing as hazardous wastes under 40 CFR Part 261.

EFFECTIVE DATE: April 29, 1986.

ADDRESSES: The public docket for these final exclusions and the final denial is located in Room S-212, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC, 20460, and is available for public viewing from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding holidays.

FOR FURTHER INFORMATION CONTACT:

For general information, contact the RCRA/Superfund Hotline, toll-free at (800) 424-9346, or (202) 382-3000. For technical information, contact Lori DeRose, Office of Solid Waste (WH-562B), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 382-5096.

SUPPLEMENTARY INFORMATION: On November 27, 1985, EPA proposed to exclude specific wastes generated by several facilities, including: (1) Arco Chemical Company, located in Miami, Florida (see 50 FR 48928); (2) Dover Corporation, Norris Division, located in Tulsa, Oklahoma (see 50 FR 48932); and (3) United Technologies Automotive, Inc. located in Jeffersonville, Indiana (see 50 FR 48941). In addition, EPA proposed to deny the petition submitted by General Motors Corporation, located in Saginaw, Michigan (see 50 FR 48924).¹

¹ In the same *Federal Register* notice, the Agency also proposed to exclude specific wastes generated by: (1) American Cyanamid Company, Hannibal, Missouri (see 50 FR 48912); (2) Continental Can Company, Milwaukee, Wisconsin (see 50 FR 48915); (3) General Motors Corporation, Fisher Body Division, Elyria, Ohio (see 50 FR 48917); (4)

These actions were taken in response to petitions submitted by these companies (pursuant to 40 CFR 260.20 and 260.22) to exclude their wastes from hazardous waste control. In their petitions, these companies have argued that certain of their wastes were non-hazardous based upon the criteria for which the waste was listed. The petitioners have also provided information which has enabled the Agency to determine whether any other toxicants are present in the wastes at levels of regulatory concern. The purpose of today's actions is to make final those proposals and to make our decisions effective immediately. More specifically, today's rule allows three of these facilities to manage their petitioned wastes as non-hazardous. The exclusions remain in effect unless the waste varies from that originally described in the petition (*i.e.*, the waste is altered as a result of changes in the manufacturing or treatment process).² In addition, generators still are obliged to determine whether these wastes exhibit any of the characteristics of hazardous waste.

The Agency notes that the petitioners granted final exclusions in today's *Federal Register* have been reviewed for both the listed and non-listed criteria. As required by the Hazardous and Solid Waste Amendments of 1984, the Agency evaluated the wastes for the listed constituents of concern as well as for all other factors (including additional constituents) for which there was a reasonable basis to believe that they could cause the wastes to be hazardous. These petitioners have demonstrated through submission of raw materials data, EP toxicity test data for all EP toxic metals, and test data on the four hazardous waste characteristics that their wastes do not exhibit any of the hazardous waste characteristics, and do not contain any other toxicants at levels of regulatory concern.

EPA also proposed to deny an exclusion for specific wastes generated by General Motors Corporation, located

Keymark Corporation, Ponda, New York (see 50 FR 48922); (5) Bommer Industries Incorporated, Landrum, South Carolina (see 50 FR 48930); (6) Star Expansion Company Mountainville, New York (see 50 FR 48934); (7) Texas Eastman Company, Longview, Texas (see 50 FR 48937); (8) Eli Lilly and Company, Clinton, Indiana, (see 50 FR 48945); (9) General Electric Company, Shreveport, Louisiana (see 50 FR 48949); and (10) Waterloo Industries, Pocahontas, Arkansas (50 FR 48951). The Agency will address these proposed decisions in a later *Federal Register* notice.

² The current exclusions apply only to the processes covered by the original demonstrations. A facility may file a new petition if it alters its process. The facility must treat its waste as hazardous, however, until a new exclusion is granted.

in Saginaw, Michigan. In today's notice, this denial is being made final, since the levels of cadmium, chromium, and lead in the waste may present a substantial hazard to human health or the environment, if improperly managed. Furthermore, no information concerning the additional constituents (other than those for which the waste was listed) was received by the Agency. The Agency, therefore, could not fully evaluate the characteristics of the petitioned waste.

Limited Effect of Federal Exclusion

States are allowed to impose requirements that are more stringent than EPA's pursuant to section 3009 of RCRA. State programs thus need not include those Federal provisions which exempt persons from certain regulatory requirements. For example, States are not required to provide a delisting mechanism to obtain final authorization. If the State program does include a delisting mechanism, however, that mechanism must be no less stringent than that of the Federal program for the State to obtain and keep final authorization.

As a result of enactment of the Hazardous and Solid Waste Amendments of 1984, no State delisting programs are presently authorized. Any states which had delisting programs prior to the Amendments must become reauthorized under the new provisions.³ The final exclusions granted today, therefore, are issued under the Federal program. States, however, can still decide whether to exclude these wastes under their State (non-RCRA) program. Since a petitioner's waste may be regulated by a dual system (*i.e.*, both Federal (RCRA) and State (non-RCRA) programs), petitioners are urged to contact their State regulatory authority to determine the current status of their wastes under State law.

The exclusions made final here involve the following petitioners:

Arco Chemical Company, Miami, Florida;
Dover Corporation, Norris Division, Tulsa, Oklahoma;
United Technologies Automotive, Inc., Jeffersonville, Indiana.

The denial made final today is for the following petitioner:

General Motors Corporation, Saginaw, Michigan.

I. Arco Chemical Company

A. Proposed Exclusion

The Arco Chemical Company (Arco) has petitioned the Agency to exclude its wastewater treatment sludge (filter press sludge) from EPA Hazardous Waste No. FO19, based upon the reduction and immobilization of the listed constituents of this waste. Data submitted by Arco substantiate their claim that the listed constituents of concern are either not present in the waste at levels of regulatory concern or are present in essentially an immobile form. Furthermore, additional data provided by Arco indicate that no other hazardous constituents are present in the waste, and that this waste does not exhibit any of the characteristics of hazardous waste. (See 50 FR 48928-48930, November 27, 1985, for a more detailed explanation of why EPA proposed to grant Arco's petition.)

B. Agency Response to Public Comments

The Agency did not receive any public comments regarding its decision to grant an exclusion to Arco for the waste identified in its petition.

C. Final Agency Decision

For the reasons stated in the proposal, the Agency believes that the filter press sludge is non-hazardous and as such should be excluded from hazardous waste control. The Agency, therefore, is granting a final exclusion to Arco Chemical Company for its dewatered wastewater treatment sludge (filter press sludge) resulting from the chemical conversion coating of aluminum, listed as EPA Hazardous Waste No. FO19, generated at its Opa Locka facility in Miami, Florida.

II. Dover Corporation/Norris Division

A. Proposed Exclusion

Dover Corporation/Norris Division (Dover) has petitioned the Agency to exclude its dewatered wastewater treatment sludge (centrifuge sludge) from EPA Hazardous Waste No. FO06 based on the absence or immobilization of the listed constituents of this waste. Data submitted by Dover substantiate their claim that the listed constituents of concern are either not present in the waste at levels of regulatory concern or are present in essentially an immobile form. Furthermore, additional data provided by Dover indicate that no other hazardous constituents are present in

this waste, and that the waste does not exhibit any of the characteristics of hazardous waste. (See 50 FR 48932-48934, November 27, 1985, for a more detailed explanation of why EPA proposed to grant Dover's petition.)

B. Agency Response to Public Comments

The Agency did not receive any public comments regarding its decision to grant an exclusion to Dover for the waste identified in its petition.

C. Final Agency Decision

For the reasons stated in the proposal, the Agency believes that this waste is non-hazardous and as such should be excluded from hazardous waste control. The Agency, therefore, is granting a final exclusion to Dover Corporation/Norris Division for its dewatered wastewater treatment sludge (centrifuge sludge) resulting from electroplating operations listed as EPA Hazardous Waste No. FO06 generated at its Tulsa, Oklahoma facility.

III. United Technologies Automotive, Inc.

A. Proposed Exclusion

United Technologies Automotive, Inc. (United) has petitioned the Agency to exclude its dewatered wastewater treatment sludge (filter cake) from EPA Hazardous Waste No. FO19 based upon the absence, reduction, or immobilization of the listed constituents of this waste. Data submitted by United substantiate their claim that the listed constituents of concern are either not present in the waste at levels of regulatory concern or are present in essentially an immobile form. Furthermore, additional data provided by United indicate that no other hazardous constituents are present in the waste, and that the waste does not exhibit any of the characteristics of hazardous waste. (See 50 FR 48941-48942, November 27, 1985, for a more detailed explanation of why EPA proposed to grant United's petition.)

B. Agency Response to Public Comments

The Agency did not receive any public comments regarding its decision to grant an exclusion to United for the waste identified in its petition.

C. Final Agency Decision

For the reasons stated in the proposal, the Agency believes that this waste is non-hazardous and as such should be excluded from hazardous waste control.

³ RCRA Reauthorization Statutory Interpretation #4: Effect of Hazardous and Solid Waste Amendments of 1984 on State Delisting Decisions, May 16, 1984, Jack W. McGraw, Acting Assistant Administrator for the Office of Solid Waste and Emergency Response.

The Agency, therefore, is granting a final exclusion to United Technologies Automotive, Inc. for its dewatered wastewater treatment sludge (filter cake) resulting from the chemical conversion coating of aluminum listed as EPA Hazardous Waste No. FO19 generated at its Jeffersonville, Indiana facility.

IV. General Motors Corporation

A. Proposed Denial

The General Motors Corporation (GMC) has petitioned the Agency to exclude its wastewater treatment sludge (dissolved air flotation sludge) from EPA Hazardous Waste No. FO06, based on the reduction and immobilization of the listed constituents of this waste. Data submitted by GMC, however, fails to substantiate their claim that the listed constituents of concern are present in an immobile form. Furthermore, GMC did not respond to Agency requests for additional information regarding factors (including additional constituents) other than those for which the waste was listed which may cause the waste to be hazardous. The Agency, therefore, cannot fully evaluate GMC's petition to determine the characteristics of the petitioned waste. (See 50 FR 48924-48926, November 27, 1985, for a more detailed explanation of why EPA proposed to deny GMC's petition.)

B. Agency Response to Public Comments

The Agency did not receive any comments regarding its decision to deny an exclusion to GMC for the waste identified in its petition.

C. Final Agency Decision

For the reasons stated in the proposal, the Agency believes that the waste generated by the manufacturing processes at the GMC Saginaw Steering Gear facility (for which the petition was submitted) are not rendered non-hazardous by the wastewater treatment system currently in use. The analysis of the sludge, using the VHS model, indicates the potential of the sludge to leach several toxic heavy metals (cadmium, chromium, and lead) and contaminate ground water. Furthermore, the Agency has not received requested information necessary to determine whether or not additional toxicants (other than those for which the waste was listed) are present in the waste at levels of regulatory concern. The Agency, therefore, is denying this petition for exclusion of the wastewater treatment sludge EPA Hazardous Waste No. FO06, produced by GMC at its

Holland Road complex in Saginaw, Michigan.*

V. Effective Date

This rule is effective immediately. The Hazardous and Solid Waste Amendments of 1984 amended section 3010 of RCRA to allow rules to become effective in less than six months when the regulated community does not need the six month period to come into compliance. That is the case here since this rule reduces, rather than increases, the existing requirements for persons generating hazardous wastes. In light of the unnecessary hardship and expense which would be imposed on the petitioners by an effective date six months after promulgation, and the fact that such a deadline is not necessary to achieve the purpose of section 3010, we believe that these rules should be effective immediately. As for the denial, GMC already should be in compliance; thus no additional time should be necessary. These reasons also provide a basis for making this rule effective immediately under the Administrative Procedure Act, pursuant to 5 U.S.C. 553(d).

VI. Regulatory Impact

Under Executive Order 12291, EPA must judge whether a regulation is "major" and, therefore, subject to the requirement of a Regulatory Impact Analysis. This grant of exclusions 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 wastes generated at specific facilities from EPA's lists of hazardous wastes, thereby enabling these facilities to treat their wastes as non-hazardous. Although the Agency is also proposing to deny a petition for one waste, our decision does not trigger a Regulatory Impact Analysis, since the waste is already being handled as hazardous.

VII. 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, it must prepare and make available for public comment a

* The Agency notified GMC in a letter dated July 23, 1985, that the Office of Solid Waste would recommend to the Assistant Administrator for Solid Waste and Emergency Response that GMC's petition be denied. GMC declined to exercise its option to withdraw the petition. See 50 FR 48925, n. 46, November 27, 1985.

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 effects will be to reduce the overall costs of EPA's hazardous waste regulations. Accordingly, I hereby certify that this final regulation will not have a significant economic impact on a substantial number of small entities.

This regulation, therefore, does not require a regulatory flexibility analysis.

Dated: April 22, 1986.

J.W. McGraw,

Acting Assistant Administrator, Office of Solid Waste and Emergency Response.

List of Subjects in 40 CFR Part 261

Hazardous wastes, Recycling.

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for Part 261 continues to read as follows:

Authority: Sections 1006, 2002(a), 3001, and 3002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6905, 6912(a), 6921, and 6922).

2. In Appendix IX, add the following wastestreams in alphabetical order to Table 1 as indicated:

TABLE 1—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES

Facility	Address	Waste description
Arco Chemical Co.	Miami, FL.....	Dewatered wastewater treatment sludge (EPA Hazardous Waste No. FO19) generated from the chemical conversion coating of aluminum after April 29, 1986.
Dover Corp., Norris Div.	Tulsa, OK.....	Dewatered wastewater treatment sludge (EPA Hazardous Waste No. FO06) generated from their electroplating operations after April 29, 1986.
United Technologies Automotive, Inc.	Jeffersonville, IN.	Dewatered wastewater treatment sludge (EPA Hazardous Waste No. FO19) generated from the chemical conversion of aluminum after April 29, 1986.

[FR Doc. 86-9520 Filed 4-28-1986; 8:45 am]

BILLING CODE 5560-50-M

DEPARTMENT OF THE INTERIOR
Bureau of Land Management

43 CFR Part 8560

[Circular No. 2581]

**Designated Wilderness Areas;
Procedures for Management;
Amendment Providing a Review
Process for Mining Plans of Operation**

AGENCY: Bureau of Land Management,
Interior.

ACTION: Final rulemaking.

SUMMARY: This final rulemaking establishes procedures for reviewing plans of operations and continuing operations on unpatented mining claims within designated wilderness areas administered by the Bureau of Land Management. The final rulemaking is based on the Bureau's Wilderness Management Policy, published in the *Federal Register* on September 24, 1981 (46 FR 47180).

EFFECTIVE DATE: May 29, 1986.

ADDRESS: Inquiries or suggestions should be sent to: Director (340), Bureau of Land Management, Room 2061, Department of the Interior, Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT:
David E. Porter, (202) 343-6064.

SUPPLEMENTARY INFORMATION: On February 25, 1985, the Department of the Interior published in the *Federal Register* (50 FR 5504) a final rulemaking providing procedures for the administration of wilderness areas on public lands under the jurisdiction of the Bureau of Land Management. By a notice published in the *Federal Register* on March 27, 1985 (50 FR 12020), the Department of the Interior withdrew section 8560.4-6(j) of that final rulemaking, which stated the requirements for approving plans of operations for unpatented mining claims existing before the date on which the wilderness areas were withdrawn from appropriation under the mining laws. Except for that provision, the final rulemaking for 43 CFR Part 8560 went into effect on March 27, 1985.

A proposed rulemaking establishing requirements to be met before the authorized officer of the Bureau of Land Management (BLM) can approve a plan of operations for a mining claim or allow previously approved operations to continue was published in the *Federal Register* on August 6, 1985 (50 FR 31734). Comments were invited for a period of 30 days ending September 5, 1985, during which period a total of 14 comments were received, with 4 from associations, 2 from business establishments, 4 from individuals, and

4 from Federal agency offices or personnel. All of the comments have been given careful consideration during the decisionmaking process on this final rulemaking.

Several of the comments addressed the proposed rulemaking in general terms, opposing mining in designated wilderness areas, opposing restrictions on mining in wilderness, or opposing regulations alleged to impair the property interests of miners in mining claims. Others criticized the single paragraph of the proposed rulemaking in detail; these will be analyzed in the same manner in this Supplementary Information.

One comment requested clarification of the first sentence of paragraph (j), pointing out that the final phrase "at the time operations are proposed" appears inconsistent as a condition for "allowing previously approved operations to continue." To resolve this inconsistency, the final phrase, which is unnecessary and confusing, has been removed in the final rulemaking.

Minor amendments were made in the final rulemaking in response to comments. The following paragraphs discuss all of the comments submitted and explain why they did or did not result in any change in the language of the final regulation.

One comment urged that there be public participation in the review of plans of operation in wilderness areas. The Bureau of Land Management notifies affected and interested members of the public when plans of operations are submitted for mining claims in wilderness areas. This practice is required by the operating instructions of the Bureau. Such internal procedures are not proper matters for regulations.

One comment stated that the proposed regulation is too inflexible and would provoke continuing controversy. The comment stated that the Federal Land Policy and Management Act of 1976 (FLPMA) affords sufficient authority to assure reclamation of mined out areas, that plans not meeting reclamation requirements can be disapproved, and that section 8560.4-6(j)(2) requires a mineral examination to be carried out if wilderness values might be impaired. The comment misinterpreted section 8560.4-6(j)(2), which allows performance of annual assessment work under a plan of operations pending the contest outcome even if the mineral examination report concludes that the claim is invalid. Reclamation under FLPMA or any other authority is not directed to preserving wilderness character, but rather to restoring it. The existence of a reclamation requirement does not

eliminate the need to protect the wilderness character of the land to the maximum extent possible, at all stages before reclamation, consistent with protecting the legal rights of the miner. The Wilderness Act requires preservation of the wilderness character of lands in the wilderness preservation system, and allows mining only on valid claims existing at the time the area was withdrawn from the operation of the mining law.

Another comment opposed the provision allowing the miner to gather evidence of claim validity or perform assessment work, even if only insignificant surface disturbance would be caused. While the miner may not prospect for a discovery, claims must be properly located and recorded, and contain a discovery of a valuable mineral deposit. Collecting samples may be the only way to confirm a discovery, if samples from the time before designation of the land as wilderness are not available or cannot be demonstrated to be from the claim being examined. If sample collection were to be prohibited by the regulation, the miner would be presented with the untenable situation of having no way to prove that samples collected before a wilderness was designated are from that wilderness area, and no ability to collect them afterward. This legal principle has been consistently adhered to by the Department in cases involving both executive and legislative withdrawals made subject to valid existing rights. See *United States v. Harlan H. Foresyth*, 15 IBLA 43 (1974) and *United States v. Chappell*, 42 IBLA 74 (1979).

One comment stated that it is inconsistent with the Wilderness Act to allow significant surface disturbance if that is the minimum disturbance necessary to remove mineral samples to confirm valuable mineral exposures, and that wilderness values may not be degraded except on claims already determined to have valid rights. A claim can be valid in fact without having been administratively determined to be valid, and, as mentioned above, the Department has consistently recognized that the holder of a claim has the right to establish the validity of his discovery. Under some circumstances, surface disturbance exceeding the insignificant level may be necessary to collect such evidence, but the regulation requires the disturbance to be minimized. On the other hand, the miner does not have the right to prospect to make a discovery.

One comment urged that the miner be allowed the opportunity to assess his discovery, so that an informed decision can be made as to whether the mineral

discovery is of greater relative value to the public than preserving the land as wilderness. Section 8560.4-6(j) does not prohibit gathering samples as evidence of discovery; it specifically permits it. Decisions are not made by comparing the value of the mineral with the value of the wilderness area, but on the basis of whether the miner has an established right based on a valid mining claim.

One comment pointed out that exploration can be carried out with very little surface disturbance, using helicopters, tunnels, and so forth, and that the rulemaking should allow mineral deposits to be assessed individually. It concluded that the rulemaking would make assessment work impossible. The law and this rulemaking specifically permit annual assessment work and gathering samples to provide evidence of claim validity. If such work is done with the minimal surface disturbance described in the comment, the miner may be able to demonstrate that any surface disturbance he might cause would be insignificant, and his plan of operations that proposes use of helicopters or tunnels may be approved for purposes of doing assessment work and gathering evidence of claim validity. Use of helicopters under this subpart requires a plan of operations.

One comment objected to the provision allowing operations on producing mines to continue pending determination of claim validity. This exemption was created because producing mines were presumed to be economically producing, and therefore to meet the prudent man test. Although it might seem to impair the property interest of the miner to interrupt economic production, after consideration of the comment objecting to the provision, the Department of the Interior has concluded that the exemption for producing mines should be removed. The issue of whether the exemption is needed is likely to be academic because few producing mines will be found in designated Wilderness areas. For mining claims to be producing in a newly designated Wilderness Area, they are required to meet either of two circumstances: the claims were located and had discoveries prior to the enactment of the Federal Land Policy and Management Act so that operations are not subject to the non-impairment standard because they are valid existing rights, or the claimant is operating to the same "manner and degree" as at the time of the passage of the Act and thus has "grandfathered rights." BLM will be able to confirm quickly that a producing mine is in fact valid without suspending

producing operations for a significant period of time because, normally, a USGS/Bureau of Mines mineral survey is prepared prior to designation. In order to assure that this amendment will not shut down operation on claims that have previously been determined to be valid, the section has been amended to apply only to proposed operations or previously approved operations occurring on mining claims for which there exists no approved, current BLM mineral examination report concluding that the claim is valid. This will ensure that a producing mine, or any other operation, located on an unpatented mining claim previously found valid by a mineral examination, is not temporarily shut down pending a new mineral examination after wilderness designation.

In the usual case, a producing operation will have been in a Wilderness Study Area prior to Wilderness designation, and BLM will have already prepared a mineral report confirming validity of the claim. This is because, under 43 CFR Subpart 3802, a determination of valid existing rights is required to be made while reviewing a plan of operations for a mining claim.

Several comments objected to the provision applying the time limitations imposed on the authorized officer by 43 CFR 3809.1-6, stating that BLM could not meet the 30-day deadline for reviewing plans of operations if mineral examinations were included in the review. The 30-day review period is generally sufficient to perform the mineral examination. However, 43 CFR 3809.1-6 does provide for extension of the deadline for 60 days when notice is provided of the circumstances justifying the additional time for review. In addition, periods when the area of operations is inaccessible for inspection do not count against the 60 days.

One comment also stated that section 3809.1-6 imposes a less rigorous standard on the miner than that Wilderness Act requires, and that that section should not be referred to at all in managing wilderness areas. The Wilderness Act standards are stated in 43 CFR 8560.4-6 (e) and (h). The plan of operations provided for in section 3809.1-6 is the mechanism used to apply these standards to performing assessment work and gathering evidence of claim validity in wilderness areas. The miner is required under 43 CFR 8560.4-6 (e) and (h) to comply with stipulations to protect the wilderness character of the area. These are imposed by the authorized officer as part of the approved plan of operations under section 3809.1-6.

Several comments stated that the proposed rulemaking arbitrarily infringes on the property rights of miners in their claims by requiring the Bureau to deny a plan of operations on the basis of mineral examiner's report alone, and that the rulemaking should be revised to require completion of a contest and exhaustion of appeals before a plan can be disapproved. This rulemaking has been carefully written to reach a fair balance between the property interests of mining claimants and the preservation policy enunciated in the Wilderness Act. The Wilderness Act protects valid rights existing on the date a wilderness is designated. For wilderness administered by BLM, this date is usually the date the specific wilderness designation legislation is enacted. Claims do not have to be adjudicated and found valid in order to be valid, but if on examination a mineral examiner has reason to doubt the validity of the claim, the public interest in wilderness protection expressed in the Wilderness Act justifies disapproval of the plan of operations or termination of an ongoing operation, so that the matter can be promptly and conclusively resolved in a contest proceeding. At the same time, the miner's property right in the claim requires that he have a fair opportunity to supply proof of its validity by gathering samples, mitigated by the requirement that surface disturbance be the minimum necessary. The rulemaking does not state that the mineral examiner will invalidate a claim, but only that the examiner will disapprove the plan of operations and initiate a contest to determine the status of the claim conclusively. No operations may proceed except under the authority of this rulemaking until the contest is concluded.

One comment stated that the provision for terminating a previously approved plan of operations if the mineral examiner finds no discovery is inconsistent with the provision allowing producing mines to continue in operation. If a mine is producing in quantity, the likelihood is greatly reduced that examination will disclose a failure to discover a valuable mineral deposit. The final rulemaking does not provide for delays in reviewing ongoing operations, but recognizes that there is little likelihood that review will result in shutting down the mines.

One comment objected that this rulemaking treats the plan of operations as a minerals management tool rather than a surface management tool. Congress has determined that wilderness shall be preserved against all

mining except what is carried on under valid existing rights. Review of the plan of operations under 43 CFR 3809.1-6 is the most reasonable stage of the process at which validity can be determined.

One comment objected that an examination that determines the validity of a claim based upon the marketability of a mineral at any given time or period of time may unfairly determine a claim invalid because of temporarily depressed markets for the mineral, and urged that the prudent man test be applied in judging validity of discoveries. The prudent man test requires that the "present marketability" of the mineral deposit be considered in determining whether the claim was valid at the time the wilderness area was withdrawn from the operation of the mining law and continues to be valid. The determination of "present marketability" has never comprised the examination of either cost or price factors as of a specific, finite moment of time, without reference to other economic factors. Rather, the question of whether something is "presently marketable at a profit" simply means that a mining claimant must show that, as a present fact, considering historic price and cost factors and assuming that they will continue, there is a reasonable likelihood that a paying mine can be developed. *Pacific Coast Molybdenum Co.*, 90 I.D. 353 (1983). If a mineral market is depressed, the mineral examiner will take into account the possibility of market resurgence, based upon the history of that market, in projecting marketability and determining the validity or invalidity of a discovery. At the same time, the mineral examiner will recognize that a trend may be considered sufficiently long-term to be permanent, in cases where there is little or no foreseeable demand for the mineral, despite past marketability.

One comment stated that BLM lacks the expertise to determine whether a valuable mineral discovery has been made, and that this would lead to a great amount of costly litigation. The authority of the Secretary of the Interior to contest mining claims stated in *Cameron v. United States*, 252 U.S. 450 (1920), has been delegated by the Secretary to the Director, Bureau of Land Management. Every State office of the Bureau has qualified mineral examiners whose responsibility it is to evaluate the validity of mining claims.

One comment stated that although BLM does not issue mitigating measures for a plan of operations that is denied, the rulemaking allows some operations to be conducted. The comment questions

how mitigating measures can be applied to a nonexistent plan. The comment also questions how environmental protection can be assured without imposing mitigation stipulations. The comment apparently assumes that if a proposed plan of operations is denied, there will be no plan of operations at all, and then asks how BLM will ensure environmental protection. This final rulemaking prohibits the authorized officer from disallowing a plan of operations, either before contest proceedings begin or while they are pending, because of adverse conclusions in the mineral report, to the extent that the plan proposes assessment work or gathering proof of claim validity. In addition, the regulations at 43 CFR 3809.1-6 and 8560.1-2 do not allow the miner to proceed with work that disturbs the surface even insignificantly without a plan of operations, if mechanized earth-moving equipment or landing of aircraft is involved. Thus, a plan of operations is required for those activities. By allowing mining activities on such claims for the two named purposes and requiring a plan of operations, the rulemaking affords the authorized officer the opportunity to impose on these plans stipulations to protect the environment, in accordance with 43 CFR 3809.1-6 and the Wilderness Act, pending the outcome of contest proceedings.

One comment questioned why the rulemaking limits the claimant to reliance upon physically exposed minerals to prove claim validity. Because the Wilderness Act requires the claim to be valid on the date the land is withdrawn for wilderness, prospecting to make a discovery under the mining laws is not allowed in wilderness areas. To be discovered, a mineral has to be exposed. Geologic inference alone is insufficient to establish a discovery.

Another comment requested that the rulemaking use a physical exposure of mineralization as sufficient proof of a valuable discovery, stating that there is no readily available definition of "valuable mineral deposit." The term suggested by the comment, "physical exposure of mineralization," is vague. It implies that an exposure of a mineral in trace amounts, which may be far from economic, would be sufficient to support a discovery. The prudent man test will be applied by the mineral examiner to determine whether there has been a discovery of a valuable mineral deposit. This has long been the procedure for evaluating claims.

One comment stated that the rulemaking should include assessment work options and procedures for

obtaining patents. These matters are covered in 43 CFR Parts 3850 and 3860.

Several comments suggested relating the term "insignificant surface disturbance" to the term "casual use." The terms relate to different issues. "Casual use" is used in 43 CFR Subpart 3809 to describe activities that may be carried on without an approved plan of operations. "Insignificant surface disturbance" refers to the degree of disturbance an activity performed under a plan of operations may cause. This rulemaking is designed to protect the wilderness character of the land, allowing assessment work or gathering of evidence to support a discovery existing before the wilderness was withdrawn only if it will cause insignificant surface disturbance under a plan of operations, except in the special circumstances provided for where surface disturbance exceeding the insignificant level is the minimum necessary to confirm preexisting exposures of a valuable mineral.

One comment suggested that the final sentence of the section be amended to except required reclamation work from the requirement that all operations shall cease once a final administrative decision is rendered declaring a claim to be invalid. This suggestion has been adopted in the final rulemaking.

The principal author of this final rulemaking is David E. Porter, Division of Recreation, Cultural, and Wilderness Resources, assisted by the staff of the Office of Legislation and Regulatory Management, Bureau of Land Management.

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

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291 and that it would not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). The rulemaking favors no demographic group, and applies equally to all users, regardless of size, operating or planning to operate a mine in any wilderness area administered by the Bureau. Information is required from the public for certain uses and activities in wilderness areas in accordance with existing procedures found in 43 CFR Parts 2800, 2880, 2920, 3045, 3205, 3809, 4100 and 8372. The information collection requirements of those procedures referred to in this rule have been approved by the Office of

Management and Budget under 44 U.S.C. 3501 et seq.

List of Subjects in 43 CFR Part 8560

Grazing land, Livestock, National Wilderness Preservation System, Oil and gas exploration, Penalties, Public lands-mineral resources, Public lands-recreation, Recreation.

Under the authority of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701) and the Wilderness Act of 1964 (16 U.S.C. 1131), Group 8500, Subchapter H, Chapter II, Title 43 of the Code of Federal Regulations is amended as set forth below.

Dated: April 11, 1986.

J. Steven Griles,

Assistant Secretary of the Interior.

GROUP 8500—WILDERNESS MANAGEMENT

PART 8560—WILDERNESS AREAS

1. The authority citation for Part 8560 continues to read as follows:

Authority: 43 U.S.C. 1701 et seq., 16 U.S.C. 1131 et seq.

2. Section 8560.4-6 is amended by adding paragraph (j) to read as follows:

§ 8560.4-6 Mining law administration.

(j) Where there exists no current approved mineral examination report concluding that unpatented mining claims are valid, prior to approving plans of operations or allowing previously approved operations to continue on unpatented mining claims after the date on which the lands were withdrawn from appropriation under the mining laws, the authorized officer shall cause a mineral examination of the unpatented mining claim to be conducted by a Bureau of Land Management mineral examiner to determine whether or not the claim was valid prior to the withdrawal and remains valid. If the approved mineral examination report concludes that the claim lacks a discovery of a valuable mineral deposit, or is invalid for any other reason, the authorized officer shall either deny the plan of operation or, in the case of an existing approved operation, issue a notice ordering the cessation of operations and shall promptly initiate contest proceedings to determine the status of the claim conclusively. However, neither the adverse conclusions of an approved mineral examination report nor the pendency of contest proceedings shall constitute grounds to disallow a plan of operations to the extent the plan proposes operations that will cause only

insignificant surface disturbance and are for the purpose of: (1) Taking samples or gathering other evidence of claim validity to confirm and corroborate mineral exposures which are physically disclosed and existing on the claim prior to the withdrawal date, or (2) performing the minimum necessary annual assessment work as required by subsection 3851.1 of this title. Surface disturbance exceeding the insignificant level is permissible only when it is the minimum disturbance necessary to remove mineral samples to confirm and corroborate preexisting exposures of a valuable mineral deposit discovered prior to the withdrawal. The requirement in this subsection for a mineral examination shall not cause a suspension of the time limitations governing approval of operating plans contained in subsection 3809.1-6 of this title. Once a final administrative decision is rendered declaring a claim to be null and void, all operations, except required reclamation work, shall be disallowed and shall cease unless and until such decision is reversed in a judicial review action.

[FR Doc. 86-9446 Filed 4-28-86; 8:45 am]

BILLING CODE 4310-84-M

LEGAL SERVICES CORPORATION

45 CFR Part 1625

Procedures Governing Denial of Refunding

AGENCY: Legal Services Corporation.

ACTION: Final rule.

SUMMARY: This final rule revises the Corporation's regulations governing denial of an application for the refunding of a grant. Some of these revisions are required to comply with the provisions of the Corporation's appropriations acts for 1984, 1985, and 1986 (Pub. L. 98-166, 98-411, and 99-180). Other revisions are designed to improve the procedures and to ensure that they comply fully with the provisions of the Legal Services Corporation Act, as amended (42 U.S.C. 2996 et seq.) (the Act) and the cited appropriations acts, all of which require procedures which provide for a "timely, full, and fair" hearing. This rule (1) specifies new and more detailed procedures for denial of refunding, (2) establishes new and generally shorter time limits within which procedural steps in denying refunding must be taken, and (3) changes the burden of proof in denial of refunding proceedings. The regulations, as revised, are fully consistent with the

requirements of both the Act and the appropriations acts.

EFFECTIVE DATE: This regulation is effective May 29, 1986.

FOR FURTHER INFORMATION CONTACT: John H. Bayly, Jr. General Counsel (202) 863-1820.

SUPPLEMENTARY INFORMATION:

Background

The Corporation has discovered that amendments to this part which were published as a final rule in the *Federal Register* of July 29, 1985 (50 FR 30714) were not properly adopted. Since this rulemaking proceeding covers the same areas, the amendments made in the July 29, 1985 publication are revoked through this final rule.

Pub. L. 98-166, which appropriated the Corporation's funding for the fiscal year ending on September 30, 1984, provided for revision of the Corporation's procedures under section 1011(2) of the Act. This requirement has been continued in appropriations acts for subsequent years. The appropriations acts provide that the proceedings must be in the form of a hearing to show cause, that the recipient has the burden of proof, and that all denial of refunding proceedings must be completed within 90 days, of which 30 days are allowed for the recipient to request a hearing, 30 days for completion of the hearing, and 30 days for rendering of the final decision.

Changes, including several deadline changes, have been necessitated by the acts. These changes are concentrated in §§ 1625.4, 1625.5, 1625.6, 1625.7, 1625.8, 1625.9, 1625.10, 1625.11, and 1625.12. Additional changes have been made to conform other sections to these revisions and to simplify, expedite, and ensure the fairness of the proceeding. The entire part, as revised, is republished for clarity and ease of use.

Notice of Proposed Rulemaking

Proposed new procedures were published in the *Federal Register* on February 7, 1986 (51 FR 4882) and opportunity for comment provided until March 10, 1986. Sixty-two timely comments were received. Several late comments were also received. In addition, oral comments were received directly by the Operations and Regulations Committee of the Board of Directors (Board) at its meeting in Tampa, Fla., February 20, 1986, and again in Jackson, Miss., March 12, 1986. All timely comments were considered in the development of the final rule. Late comments were also reviewed and no new or unforeseen issues were raised.

Numerous changes, substantive and technical, were made as a result of our consideration of the comments.

Comments

The most comprehensive comments were made by Alan W. Houseman of the Center for Law and Social Policy, for the Project Advisory Group (PAG). Mr. Houseman made his comments in a series of proposed changes and analyses and in oral comments before the Corporation and the Board. Some forty grant recipients made individual comments. Some specifically endorsed the PAG comments. Generally, however, they repeated one or more of the PAG comments and suggestions. A number of bar groups commented. Generally, they also identified one or more of the points made by the comprehensive PAG comment. Four of the comments, one of which was a grant recipient, favored the proposal.

The issues which drew the most interest were:

1. The placing of the burden of going forward and the burden of ultimate persuasion on the recipient (§ 1625.9) (48 comments);

2. The use of written testimony exclusively to put on the direct case and the use of the hearing for cross-examination and rebuttal testimony only (§ 1625.8(d)) (20 comments);

3. Application of the attorney-client privilege (§ 1625.8(f)) redesignated (e) (50 comments);

4. The criteria to be used in applying the standards set out in §§ 1625.3 and 1625.9, particularly §§ 1625.3(d) and 1625.9(d) in connection with the selection of another organization to serve the clients (28 comments); and

5. The potential for conflict in personally involving the President of the Corporation prior to final decision and for *ex parte* contacts with the hearing examiner (§ 1625.4(f)) (21 comments);

General Issues

Several comments suggested that many of the requirements were not necessary to comply with the appropriations acts and that these requirements should be dropped. We believe that the provisions are necessary to comply with the Act, which requires hearings under these proceedings to be "timely, full, and fair" (section 1011(2); 42 U.S.C. 2996j) and the appropriations acts which, more specifically, require the proceedings to be completed within no more than 90 days (divided into three periods of no more than 30 days each). Since several previous denial of refunding proceedings have lasted an unreasonably long time, during which provision of legal services

to eligible clients was adversely affected, it is reasonable for us to interpret "timely" in the Act to be consistent with the Congressional determination that the proceedings should be completed in no more than 90 days. Clients should not be left for more than one-fourth of a year with a legal services provider whose future is uncertain because of serious doubts as to its ability to provide quality legal services in an effective manner within the law. We believe that the procedures adopted by this part provide full and fair procedures for recipients, eligible clients, and taxpayers.

Many commenters were concerned about the propriety of having the Corporation President involved in a defunding proceeding prior to final decision, particularly under § 1625.4(f). They were also concerned about the fact that the hearing examiner would be selected before the recipient is notified (§ 1625.4(d)(1)), and that he could be asked *ex parte* to issue an order under § 1625.4(f). One of the remedies proposed was that the hearing examiner not be selected until after the recipient is notified under § 1625.4(d). It was also suggested that the hearing examiner be authorized to limit or quash a § 1625.4(f) requirement. In addition, it was noted, generally in connection with comments under § 1625.9, that the recipient should be able to challenge any law, regulation or guideline of the Corporation and that this is desirable to make the doctrine of exhaustion of administrative remedies applicable.

We respond to all four comments. The provisions giving a role to the President or to the hearing examiner, prior to the service of notice, have been revised to eliminate such a role for either. In addition, it is specifically provided that the hearing examiner may rule on a motion to limit or quash a requirement under § 1625.4(f), and challenges to any relevant law, regulation, or guideline may be made and briefed under § 1625.8(g)(2); this provision specifically implements the doctrine of exhaustion of administrative remedies by stating that an argument not timely made in the proceeding is waived unless recipient can show that it could not have made the argument prior to that time.

Concern was also raised that the Corporation could go back indefinitely in pursuing a matter and that there should be some time limit. One comment suggested 30 days from the date the Corporation has knowledge of the basis for its action. Another noted that its state statute of limitations on contract proceedings was 6 years. If an event occurs during a fiscal year, is questioned during a monitoring trip the following

year, and the investigation completed and a proceeding initiated the year after that, this would not be an unlikely sequence of events and would take 3 years. There is also the possibility that there could be a deliberate covering up of an event so that it is not discovered for some time. Accordingly, under § 1625.3(b) we have provided for a six-year notice limitation for failure to comply with any rule, regulation, guideline, or instruction of the Corporation, or a term or condition of a current or former grant or contract. Some commenters were concerned that failure to comply at a time when a requirement was not in effect may be the basis for denial of refunding. We provide specifically that it will not.

A new paragraph (3) of § 1625.8(e) was considered initially by the Board at its Tampa, Fla., meeting, February 19-21, 1986. As part of the process of assuring openness and avoiding surprise, it provides that a recipient cannot use a witness or evidence in a proceeding where it failed to comply with its obligations (under, e.g., 42 U.S.C. 2996f(d), 2996g(b)) to provide the evidence or witness to the Corporation on request prior to the initiation of the proceeding, unless it is able to show good cause for its failure to comply at an earlier date. One comment suggested that the paragraph should be published for comment, citing cases. We found the cases supported the decision to adopt the provision. The key case cited was *Air Transport Association of America v. CAB*, 732 F.2d 219 (D.C. Cir. 1984). In that case, the Court ruled that the published proposal was sufficiently descriptive of the subject and issues involved that interested parties could offer informed criticism and comments. The critical elements of the proposal did not change and the final rule was a logical outgrowth of the proposed rule. Here, we add a provision designed to spur disclosure and avoid surprise. Given the need to combine adequacy of hearing and compliance with deadlines, such a proviso is very clearly a logical outgrowth of the proposed rule.

Sections 1625.3 and 1625.4

It was proposed that the Corporation's notice to a recipient in § 1625.4(a) be tied specifically to the four grounds for denial specified in § 1625.3. In effect, the substance of § 1625.3 would be repeated in § 1625.4(a). We do not believe the inclusion would improve clarity. Instead, we expanded § 1625.4(c) to spell out clearly that the Corporation must provide a detailed memorandum of points and authorities to apply the facts recited under § 1625.4(b) to the specific

grounds for denial under § 1625.3. It should be noted that the recipient's obligation under § 1625.5(d) to submit its memorandum of points and authorities, is not spelled out in identical language to that of the Corporation under § 1625.4(c). That does not mean that its obligations do not match those of the Corporation—they do. Any issue of fact or law not joined is considered admitted.

It was also suggested that, where another organization is identified in a statement under § 1625.4(a) as being better able to serve the clients, relevant information about that organization, its staff, officers and board, its experience, and the basis for our finding, should be included in the § 1625.4(a) statement. A prima facie case will include all needed information about the organization and its principal officials, as well as provide a factual basis for the allegation that it is better able to serve the clients. In addition, the language of §§ 1625.5(e) and 1625.7(d), dealing with the ability of the recipient to secure production of documents or witnesses of the Corporation, is revised to make clear that an organization identified under § 1625.4(a)(2) as being better able to serve the client community may be required to produce a document or employee, subject to the sanctions set forth in § 1625.8(e).

It was suggested that when we name the hearing examiner under § 1625.4(d), we provide a résumé and the information on which we made our determination under § 1625.6(a). We think it would be helpful to include a summary of the hearing examiner's professional qualifications, his or her current business address and phone number, and a statement that he or she supports the purposes of the Act.

It was suggested that the provisions of former § 1625.4(c) advising the recipient of its right to interim and termination funding under §§ 1625.15 and 1625.16 be preserved in a new § 1625.4(g). We think this is unnecessary since under § 1625.4(e) we send all of Part 1625 to the recipient with the show cause order.

Section 1625.5

Under § 1625.5(c), it was suggested that we strike the provision that the recipient may not rest on mere allegations or denials, but must recite specific facts to assure that a genuine issue of fact is involved. There is apparent concern that there may be situations where a recipient can only deny. For example, comments suggested that if the Corporation alleged that a recipient engaged in lobbying by mailing a specific letter and in fact the recipient had not mailed the letter, it could only

deny the allegation. We shortened the language of the provision, eliminating the reference to mere allegations and denials, but retained the requirement that the recipient must provide sworn evidence of specific facts showing there is a genuine issue of material fact at issue. We think the official responsible for the denial must sign an affidavit on personal knowledge that he has checked records and done what is possible to find evidence in order to put a material fact in issue and to avoid issuance of an adverse summary judgment.

It was suggested that a recipient should be able to request the hearing examiner to add parties under § 1625.5(e). We do not agree. Where an organization is alleged to be better able to serve eligible clients, it should be identified pursuant to § 1625.4(a)(2) (as we noted above), and adverse inferences should be available if it refuses to make its documents or employees available for the hearing (§§ 1625.5(e), 1625.7(d) and 1625.8(e)(1)). But, we see no reason why it should be a party. With respect to other persons, we fail to see how they could be involved as parties, although many could be witnesses, and we do not think that witness availability may be solved in this fashion. Certainly, denial of refunding will have indirect impact on other persons (the recipient's clients, employees, landlord, suppliers, contractors, and grantees may all incur at least some costs of adjustment to a possible denial of refunding; either the particular organization that is alleged to be better for the clients or some other or new recipient chosen after appropriate competition may gain by receiving the grant funds that the original provider would have received if it had been refunded). None of these persons must be present as a party for resolution of the only question at issue during a proceeding under this part: If the Corporation has presented a prima facie case for denial of refunding, can the existing recipient show cause why refunding should be granted? Accordingly, we have clarified language in § 1625.7(d)(3) regarding the obligation of an organization identified under § 1625.3(d) to produce documents and employees; and we have added a new § 1625.7(c)(5) limiting the proceeding to the Corporation and the recipient, except that a state support center which is a subgrantee or a subrecipient when this regulation becomes effective, may be included as a party, but only during the term of the subgrant that is in force at the time the regulation becomes effective. This will provide adequate time for state support centers now funded through recipients to seek to

become direct recipients if they so desire.

It was also suggested under § 1625.5(e) that the recipient should be able to require the Corporation or another party to produce a board member or another person, other than a current employee, as a witness. Congress, however, has given the Corporation no power to subpoena third parties, including board members. We believe that both parties should bear the consequences under § 1625.8(e) if their current employees are unavailable without good cause, but that no adverse inferences may be made from a party's failure to do what it has no power to do. Certainly, either party may be sanctioned for its efforts to persuade witnesses to refuse to cooperate with the other party or for failure to produce information in its possession, custody, or control which may assist the other party to locate favorable witnesses or evidence.

Section 1625.6

It was also suggested that the period of time to object to the hearing examiner under § 1625.6(b), be extended from 5 to 20 days. It is claimed that the recipient needs the time to make the objection, yet no actual problems are cited as having resulted from the existing provision. The proposal would leave only seventeen (17) days to dispose of the objection, choose another examiner, if necessary, and allow the new examiner to prepare for the prehearing conference. Meanwhile, there would not be a hearing examiner available to rule on the recipient's request to limit or quash the Corporation's requirement for production of documents or witnesses (§ 1625.4(f) or to dismiss the proceeding (§ 1625.7(a)(1)) before the recipient has to make a detailed response. We believe that a more practical approach would be to give the recipient an additional five (5) days (for a total of 10) upon written request, provided it gives the basis of its objection and explains why, despite due diligence, it is unable to make its objection without the extension. This will give the recipient time to ascertain if there is a problem and then to prepare an adequate objection; at the same time, the Corporation will be on notice at an early date that it may need to locate another hearing examiner.

Section 1625.7

It was suggested that the examiner be authorized under § 1625.7(a)(2) to extend the original 30-day period within which the recipient must request a hearing to protest a denial of refunding, or be deemed to have waived its right to it.

Since Congress has indicated that this is an adequate amount of time, we do not think it necessary to make such a change. There may be circumstances where the record shows that a recipient did try to request a hearing and, through extraordinary circumstances, such as an act of God, was unable to do so until a day or two after the 30th day, although extraordinary efforts were made to overcome the adverse circumstances, inform the Corporation of its desire for a hearing, and comply as much as possible with the requirements of § 1625.5. Under such unusual circumstances, constructive notice and service could be found a day or two late, where the record shows good faith, absence of intent to delay, and the Corporation is not prejudiced. No change is needed to permit this.

It is suggested that summary judgment under § 1625.7(a)(3) be limited to the grounds specified in § 1625.3 (a) and (b). Several comments took the view that the grounds specified in paragraphs (c) and (d) of the section were too complex to be the subject of a summary judgment proceeding. We disagree. The summary judgment language is taken from F.R. Civ. P. 56 and is generally applicable to all litigation, although in practice some kinds of claims may only rarely be subject to actual imposition of summary judgment. "[I]t cannot be stated too strongly that no type of action or issue is immune from a summary adjudication and that there will be instances when the rendition of a summary judgment is clearly called for, although the particular action or issue is one which does not lend itself to a summary adjudication as a general proposition." (6 Moore's Federal Practice ¶ 56.17[1]). The suggestion is rejected.

It is suggested that we change the proviso at the end of § 1625.7(d)(2), limiting the opportunity to make a delayed request that the opponent produce a document or a witness. Such a delay request is permitted only in situations which could not be anticipated and where failure to permit it would result in a manifest injustice. It is suggested that we strike the manifest injustice standard and that we permit delayed requests where the situation could not be anticipated, or the request is in response to new witnesses, testimony, or documents. We cannot accept the proposal. The whole purpose of the obligations spelled out in §§ 1625.4 and 1625.5 is to avoid surprise. It must be remembered that recipients will not be forced to wait until the witnesses testify to react to the Corporation's case. They will have it six weeks in advance of the hearing. They

will have it a month before they must answer.

Sections 1625.7 and 1625.8

It is suggested in §§ 1625.7 and 1625.8 that direct testimony be permitted because it may be necessary or desirable later. We have revised §§ 1625.7 (b) and (c) and § 1625.8(d) to allow either party to choose to present direct testimony from its witnesses. The testimony will be limited to the scope of the witness' affidavit and the party will, of course, be required to make these direct witnesses available at that time for a complete cross-examination on both the written and oral testimony. The time used by a party for its witnesses will include the other party's cross-examination of them and will reduce the amount of time available to call the affiant of the other party or make other use of the time allotted for its use during the hearing. Therefore, neither party is likely to make excessive use of the opportunity to present direct testimony.

Each party will be required pursuant to § 1625.7(c)(6) to arrange for the testimony of the witnesses it will rely on and bear the associated expenses. This includes witnesses associated with the other party, except that each party must produce its own affiants for cross-examination. In addition, the hearing examiner may require either party to produce a document or a witness and to bear the expense thereof. He has 7 days to rule on motions regarding requests for documents or witnesses.

Section 1625.8

It was suggested that we strike the provision in § 1625.8(b) (now (a)) that the hearing will normally be held in or near a city with a commercial airport and a U.S. District Court. The concern is that a program could be burdened if a location were chosen that is substantially more inconvenient for the recipient than another location where both locations have an airport and a federal court. Another concern was that a location with an airport and a federal court would be less convenient than the recipient's headquarters. Choice of venue must balance the convenience of witnesses, counsel for both parties, and the hearing examiner. The Corporation would probably prefer Washington, D.C., and the recipients' lawyers would probably prefer their own community. We have revised the proposed provision to eliminate the requirement that the hearing be held at a city with a federal court and to clarify that the hearing will be held at a place in or near a city with a commercial airport that is convenient to the Corporation, the recipient, the community served, and the witnesses.

It is suggested that § 1625.8(f) (renumbered (e)) be revised to provide that if the Corporation fails to produce a witness or document from an organization determined under § 1625.3(d) to be better able to serve the client community, or if it fails to produce one or more members of a monitoring team where it relies on the team report and produces only those team members it needs, the proceeding should be dismissed. We provide in § 1625.8(f) that technical rules of evidence do not apply. While we have not changed this section and no one has commented directly on it, we think it requires discussion here in connection with this proposal and the availability of monitoring reports and monitors. Administrative proceedings subject to the Administrative Procedure Act (APA) often contain hearsay in the documents submitted. This is generally not considered harmful, however, as the hearing examiner is considered competent to give appropriate weight to, or disregard, such evidence. Thus, the Attorney General's Manual on the APA at p. 76, quotes from the Committee Reports on the APA as follows:

"[T]he mere admission of evidence is not to be taken as prejudicial error (there being no jury to be protected from improper influence) although irrelevant, immaterial, and unduly repetitious evidence is useless and is to be excluded as a matter of efficiency and good practice" H.R. Rep. p. 36, Sen. Rep. p. 22 (Sen. Doc. pp. 270, 208).

It is also stated in the Manual that agency action must be supported by "reliable, probative, and substantial evidence" and that "[T]hese are standards or principles usually applied tacitly and resting mainly upon common sense which people engaged in the conduct of responsible affairs instinctively understand". H.R. Rep. p. 36, Sen. Rep. p. 22 (Sen. Doc. pp. 270, 208). In our situation, where a monitoring report contains input from 5 monitors, only 3 of whom are called by the Corporation, it could have some hearsay, and it would be the examiner's responsibility to give such hearsay the weight it deserves, or no weight at all, as appropriate.

With respect to access to witnesses, § 1625.8(e) (as renumbered) gives the examiner the power to draw the adverse inference which is in proportion to the loss. We do not see how adverse inferences can be drawn where a party does not use someone as a witness. Presumably, it does not need that person for its case. Similarly, where there are no subpoena powers, and a party asks that the opponent produce a person not under its control, such as a board member, former employee, or former

consultant, it cannot be assumed that that person is under the control of the opponent. Consequently, no adverse inferences can be drawn.

The dismissal proposal is far too broad and is rejected. For clarification, however, we added specific language, in new paragraph (4) of § 1625.8(e), that no adverse inference can be drawn for failure to produce a document or witness not under the actual control of the party, (or, in the case of the Corporation, an organization identified under § 1625.4(a)(2)). In addition, we provide in § 1625.8(k) that the APA and the Federal Rules of Civil Procedure are to be used as guides where relevant. While the APA does not, *per se*, apply to the Legal Services Corporation, because we are not an agency of the Federal Government (42 U.S.C. 2996d(e)(1)), we must have suitable guidelines and, since we are a creature of Federal law and are federally funded, we believe that the APA and the Federal Rules of Civil Procedure are the appropriate guides to the extent that they are relevant. Their use for such guidance should eliminate many of the concerns of commenters concerning various details of the procedures, fill in any missing details in the procedures, and provide reliable precedents for the interpretation of the many provisions in this part which have been adapted from these sources.

It is suggested that we strike the provisions in § 1625.8(f) (now (e)) permitting the examiner to review the exercise of the attorney-client privilege. A full and fair hearing before an independent hearing examiner implies that the hearing examiner—like a judge or an administrative law judge—will have the power to rule on questions of privilege and to issue appropriate protective orders. The statutory provision that prohibits the Corporation from having access to reports or records subject to the attorney-client privilege (section 1009(d) of the Act, 42 U.S.C. 2996b(d)) does not apply to the hearing examiner since the statute also requires that the hearing examiner be independent of the Corporation (section 1011(2), 42 U.S.C. 2996j(2)). There have been instances during monitoring where the privilege has been invoked under circumstances where it seemed frivolous, a sham, or an excuse. Yet, we are expected to monitor "to insure that the provisions of [the Act] and the bylaws of the Corporation and applicable rules, regulations, and guidelines promulgated pursuant to [the Act] are carried out" (42 U.S.C. 2996f(d)). Obviously, there must be an adequate balancing of interests to achieve legislative purposes, assure fiduciary

accountability, and protect taxpayer dollars.

The Corporation is not in an adversary relationship with the recipients' clients. We seek nothing from or about individual persons represented by the recipients. We do not want to know their secrets or confidences. We do not see how they can be harmed by provisions that prevent recipients' attorneys from attempting to use the privilege as a shield to make selective presentations under the guise of full disclosure. The privilege, of course, is intended for the protection of the client, not for the attorney.

We provide that the hearing examiner may look at the document with the privileged matter expunged and, if he thinks exercise of the privilege is in bad faith or in error, he can ask to see the document for *in camera* inspection, and may issue such finding or order as the facts may warrant, but he may not disclose any of this privileged information to the President. In addition, authority is given the examiner to issue such protective orders as necessary to protect client confidences and to prohibit unjustified dissemination of evidence (§ 1625.7(c)(3)).

Several commenters were particularly concerned about the provision permitting the hearing examiner to require a good faith effort by the attorney to get the client to waive the privilege. Several referred to the American Bar Association Ethics Committee Informal Opinion No. 1287 (June 7, 1974) (apparently inadvertently cited as No. 1287).

The Corporation considered clarifying language to incorporate the language of Informal Opinion No. 1287 because we think our purpose was misunderstood. Some recipients, for example, have refused access by Corporation auditors to the accounting records regarding the client trust accounts on the ground their records contain client names. It is plausible that many clients would be happy to sign a waiver limited to that necessary for the Corporation to ascertain, *inter alia*, if all funds to which they may be entitled have been paid promptly to them and that all the funds have been accounted for properly. A recipients' assertion of the privilege in such circumstances and refusal to offer the client the opportunity to waive—fully consistent with relevant ABA opinions—would appear highly questionable. However, because of the importance and sensitivity of the privilege and to avoid any possible semblance that clients of recipients are entitled to any less confidentiality and dignity than any other clients, we

deleted all reference to efforts to obtain a waiver.

Sections 1625.8 and 1625.9

It is suggested that § 1625.8 and § 1625.9 be revised to provide that the Corporation will proceed first. We think that the Corporation should put on its entire case, in writing, with its show cause order. If it cannot do that, it should not initiate the proceeding. If it fails to make a *prima facie* case, the recipient should not have to make a detailed response. A specific provision has been added to permit the recipient to challenge a *prima facie* case (§ 1625.7(a)(1)) and if it makes timely request and prevails it can avoid having to make a response under § 1625.5. The recipient's response will reduce the disagreement to specific issues of fact, or argument as to whether the facts constitute a lawful basis for denial of refunding. The rule clearly specifies that, after the recipient has applied for refunding, the initial burden of going forward is placed on the Corporation, and only if the Corporation makes a *prima facie* case in its initial affidavits and other submissions does the burden shift to the recipient to show cause why it should receive refunding. Then, the Corporation has an opportunity to rebut and the recipient has the opportunity for sur-rebuttal. Accordingly, § 1625.9 is revised to omit the reference to the burden of going forward.

Section 1625.9

It is suggested that under § 1625.9 the Corporation shall have the burden of going forward to establish a *prima facie* case by a preponderance of admissible evidence. Perhaps no other provision of the regulations, with the possible exception of the comments on attorney-client privilege, drew more comments. Most argued that a show cause proceeding does not shift the burden of proof, while ignoring the statements of Senators Hatch and Rudman (Cong. Rec. Oct. 21, 1983, P. S14446) that Congress intended to shift the burden of proof to the recipient. The only House exchange, between Congressmen Morrison and Smith, is fully consistent with this interpretation (Cong. Rec. Nov. 9, 1983, P. H9562). We recognize that there are state court decisions which state that a show cause proceeding does not always shift the burden of proof (i.e., persuasion), although it may shift the burden of going forward where a *prima facie* case is made at the time of issuance of the show cause order. We must recognize here, however, that it was the Congressional intent that the burden be shifted, even though many

commenters may have disagreed with the method used. In light of the legislative record, the suggestion must be rejected. As noted above, however, the reference to the burden of going forward is deleted.

A great many comments also addressed the way we explained the recipient's burden of proof under each of the four standards set out in § 1625.9. The descriptive language used in § 1625.9 is the reverse of that used in § 1625.3. For example, where § 1625.3(b) provides that there can be a denial of refunding where there has been "significant failure (emphasis supplied) by a recipient to comply" with the cited sections of the Act and the regulations, § 1625.9(b) provides that the recipient must show "by a preponderance of admissible evidence . . . that it has complied" (emphasis supplied) with those cited sections of the Act and the regulations. The comments suggested that the Corporation's burden as well as that of the recipient should be spelled out under each ground. We do not think it is necessary to do this.

The new § 1625.9(c) standard is different from the standard in old § 1625.3(c). We have conformed § 1625.3(c) to that of § 1625.9(c) to insure that the standards under both sections as revised are fully consistent. The conforming change is as follows: Under old (c), except in "unusual circumstances", a recipient which had had a significant failure to provide adequate service had to receive notice and opportunity to take corrective action before formal proceedings could be commenced. Under the new standard, the recipient cannot claim that it was not notified and given an opportunity to take corrective action unless it could not reasonably be expected to have prevented or corrected its failure without such notice and opportunity to correct. We think this a considerable improvement in the regulations. The old requirement could be used repeatedly by a neglectful or incompetent recipient to buy time and avoid a formal proceeding. In effect, the Corporation would be responsible for continuous current awareness of all recipients' compliance with this requirement at all times—an impossible obligation. Under the new standard, a recipient will be able to claim it should have been given notice and opportunity to take corrective action only where without such notice it could not reasonably have been expected to have prevented or corrected the failure. Thus, recipients are expected to maintain adequate self-appraisal procedures and standards and to take necessary

corrective action on their own, and cannot wait until the Corporation makes a monitoring trip or receives a complaint, knowing they will have an opportunity to correct before a formal action can be taken. Clients deserve better than that.

Section 1625.11

It is recommended that, on review by the President under § 1625.11, the examiner's decision shall be modified or reversed only if there was abuse of discretion or clear error of law. We do not think the President can limit his review in this fashion. This is the standard for court review of a final agency action and the examiner's action is not final. On review of an initial decision of an administrative law judge, an agency subject to the Administrative Procedure Act generally has all the powers it would have had in making the initial decision. See 5 U.S.C. 557(b). The analogy is persuasive and the suggestion is rejected.

Other Matters

1. One comment complained about the rewording of the statement of purpose. We believe we reflect Congressional intent in the Act and the appropriations riders as accurately as practicable. We have not changed it.

2. Several comments reargued the changes made in 1983 when denial of refunding procedures (Part 1625) were split from termination actions (Part 1606). Those suggested changes were discussed and considered in full at that time. We think it is unnecessary to reargue them. Accordingly, we will not discuss suggestions concerning the 1983 changes any further. However, we did accept the suggestions that challenges to Corporation rules may be made in proceedings under this part, but required that the challenges be made no later than the request for a hearing or that they be waived.

3. Various changes were made to conform sections and to provide a consistent and coherent set of procedures. These changes include the following:

a. The title "presiding officer" was changed to "hearing examiner" throughout to reflect the language of the Act and appropriations riders.

b. The earliest date on which the Corporation can require a recipient's employee to testify under § 1625.4(f) will be after the date on which the recipient requests a hearing under § 1625.4(d).

c. Depositions, if available, and relevant papers and parts of papers, must accompany affidavits under § 1625.4(b) and § 1625.5(c).

d. Each party will give a list of all its

witnesses, including its own and opponents' affiants and all others who are to testify, to one another and to the hearing examiner, 24 hours before the prehearing conference under § 1625.7(b). They will indicate whether they want the witness for cross-examination or direct testimony, and, if they expect the opponent to produce the witness, they will explain the basis for this expectation.

e. Under § 1625.7(c)(4), the hearing examiner may not go into matters not necessary for his or her decision. For example, it would be improper to allow explanation of the Corporation's exercise of investigative or prosecutorial discretion in bringing the action against the particular recipient rather than whether the facts found justify refunding under applicable legal standards.

f. Section 1625.10(b) has been revised to more comprehensively spell out what the initial decision will contain. It will be a part of the record, and will have a statement of findings and conclusions, and the reasons or basis for them, on all material issues of fact, law or discretion presented. The last sentence of old paragraph (b) is made into a new paragraph (c).

g. Section 1625.11 has been revised to reduce from 10 to 7 days, the time within which

(1) The Corporation or the recipient can ask for review of the hearing examiner's decision,

(2) an initial decision becomes final, and

(3) The President must make his decision.

h. Section 1625.12 has been revised to conform the provisions dealing with time to the new statutory requirements. Thus, any extensions of time must not prevent completion of the hearing within 60 days of the receipt by the recipient of the notice under § 1625.4, or prevent the President from reaching a final decision (including time to consider a request for review) within 90 days of the notice, unless extraordinary circumstances require an extension to prevent a manifest injustice.

The time computation language of paragraph (a) of the section is taken from Rule 6 of the Federal Rules of Civil Procedure. By mutual agreement any time period may be shortened. In addition, former paragraph (a) of § 1625.15 has been transferred to the section as new paragraph (d). We believe it is more appropriate here since it relates to time requirements. Paragraph (e) of the section permits waiver or modification of any provision except paragraph (b) of section 12 which deals with enlargement of time.

List of Subjects in 45 CFR Part 1625

Administrative practice and procedure, Legal Services,

For the reasons set out above, 45 CFR Part 1625 is revised to read as follows:

PART 1625—DENIAL OF REFUNDING

Sec.	
1625.1	Purpose.
1625.2	Definitions.
1625.3	Grounds for denial of refunding.
1625.4	Notice.
1625.5	Request for hearing.
1625.6	Hearing examiner.
1625.7	Pre-hearing procedures.
1625.8	Conduct of the hearing.
1625.9	Burden of persuasion.
1625.10	Initial decision.
1625.11	Final decision.
1625.12	Time and waiver.
1625.13	Right to counsel.
1625.14	Reimbursement.
1625.15	Interim funding.
1625.16	Termination funding.

Authority: Sec. 1006(b)(1) and (3), 1007(a)(1), (3) and (9), 1007(d) and (e), 1008(e), and 1011(2) of the Legal Services Corporation Act, as amended, (42 U.S.C. 2996e(b)(1) and (3), 2996f (a)(1), (3) and (9), 2996f(d) and (e), 2996g(e) and 2996(j); Pub. L. 98-166, 97 Stat. 1071; Pub. L. 98-411, 98 Stat. 1545; Pub. L. 99-180, 99 Stat. 1136.

§ 1625.1 Purpose.

This part is intended to provide timely, full, fair, and impartial procedures for allowing a recipient to show cause why its funding should be continued when the Corporation has made a preliminary determination that an application for refunding of a grant or contract should be denied. This part is further intended to provide for completion of these procedures in a timely manner so that funding issues are expeditiously resolved so as to avoid unnecessary and protracted disruption in the delivery of legal services to eligible clients.

§ 1625.2 Definitions.

"Denial of refunding" means a decision that, after the expiration of a grant or contract, a recipient:

- (a) Will not be provided financial assistance; or
- (b) Will have its annual level of financial support reduced to an extent that is not required either by a change of law, or a reduction in the Corporation's appropriation that is apportioned among all recipients of the same class in proportion to their current level of funding, or by the uniform application of a statistical formula for the reallocation of funding among the members of the same class, and is more than 10 percent below the recipient's annual level of financial assistance under its current grant or contract.

§ 1625.3 Grounds for denial of refunding.

Refunding may be denied when:

(a) Denial is required by, or will implement, a provision of law, a Corporation rule, regulation, guideline, or instruction that is generally applicable to all recipients of the same class, or a funding policy, standard, or criterion approved by the Board; or

(b) There has been significant failure by a recipient to comply with a provision of law, or a rule, regulation, guideline, or instruction issued by the Corporation, or a term or condition of a current or prior grant from or contract with the Corporation; provided, however, that a recipient's failure to comply with any of the requirements in this paragraph at a time when the requirement was not in effect or at a time more than 6 years prior to the date the recipient receives notice of the failure pursuant to § 1625.4 shall not be a basis for denial of refunding; or

(c) There has been significant failure by a recipient to use its resources to provide economical and effective legal assistance of highly quality as measured by generally accepted professional standards, the provisions of the act, or a rule, regulation, or guideline issued by the Corporation. If the recipient could not reasonably be expected to have prevented or corrected its failure without notice from the Corporation and an opportunity to have taken effective corrective action, refunding shall not be denied for this cause unless the Corporation has given the recipient such notice and opportunity; or

(d) The Corporation finds that another organization, whether a current recipient or not, could better serve eligible clients in the recipient's service area.

§ 1625.4 Notice.

When there is reason to believe that refunding should be denied, the Corporation shall serve a written notice upon the recipient, and the Chairperson of its governing board, which shall include:

(a)(1) A short and plain statement, in numbered paragraphs, the contents of each of which shall be limited as far as practicable to a single set of circumstances, of the factual grounds for the denial of refunding;

(2) If the ground specified in § 1625.3(d) is asserted, the statement shall identify the other organization and specify the basis for the Corporation's assertion that it could better and more economically serve eligible clients;

(b) An affidavit or affidavits covering the direct testimony of each witness upon whom Corporation's counsel relies; such affidavit(s) shall be made on

personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein; sworn or certified copies of all papers or parts thereof referred to in an affidavit shall be appended thereto; depositions, if available, shall be included;

(c) A memorandum of points of law and authorities showing with particularity:

(1) that the affidavit(s), paper(s), and deposition testimony specified in paragraph (b) of this section constitute evidence of such discrete factual allegations as were identified in paragraph (a)(1) of this section and as are sufficient under applicable law to support denial of refunding;

(2) the legal standards, rulings, statutes, regulations, or decisional law upon which the Corporation relies in advancing its theories or arguments in support of denial of refunding with particularized reference and adequate citation to competent authority; and

(3) as proximately as reasonably possible, the logical nexus and points of reference among (i) affidavit(s), paper(s), and deposition testimony specified in paragraph (b) of this section, (ii) the factual grounds as identified in enumerated paragraphs specified by paragraph (a)(1) of this section, and (iii) the legal theories or arguments advanced by the Corporation to justify denial of refunding.

(d) A directive to show cause, signed by an official of the Corporation other than the President, which shall inform the recipient that, if within 30 days of the recipient's receipt of this notice the Corporation receives a request for a hearing as specified in § 1625.5 of this part and accompanied or preceded by all documents specified by paragraph (f) of this section, a hearing will be held; the directive shall identify:

(1) The name, business address, telephone number, and brief summary of professional qualifications of the hearing examiner and a statement that the examiner supports the purposes of the Act;

(2) The name, address, and phone number of the Corporation's counsel;

(3) The time and place of the pre-hearing conference and the last date upon which it may be held, which date shall be no more than 37 days after the date of the notice; and

(4) The time and place of the hearing and the last date on which it can start, which date shall be no more than 44 days after the date of the notice;

(e) A copy of these procedures as contained in Part 1625.

(f) A requirement, signed by an official of the Corporation other than the President, may be included that the recipient produce a specific document or documents in its possession, custody, or control no later than the time the recipient requests a hearing or produce a person in its employ to testify in a pre-hearing deposition at a date (subsequent to the recipient's request for a hearing), place, and time to be specified in the requirement or to be available to testify at the show cause hearing; provided, however, that the recipient may serve a motion within 10 days of its receipt of the notice, for the hearing examiner to limit or quash the requirement; the hearing examiner shall rule on such motion within 7 days; if an objection to the hearing examiner, filed pursuant to § 1625.6(b) has delayed such ruling, the hearing examiner shall promptly rule when the objection is resolved.

§ 1625.5 Request for hearing.

Within 30 days of receipt of the notice, the recipient shall serve upon the Corporation a request for a hearing, which must include:

(a) A short and plain statement in numbered paragraphs, that is either an admission or a denial of each of the numbered paragraphs in the notice; any averment in the notice which is not specifically denied is deemed admitted;

(b) A short and plain statement, in numbered paragraphs, the contents of each of which shall be limited as far as practicable to a single set of circumstances, of all factual grounds on which the recipient will rely to show cause why refunding should not be denied;

(c) An affidavit or affidavits covering the direct testimony of each witness upon whom recipient's counsel relies and appending all exhibits to such testimony; such affidavit(s) shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein; sworn or certified copies of all papers or parts thereof referred to in an affidavit shall be appended thereto; depositions, if available, shall be included; the recipient, must set forth by affidavit, sworn or certified copies of papers, and depositions, specific facts showing that there is a genuine issue of material fact for a show cause hearing;

(d) A memorandum of points and authorities showing that the Corporation has failed to provide affidavits or other evidence sufficient to deny refunding or that the affidavit(s) specified in paragraph (c) of this section constitute evidence of facts necessary to show

cause why refunding should not be denied under applicable legal standards.

(e) The recipient may serve a request on the hearing examiner that the Corporation be required, upon sufficient notice, to produce a specific document or documents in the possession, custody, or control of the Corporation or of another organization identified under § 1625.4(a)(2) or produce a person in its employ (or that of such other organization) to testify in a pre-hearing deposition at a date, place, and time to be specified in the requirement or to be available to testify at the show cause hearing.

§ 1625.6 Hearing examiner.

(a) The hearing examiner shall be appointed by the President, and shall be a person who is familiar with legal services and supportive of the purposes of the Act, who is independent, and who is not an employee of the Corporation.

(b) Within 5 days of receipt of notice of the name of the hearing examiner, the recipient may file a written notice that it objects to the hearing examiner on the basis that this person does not fit the criteria of paragraph (a) of this section or has made statements or taken actions indicating personal bias against the recipient. The recipient will be granted a 5-day extension for presenting the basis of its objection if it files a timely notice of objection and a statement as to why it is unable with due diligence to present the basis of its objection without the extension.

(c) The President shall consider the recipient's objection(s) with any supporting documentation and, within 10 days thereafter, issue a written notice of a decision either to retain or replace the hearing examiner.

(d) No objection to the appointment of a hearing examiner may be made unless presented in the manner specified in this section.

§ 1625.7 Pre-hearing procedures.

(a)(1) On or before the date it requests a hearing, the recipient may serve a motion for an interim decision that the notice fails to state an adequate basis for the denial of its application for refunding. The hearing examiner shall rule on such motion within 7 days and shall grant the motion if he or she finds that the facts sworn to in the notice do not provide an adequate basis to deny the application for refunding.

(2) If the recipient fails to make a request for hearing in such a timely fashion that it is received by the Corporation within 30 days of receipt of the notice by the recipient, the recipient shall be deemed to have waived its right

to a hearing and a final decision shall be entered by the President.

(3) If the recipient makes timely request for a hearing, the hearing examiner may, *sua sponte* or on the motion of a party, review the notice, the request for a hearing, and all documents submitted by the recipient pursuant to requirement(s) issued pursuant to § 1625.4(f) to determine before the date set for the hearing whether there is any genuine issue as to any material fact and whether a party is entitled to summary judgment or partial summary judgment as a matter of law. If, considering the papers in the light most favorable to the opposing party, the hearing examiner finds that the parties' submissions, admissions on file, affidavits, and any other matter on the record show that there is no genuine issue as to any material fact and that either party is entitled to summary judgment as a matter of law, the hearing examiner shall issue to the President a written initial decision pursuant to § 1625.10(b). If such a decision with a partial summary judgment should become final pursuant to § 1625.11, the hearing examiner may exclude further evidence relevant only to an issue or issues resolved by such decision.

(b) If the recipient makes a timely request for a hearing, a pre-hearing conference shall be held within 7 days. At least 24 hours prior to the pre-hearing conference, each party shall cause to be delivered in person to the hearing examiner and counsel for the opposing party a list including all its affiants it intends to call for direct testimony, all the other party's affiants it will require the party to produce for cross-examination, and all other persons who are to testify on direct or cross-examination. For each person on its list, the party will indicate whether the person will be called for direct testimony or for cross-examination and whether the party will require the opposing party to produce the witness (and, if so, the basis). At the pre-hearing conference, the matters to be considered shall include:

- (1) Whether summary judgment or partial summary judgment ought to be issued;
- (2) Proposals to define and narrow the issues;
- (3) Efforts to stipulate the facts, in whole or in part;
- (4) The order of presentation of exhibits and witnesses, along with their number and identity;
- (5) The possibility of presenting the case on written submission or oral argument;

(6) Any necessary variation in the date, time, and place of the hearing;

(7) The possibility of settlement; and

(8) Such other matters as may be appropriate.

(c) (1) The hearing examiner may establish specific procedures consistent with this part for conduct of the show cause hearing.

(2) The hearing examiner may require or permit written submission of additional statements discussing any matter described in paragraph (b) of this section as well as any other arguments and supporting material at any time prior to completion of the show cause hearing.

(3) The hearing examiner may issue appropriate protective orders to prohibit the parties from disseminating evidence to other than specifically named individuals or such other restrictions as may be necessary to protect client confidences.

(4) The hearing examiner may not consider any issue not necessary for a determination of whether the recipient's refunding application will be denied.

(5) The only two parties to the proceeding will be the Corporation and the recipient; provided, however, that a state support center which is a subgrantee or a subrecipient as of the time of the effective date of this regulation may be joined as a party by the hearing examiner but only during the remaining term of such existing subgrant or other agreement.

(6) The hearing examiner shall require each party to make arrangements for the testimony and cross-examination of the witnesses and affiants it will rely upon and bear the expenses associated with the testimony.

(d) (1) The hearing examiner may, at any time prior to the completion of the hearing, require either party, upon sufficient notice, to produce a relevant document in its possession, custody or control; the hearing examiner may require either party to produce a person in its employ to testify at the hearing.

(2) The hearing examiner shall not issue such requirements at the request of the Corporation's counsel if request is not made within seven days of the Corporation's receipt of the request for a hearing, or at the request of the recipient, if request is not made at or before the time it makes a request for a hearing, unless the requesting party can show that it could not have anticipated its need to request the requirement and failure to issue the requirement would cause a manifest injustice.

(3) In proceedings under § 1625.3(d) the hearing examiner may likewise require the Corporation to produce a document in the possession, custody or

control of another organization identified pursuant to § 1625.4(a)(2) or a person in the employ of such other organization, subject to the sanctions set forth in § 1625.8(f).

(4) The hearing examiner shall rule on motions respecting requirements for the production of documents or witnesses within 7 days.

§ 1625.8 Conduct of the hearing.

(a) The show cause hearing shall be held within 7 days after the pre-hearing conference in or near a city having an airport with regularly scheduled airline service and convenient to the Corporation, to the recipient, the community it serves, and to witnesses determined by the hearing examiner to be necessary for the show cause hearing.

(b) The hearing examiner shall preside over the show cause hearing, avoid delay, maintain order, conduct a full and fair show cause hearing, and insure that an adequate record of the facts and issues is made.

(c) The show cause hearing shall be open to the public, unless, in the interests of justice or maintaining order, the hearing examiner shall determine otherwise.

(d) (1) Since each party will have presented the direct testimony of its witnesses by their affidavits, the show cause hearing will be limited, except as hereinafter provided, to cross-examination of the other party's affiants, examination of those employee(s) of the other party from whom the party was unable, despite due diligence, to obtain affidavit(s) or pre-hearing deposition(s), and rebuttal testimony (if allowed).

(2) The recipient will proceed first and will be allowed a total of up to 7 days to cross-examine the Corporation's affiant(s) or to present testimony from the Corporation's or the other organization's employee(s).

(3) The Corporation will then be allowed a total of up to 7 days to cross-examine the recipient's affiant(s), to present testimony from the recipient's employee(s), or to adduce rebuttal testimony.

(4) The recipient will then be allowed a total of up to one day of sur-rebuttal testimony.

(5) During the time allotted to a party, it may present its affiant(s) for direct testimony limited to the scope of the respective affidavits(s) and for cross-examination by the opposing party at that time.

(6) The hearing examiner will allow a total of up to one day divided evenly between the parties for closing arguments.

(e) (1) If either party fails, without good cause, to produce a person or document required to be produced under §§ 1625.4(f), 1625.5(e), or 1625.7(d), the hearing examiner may make a finding adverse to the party or any lesser determination.

(2) If a document is withheld on the basis of privilege, the hearing examiner may require the party to provide a version of the document that does not contain privileged information, explain the basis of the withholding, and, if it appears that the privilege is not asserted in good faith or is asserted in error, require production of the document for *in camera* inspection. After such inspection, the hearing examiner may issue such finding or order as the facts may warrant. The hearing examiner shall not disclose to the President of the Corporation information on which a claim of privilege or confidentiality is made.

(3) A recipient may neither introduce into the record nor rely upon any statement by a witness, any document, or other evidence if the Corporation, subsequent to the effective date of this regulation, had requested the recipient to arrange for that witness to cooperate in an interview or to produce the document or other evidence prior to issuance of the notice, unless the recipient is able to show good cause for its failure to comply with the request at an earlier date than it did.

(4) No adverse inference may be made if a party fails to produce a document which is not in the party's possession, custody, or control or that of another organization that is actually controlled by the party (or, for the Corporation, another organization identified under § 1625.4(a)(2)); no adverse inference may be made if a party fails to produce a witness that is not an employee of the party or of another organization that is actually controlled by the party or, for the Corporation, another organization identified under § 1625.4(a)(2).

(f) Technical rules of evidence shall not apply. The hearing examiner shall make any procedural or evidentiary ruling that may help to insure full disclosure of the facts, to maintain order, or to avoid delay. Irrelevant, immaterial, repetitious or unduly prejudicial matter may be excluded.

(g) (1) Official notice may be taken of published policies, rules, regulations, guidelines, and instructions of the Corporation, of any matter of which judicial notice may be taken in Federal court, or of any other matter whose existence, authenticity, or accuracy is not open to serious question.

(2) The validity of rules, regulations, guidelines and instructions duly published under § 1008(e) of the Act may be challenged only in a complete brief served no later than the request for a hearing; no argument which could have been included in such a brief, but was not, may be raised at a later time.

(h) The hearing will be recorded at Corporation expense. The Corporation will send one copy of the transcript to the recipient and the hearing examiner as soon as it is received.

(i) At the discretion of the hearing examiner, the recipient and the Corporation may be required or allowed to submit post-hearing briefs or proposed findings and conclusions. The recipient's brief shall be served within 5 days of the close of the hearing and the Corporation's 4 days thereafter. Either party should note any relevant transcript errors in an addendum to its post-hearing brief (or if no brief will be submitted, in a letter submitted within the time limit set for a brief; if the transcript or a part of the transcript is not received 4 or more days before the time set for its brief, errors must be noted within 4 days of receipt of the transcript or part of the transcript).

(j) The transcript and any post-hearing briefs or letters will become part of the record.

(k) The Federal Rules of Civil Procedure and the Administrative Procedure Act shall provide guidance for all actions under this part when relevant procedures or rules therein are not inconsistent with the provisions of this part or of relevant laws specifically applicable to such an action.

§ 1625.9 Burden of persuasion.

The recipient shall have the ultimate burden of persuasion by a preponderance of the evidence on the record that the application for refunding should not be denied. If the Corporation has asserted, as a ground for the denial of the application for refunding, the grounds specified in:

(a) Section 1625.3(a), the recipient must establish by a preponderance of the evidence on the record that it is not in a class of recipients affected by the law, the Corporation's rule, regulation, guideline, or instruction, or a funding policy, standard, or criterion approved by the Board or that the proposed action is not required by or will not implement such policy;

(b) Section 1625.3(b), the recipient must establish by a preponderance of the evidence on the record that:

(1) It has complied during the specified period of time in all respects with each specified provision of law, with each specified provision of the

Corporation's rules, regulations, guidelines, and instructions, and with each specified term and condition of current or prior grants from, or contracts with, the Corporation as specified in the notice; or

(2) All of its violations are merely minor, technical or insignificant;

(c) Section 1625.3(c), the recipient must establish by a preponderance of the evidence on the record that:

(1) It has provided economical and effective legal assistance of high quality as measured by generally accepted professional standards, the provisions of the act, or a rule, regulation, or guideline issued by the Corporation; or

(2) The Corporation has not given the recipient prior notice of its failure and an opportunity to take effective corrective action and the recipient could not reasonably be expected to have prevented or corrected its failure without notice from the Corporation and an opportunity to have taken effective corrective action before it received the notice specified in § 1625.4 of this part;

(d) Section 1625.3(d), the recipient must establish by a preponderance of the evidence on the record that it could serve eligible clients in its service area better and more economically than the other organization specified in the notice.

§ 1625.10 Initial decision.

(a) Within 16 days of the completion of the hearing, the hearing examiner shall cause an initial decision to be served upon the parties:

(1) Granting refunding; or
(2) Granting refunding subject to any modification or condition that may appear necessary and appropriate on the basis of information disclosed at the hearing or adduced from the record; or
(3) Denying refunding.

(b) The initial decision shall be a part of the record and shall include a statement of findings and conclusions, and the reasons or basis therefor, on all the material issues of fact, law, or discretion presented on the record.

(c) Findings of fact shall be based solely on evidence disclosed at the hearing or adduced from the record or on matters of which official notice is taken.

§ 1625.11 Final decision.

(a) If neither the Corporation's counsel nor the recipient requests review by the President, the initial decision shall become final 7 days after receipt by the recipient.

(b) The recipient or the Corporation's counsel may seek review by the President of the initial decision. A request shall be made in writing to the

President and the other party shall be served within 7 days of receipt by the party of the initial decision, and shall state in detail the reasons for seeking review.

(c) Within 7 days after receipt of a request for review of the initial decision, the President shall adopt, modify or reverse the initial decision, or shall direct further consideration of the matter. In the event of modification or reversal, the President's decision shall conform to the requirements of § 1625.10(b).

(d) A decision by the President shall become final upon service on the recipient.

§ 1625.12 Time and waiver.

(a) *Computation of time.* In computing any period of time prescribed or allowed by this part or by order of the President or the hearing examiner, the day of the act, event or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a legal holiday, in which event the period runs until the end of the next day which is not a Saturday, a Sunday, or a legal holiday. All periods shall otherwise include Saturdays, Sundays, and legal holidays. A deadline for a party or the hearing examiner to submit a document is met only if the document is actually received by counsel for the other party and by the hearing examiner by the end of the relevant time period.

(b) *Enlargement of time.* The President or the hearing examiner may enlarge any period of time on agreement of the parties if, and only if, the President or the hearing examiner makes a determination in writing or on the record either that:

(1) The enlargement will not prevent completion of the hearing within 60 days from receipt of the notice by the recipient or prevent the President from reaching a final decision—with at least 7 days to consider the request for review—within 90 days from receipt of notice by the recipient; or

(2) The existence of extraordinary circumstances require the enlargement of time to prevent manifest injustice.

(c) *Reduction of time.* On agreement of the parties and the hearing examiner, any period of time may be shortened.

(d) Failure by the Corporation to meet a time requirement of this part shall not entitle a recipient to refunding of its grant or contract.

(e) Any provision of the rules in this part, excepting those in § 1625.12(b), may be waived or modified:

(1) By the hearing examiner with the assent of the recipient and counsel for the Corporation; or

(2) By the President for good cause shown.

§ 1625.13 Right to counsel.

At a hearing under § 1625.8, the Corporation and the recipient each shall be entitled to be represented by counsel, or by an employee.

§ 1625.14 Reimbursement.

If refunding is granted after a notice has been issued under § 1625.4, a recipient shall be entitled to receive reimbursement from the Corporation for reasonable and actual expenses including attorney's fees up to the hourly equivalent of the rate of level V of the executive schedule specified in Section 5316, of Title 5, United States Code, that were required in connection with proceedings under this part, to the extent it has prevailed and where the hearing examiner finds the Corporation's position to have been substantially without merit.

§ 1625.15 Interim funding.

Pending a final determination under this part, the Corporation shall provide the recipient with interim funding necessary to maintain its current level of legal assistance activities for eligible clients under the Act.

§ 1625.16 Termination funding.

After a final decision to deny refunding, and without regard to whether a hearing has occurred, the Corporation may authorize temporary funding if necessary to enable a recipient to close or transfer current matters in a manner consistent with the professional responsibility of the recipient and the recipient's attorneys to their present clients.

Dated: April 24, 1986.

John H. Bayly, Jr.,

General Counsel.

[FR Doc. 86-9492 Filed 4-28-86; 8:45 am]

BILLING CODE 6820-35-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Determination of Endangered Status for *Hibiscadelphus distans* (Kauai Hau Kuahiwi)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service determines *Hibiscadelphus distans* (Kauai hau kuahiwi) to be an endangered species, under the authority contained in the Endangered Species Act of 1973, as amended (Act). Only ten individuals of this endemic tree remain in the wild, occurring in the State-owned Pu'u Ka Pele Forest Reserve, on the island of Kauai, Hawaii. Imminent threats to this species and its habitat exist from feral goat browsing, fire, competition with exotic species, and human disturbance. This determination that *Hibiscadelphus distans* is an endangered species implements the protection provided under the Act.

DATE: The effective date of this rule is May 29, 1986.

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

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

SUPPLEMENTARY INFORMATION:

Background

Hibiscadelphus distans was discovered by L. Earl Bishop and Derral Herbst in 1972 and was described by them as a new species the following year (Bishop and Herbst 1973). It likely was more abundant and more widely distributed at one time, but today only ten individuals are known to exist. It occurs on State-owned land within the Pu'u Ka Pele Forest Reserve, Koai'e Valley, Waimea Canyon, island and county of Kauai, Hawaii.

This species is a small tree, up to 5.5 meters (18 feet) tall, with green, heart-shaped leaves and smooth bark. Its flowers are approximately 2.5 centimeters (1 inch) long and are greenish yellow, turning maroon with age. The plants live within an area of approximately 0.02 hectares (2,000 square feet) on a steep rock bluff at an elevation of about 300 meters (1,000 feet). This area is a remnant of a native, open, dryland forest and receives approximately 150 centimeters (60 inches) of rain annually. The area's yearly mean temperature ranges from 18.5 to 25.7 degrees Centigrade (65 to 78 degrees Fahrenheit). Associated species include *Sapindus oahuensis* (lonomea), *Erythrina sandwicensis* (wiliwili), *Diospyros ferrea*, (lama), and *Melia azedarach* (chinaberry). The ground cover is sparse and consists chiefly of exotic grasses and forbs (Herbst 1978).

Although goats are not known to browse on the present plant population, browsing by an existing large feral goat population probably was responsible for the species' decline and could threaten the continued existence of the remaining plants. Other threats come from fire, competition with exotic species, and human disturbance. A cooperative effort between Federal and State agencies is needed to protect the remaining plants and to provide for species' recovery.

The Secretary of the Smithsonian Institution, as directed by section 12 of the Endangered Species Act of 1973 (Act), prepared a report on those plants considered to be endangered, threatened, or extinct in the United States. This report (House Document No. 94-51) was presented to Congress on January 9, 1975. On July 1, 1975, the Fish and Wildlife Service published a notice in the *Federal Register* (40 FR 27823) accepting this report as a petition within the context of section 4(c)(2) of the Act (petition acceptance provisions are now contained in section 4(b)(3)(A)), and giving notice of its intention to review the status of the plant taxa named therein, including *Hibiscadelphus distans*. As a result of this review, on June 16, 1976, the Service published a proposed rule in the *Federal Register* (41 FR 24523) to determine approximately 1,700 vascular plant species, including *Hibiscadelphus distans*, to be endangered pursuant to section 4 of the Act. In 1978, amendments to the Act required that all proposals over 2 years old be withdrawn. A 1-year grace period was given to proposals already over 2 years old. On December 10, 1979, the Service published a notice in the *Federal Register* (44 FR 70796) of the withdrawal of that portion of the June 16, 1976, proposal that had not been made final, along with four other proposals that had expired. The Service published an updated notice of review for plants on December 15, 1980 (45 FR 82480), including *Hibiscadelphus distans*. On October 13, 1983, and October 12, 1984, findings were made that listing *Hibiscadelphus distans* was warranted, but precluded by other pending listing actions, in accordance with section 4(b)(3)(B)(iii) of the Act. Such a finding requires the petition to be recycled, pursuant to section 4(b)(3)(C)(i) of the Act. A proposal, constituting a final finding that the petitioned action was warranted, was published on July 16, 1985 (50 FR 28873), based on information available in 1976 and gathered after that time and summarized in a detailed status report prepared by the Service (Herbst 1978). The Service now

determines *Hibiscadelphus distans* to be an endangered species with the publication of this final rule.

Summary of Comments and Recommendations

In the July 16, 1985, proposed rule (50 FR 28873) and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule. Appropriate State agencies, county governments, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. A newspaper notice that invited general public comment was published in *The Garden Island* on August 16, 1985, and in the *Honolulu Star Bulletin* and the *Honolulu Advertiser* on August 21, 1985. Four letters of comment were received and are discussed below. A public hearing was requested and held in Lihue, Kauai, Hawaii on November 7, 1985. The comment period was reopened following the public hearing, closing again December 9, 1985 (50 FR 42196). One person testified at the hearing; his testimony is included in the following summary.

Comments were received from the Governor of the State of Hawaii, the Western Regional Office of the National Audubon Society, and a Professor of Botany at the University of Hawaii. Testimony at the public hearing was presented by the Administrator of the Division of Forestry and Wildlife of the State Department of Land and Natural Resources. All comments and testimony supported the listing of *Hibiscadelphus distans* as an endangered species. The Governor further stated that the trees had been identified in the State Threatened and Endangered Species Plan as among the ten highest Kauai district priorities for protection, and that the State intends to request funding to fence the plants. The University Professor expressed reservations over the Service's failure to propose designation of critical habitat for this species. The Service continues to believe that threats of collecting and vandalism would be exacerbated by such designation and that designation of critical habitat is therefore not prudent.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that *Hibiscadelphus distans* should be classified as an endangered species. Procedures found at section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR

Part 424) promulgated to implement the listing provisions of the Act were followed. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Hibiscadelphus distans* Bishop and Herbst (Kauai hau kuahiwi) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* The habitat of *Hibiscadelphus distans* is subject to disturbance from several sources. Large herds of feral goats browse within the canyon and have destroyed surrounding vegetation. Goats may also dislodge stones from the ledges above the species, potentially damaging the trees and destroying seedlings (Herbst 1978). The presence of large goat herds results from specific game-management practices aimed at maintaining high goat population levels for hunting.

Human disturbance also presents a serious threat to the species. A hiking trail passes below the ledge where *Hibiscadelphus distans* is found, and activity by hikers straying off this path may impact the species by dislodging stones and increasing erosion of the friable soil. Trees may suffer additional damage by being used as "hand-holds" by hikers scaling the steep embankment.

The habitat disturbances created by people and feral goats have favored the introduction and spread of exotic vegetation. Today, small pockets of native plants can be found, but much of the canyon has been taken over by exotic species. Competition with exotic species and environmental changes brought about by changes in the vegetation have had a serious impact on many of the area's native species of plants and animals.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* The area where *Hibiscadelphus distans* exists is easily accessible to people and has already experienced incidents of unauthorized collecting and vandalism. When the Hawaii State Department of Forestry and Wildlife labeled other native plants along the trail system adjacent to the species' habitat, many of the labeled plants were dug up or damaged by people using the trail. Removal of or damage to any of the few remaining individuals of *Hibiscadelphus distans* could seriously jeopardize the chances of the species' survival.

C. *Disease or Predation.* Browsing by feral goats upon *Hibiscadelphus distans* is probably responsible for the species' currently depleted status. Although the

remaining plants apparently are free from browsing pressure, the situation is still precarious. Should this pressure increase, through either environmental changes or game management practices, goats may be driven into areas they usually avoid, imperiling the few remaining trees.

D. *The inadequacy of existing regulatory mechanisms.* *Hibiscadelphus distans* is found in an area within the State-owned Pu'u Ka Pele Forest Reserve. State regulations prohibit the removal, destruction, or damage of plants found on State forest land. However, these regulations are difficult to enforce due to limited personnel. The Endangered Species Act will offer additional protection to this species.

E. *Other natural or manmade factors affecting its continued existence.* The small extant population (10 individuals) remaining makes *Hibiscadelphus distans* vulnerable to any catastrophe, natural or man-caused, that may impact the area. Reduction of the gene pool and genetic variability, resulting from a small population size, could have detrimental effects on the continued existence of the species. The presence of a trail rest shelter with a small fire pit near this lone population adds a potential threat of destruction by fire during the dry season.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to make this rule final. Based on this evaluation, the preferred action is to list *Hibiscadelphus distans* as endangered. Only 10 individuals remain in the wild, and these face threats from feral goats, fire, competition with exotic species, and human disturbance. Given these circumstances, the determination of endangered status seems warranted. The following "Critical Habitat" section discusses the reasons for which critical habitat is not being designated at this time.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time a species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for *Hibiscadelphus distans* at this time. As discussed under Factor "B" in the "Summary of Factors Affecting the Species," this species potentially is subject to taking and vandalism. Other native plants along a trail near the area where the species occurs have already

experienced incidents of unauthorized taking and vandalism. Publication of a critical habitat description in the **Federal Register** would subject the few remaining individuals of *H. distans* to an increased risk of taking and vandalism. Since the plant is only known to occur on State land, and the State of Hawaii is aware of its status, the value of critical habitat as a notification to Federal agencies would not be great enough to offset the potential risk, and thus no net benefit would accrue to the species from the designation of critical habitat.

Available Conservation Measures

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

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402 and are now under revision (see proposal at 48 FR 29990; June 29, 1983). Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal

agency must enter into formal consultation with the Service. No Federal activities are known or expected to affect *Hibiscadelphus distans*.

The Act and its implementing regulations, found at 50 CFR 17.61, 17.62, and 17.63, set forth a series of general trade prohibitions and exceptions that apply to all endangered plant species. All trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export any endangered plant, transport it in interstate or foreign commerce in the course of a commercial activity, sell it or offer it for sale in interstate or foreign commerce, or remove it from areas under Federal jurisdiction and reduce it to possession. Certain exceptions can apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered species under certain circumstances. Due to the numerous threats to *H. distans* and its depleted state in the wild, it may be necessary to propagate this species in nurseries. Several specimens are presently found in cultivation and seeds have been sent to Dr. P. Fryxell at Texas A&M University. Requests for trade permits for scientific purposes and for enhancing the propagation of the species, allowed under § 17.62, may result if an artificial propagation plan is pursued. Otherwise, it is anticipated that few trade permits would ever be sought or issued, since the species is not common in cultivation or in the wild. Requests for copies of the regulations on plants and inquiries regarding them may be addressed to the Federal Wildlife Permit Office, U.S. Fish and Wildlife Service, Washington, DC 20240 (703/235-1903).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the

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

References Cited

- Bishop, L.E., and D. Herbst. 1973. A new *Hibiscadelphus* (Malvaceae) from Kauai. *Brittonia* 25:290-293.
Herbst, D. 1978. Unpublished status survey of *Hibiscadelphus distans* Bishop and Herbst (Kauai hau kuahiwi). U.S. Fish and Wildlife Service. 21 pp.

Author

The primary author of this final rule is Dr. Derral R. Herbst, Office of Environmental Services, U.S. Fish and Wildlife Service, Pacific Islands, 300 Ala Moana Boulevard, Room 6307, P.O. Box 50167, Hawaii 96850 (808/546-7530 or FTS 546-7530).

List of Subjects in 50 CFR Part 17

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

Regulation Promulgation

PART 17—[AMENDED]

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

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

Authority: Pub. L. 93-205, 87 Stat. 884; Pub. L. 94-359, 90 Stat. 911; Pub. L. 95-632, 92 Stat. 3751; Pub. L. 96-159, 93 Stat. 1225; Pub. L. 97-304, 96 Stat. 1411 (16 U.S.C. 1531 *et seq.*).

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

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Scientific name	Species Common name	Historic range	Status	When listed	Critical habitat	Special rules
Malvaceae—Mallow family: <i>Hibiscadelphus distans</i>	Kauai hau kuaihi	U.S.A. (HI)	E	225	NA	NA

Dated: April 7, 1986.

Susan Recce,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 86-9529 Filed 4-28-86; 8:45 am]

BILLING CODE 4310-55-M

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Determination of *Tumamoca maddougallii* To Be Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service determines a plant, *Tumamoca maddougallii* (Tumamoc globe-berry), to be an endangered species under the authority contained in the Endangered Species Act of 1973 (Act), as amended. This monotypic genus is known from northern Sonora, Mexico, and from Arizona where it occurs on Federal, State, Indian, Pima County, City of Tucson, and private lands. The species is threatened with habitat destruction from increased agricultural development, urbanization, a proposed Central Arizona Project (CAP) aqueduct, grazing, and collection. This action implements the protection provided by the Act.

DATE: The effective date of this rule is May 29, 1986.

ADDRESS: The complete file for this rule is available for public inspection during normal business hours, by appointment, at the Service's Regional Office of Endangered Species, 500 Gold Avenue SW., Room 4000, Albuquerque, New Mexico.

FOR FURTHER INFORMATION CONTACT: Peggy Olwell, Endangered Species Botanist, Office of Endangered Species, PO Box 1306, Albuquerque, New Mexico 87103 (505/766-3972 or FTS 474-3972).

SUPPLEMENTARY INFORMATION:

Background

Tumamoca maddougallii was first collected on July 31, 1908, by D.J. Macdougall, a scientist at the Carnegie Desert Laboratory, on Tumamoc Hill, west of Tucson, Arizona. The specimen was sent to J.N. Rose, a botanist at the

U.S. National Herbarium, who described it as a new genus and species in honor of the type locality and its collector (Rose 1912). This plant is a delicate perennial vine in the gourd family. It grows from a tuberous root and has slender herbaceous stems (Toolin 1982). Its thin leaves have three main lobes, each divided into narrow segments. The plant bears small, yellow, male and female flowers and produces small, red, watermelon-like fruits. Flowering begins before the summer rains, with female flowers either being aborted or not produced until after rains later in the season; fruit set normally occurs in August and September. The population biology and ecological requirements are poorly understood (Toolin 1982), and additional studies are needed.

Historically, *Tumamoca maddougallii* has been found in 16 very scattered populations from Pima County, Arizona to northern Sonora, Mexico. Toolin (1982) searched known localities in Mexico and was unable to relocate any Mexican populations. However, in October 1985, a reconnaissance of the historic Mexican localities identified 5 populations with approximately 60 plants. There were no large numbers of juveniles found in these populations (Reichenbacher, F.W. Reichenbacher and Assoc., Tucson, pers. comm., 1985). Reichenbacher (1984) reported 10 U.S. populations containing a total of 38 adults, 11 juveniles and 126 seedlings. Extensive field surveys of 53,500 acres in Avra Valley conducted from August to November, 1984, increased the known U.S. populations to 30, containing 290 reproducing adults, 65 probable adults, and 1,627 juveniles (Reichenbacher 1985a; Boyd, Tierra Madre Consultants, Riverside, California, pers. comm., 1984). Continued surveying in the summer of 1985 increased the total known U.S. individuals to 2,300 of which 433 are adults (Reichenbacher, pers. comm., 1985).

These populations occur on private, Federal, State, Indian, Pima County, and City of Tucson lands.

Tumamoca maddougallii occurs in the Arizona Upland Subdivision of the Desert Scrub Formation at elevations of 450-795 meters (1,476-2,608 feet) in rocky to gravelly, sandy, silty, and clayey soils derived from granite, basalt, and rhyolite. The vegetation is palo-verde/cactus shrub and creosote bush/

bursage desert scrub. Dominant associate species are creosote bush (*Larrea divaricata*), palo-verde (*Cercidium* spp.), white thorn acacia (*Acacia constricta*), saguaro cactus (*Carnegie gigantea*), prickly pear (*Opuntia phaeacantha*), cane cholla (*Opuntia versicolor*), mesquite (*Prosopis juliflora*), ironwood (*Olneya tesota*), and triangle leaf bursage (*Ambrosia deltoidea*). No symbiotic relationship is known for the Tumamoc globe-berry; however, it is usually found under trees and shrubs (nurse plants), which provide shade and protection, as well as support for the vine. The nurse plants for *Tumamoca maddougallii* include creosote bush, triangle leaf bursage, white thorn acacia, all-scale, palo-verde, and pencil cholla (Reichenbacher 1984).

In the Federal Register of December 15, 1980 (45 FR 82480), the Service published a notice of review covering plants being considered for classification as endangered or threatened. In that notice, *Tumamoca maddougallii* was included in category 1. That category comprises taxa for which the Service has sufficient biological information to support the appropriateness of their being proposed to be listed as endangered or threatened species.

The Endangered Species Act Amendments of 1982 required that all petitions pending as of October 13, 1982, be treated as having been newly submitted on that date. The species covered in the December 15, 1980, notice of review were considered to be petitioned, and the deadline for a finding on those species, including *Tumamoca maddougallii*, was October 13, 1983. On October 13, 1983, and again on October 12, 1984, the petition finding was made that listing *Tumamoca maddougallii* was warranted but precluded by other pending listing actions, in accordance with section 4(b)(3)(B)(iii) of the Act. Such a finding requires a recycling of the petition, pursuant to section 4(b)(3)(C)(i) of the Act. A proposed rule published May 20, 1985 (50 FR 20806), constituted the next required finding that the petitioned action was warranted in accordance with section 4(b)(3)(B)(ii) of the Act.

A survey of the Papago Indian Reservation (Reichenbacher 1985b) and field investigations carried out during

the summer and fall of 1985 by F.W. Reichenbacher and Associates have provided new biological data that are included in this final rule. These new data include documentation of present threats and further information on the population status of the species.

Summary of Comments and Recommendations

In the May 20, 1985, proposed rule (50 FR 20806) and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule. Appropriate State agencies, county governments, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. A newspaper notice was published in the *Arizona Daily Star* on Tuesday, June 18, 1985, which invited general public comment. Twelve letters were received in support of the proposal and five commentors provided information but expressed neither support nor opposition. These seventeen written comments on the proposal, together with the Service's responses, are summarized and discussed below. No public hearing was requested or held.

Support for the proposal was received from the International Union for Conservation of Nature and Natural Resources, Smithsonian Institution, National Museum of Natural History, and World Wildlife Fund—TRAFFIC (U.S.A.). The Arizona Game and Fish Department commented that the proposal is "... an accurate reflection of the distributional status of the species."

The Bureau of Indian Affairs (BIA), Papago Agency, provided the legal description for the locality on the Papago Indian Reservation which was discovered in the summer of 1984. The BIA indicated it has no idea what the size of the population is but would be available to assist the Service in taking a census. The Service is developing plans to conduct a census of the population on the Papago Reservation in 1986 and appreciates the cooperative efforts of the BIA.

The National Park Service (NPS) supports the proposal for listing *Tumamoca macdougallii* as endangered and supports the decision not to declare critical habitat for the species. In addition, NPS informed the Service of a locality on Saguaro National Monument. The Service is aware of this population and had included it in the population numbers in the proposal. The NPS also stated that Organ Pipe Cactus National Monument had been searched in 1984

for *Tumamoca macdougallii* but the plant population formerly known there was not relocated.

The U.S.D.A. Forest Service (FS) supports the proposal and states that project clearance surveys need to be conducted during June to December. The Service realizes the importance of field survey timing and will assume the responsibility of informing all agencies of the necessity to survey for this species during the summer and early fall. The FS also discussed several recovery measures for the species and recommended additional surveys. This information will be addressed in the recovery plan which will be written for the species following listing.

The Arizona Wildlife Federation (AWF) supports the proposal and states that "any projects on Federal lands should be planned so as to offer the least or no disturbance to the species." In addition, AWF also suggested that plants should be moved to protected areas of the Muleshoe Ranch or Buenos Aires Refuge. It is the policy of the Service to protect species within their natural habitat and not to introduce species out of their historic range. The Muleshoe Ranch is outside the known historic range of the species and the Buenos Aires Refuge is in the Semidesert Grassland Biotic Community, which is a different biotic community than the one in which *Tumamoca macdougallii* has been found. However, both Buenos Aires and the Cabeza Prieta Wildlife Refuges will be surveyed for the plant.

Dr. D.H. Wright, of the University of Georgia and a member of F.W. Reichenbacher and Associates field survey team, supports the proposal. However, he feels that the critical number reported in the proposal is the 355 adults, and that the 1,627 juveniles should not be included as part of the viable population estimate because only a small fraction of the juveniles are likely to become adults. Dr. Wright also points out that the species has a tenuous hold on population maintenance because of predation and the lack of a dispersal mechanism. In addition, Dr. Wright discusses the potential value of *Tumamoca macdougallii* as a genetic resource in breeding or genetic engineering, for example, conferring drought tolerance, fruit characteristics, tuber production or pest and disease resistance to domestic cucurbit species. Dr. Wright suggests an active management course be taken for this species. The Service realizes that *Tumamoca macdougallii* has a high rate of seedling mortality and has included this information in this final rule. Also,

the Service uses the number of adults as the critical number when considering the status of the species. The Service intends to implement an active management course for *Tumamoca macdougallii* and will address this in the recovery plan which will be written following listing.

Ms. Linda Leigh, botanist and member of F.W. Reichenbacher and Associates field survey team, supports the proposal, and comments that the proposal contained incorrect information on the flowering period, which actually begins before the summer rains. This information has been incorporated into the final rule. Ms. Leigh also noted that a 100 percent survey of the CAP corridor has not been done in the Avra Valley and that the number of plants impacted by CAP is most probably understated. The Service is aware of this and will take it into consideration when working with the Bureau of Reclamation (BR) on CAP impacts to *Tumamoca macdougallii*.

Mr. Scott Wilson, member of F.W. Reichenbacher and Associates field survey team, supports the proposal and comments that most known populations occur in small washes and water drainages, and that if development in the vicinity of these populations is allowed, existing drainage patterns may be altered. He points out that "... more than just the immediate area surrounding these populations should be considered in future protection or development plans." The Service takes into consideration both direct and indirect impacts of any Federal project which may affect a listed species. Wilson notes that evidence of successful reproduction (i.e. fruits) was not found for most of the adult individuals and additional information on reproduction by adults is necessary. The Service will incorporate requirements for population biology and ecological studies into the recovery plan which will be developed following the listing of the species. In addition, Mr. Wilson also indicated a similar concern as that of Ms. Leigh, that a complete survey of *Tumamoca macdougallii* along the CAP route has not been done, and the number of plants along the route as presently indicated is an underestimate.

Ms. M.H. Wilkins, botanist and member of F.W. Reichenbacher and Associates field survey team, supports the proposal and submits the following comments: The vining habit and nature of the foliage make it difficult for *Tumamoca macdougallii* to survive in the early growth stages. Ms. Wilkins suggested we "... transplant any known populations from areas in

question to parks, gardens, museums . . . which can accommodate and cultivate them . . ." It is the policy of the Service to protect the species in its natural habitat. However, if the Service finds it necessary to move plants, scientific and educational facilities would be contacted.

Dr. T.F. Daniel, Curator, Arizona State University Herbarium, supports the proposal and submits the following comments based on his knowledge of the species and review of the most recent comprehensive field survey of *Tumamoca macdougallii* (Reichenbacher 1985a): Dr. Daniel contends that though the study, "The Status and Distribution of the Tumamoc Globe-Berry (Reichenbacher 1985) . . . comprised an admirable amount of field surveys, many of its conclusions are highly speculative and misleading." In particular, Dr. Daniel believes the extrapolated estimate of 46,971 live plants of *Tumamoca macdougallii* in 783 populations is misleading and not supported by the surveys cited in the study. The Service is aware of the method used to arrive at the estimates and in making its decision to list it is using only those numbers of observed plants. The Service will take this into consideration in working with BR on CAP impacts to the species. Dr. Daniel points out that additional inventories are necessary in western Pima County, Arizona, and eastern Sonora, Mexico, in order to make a biologically meaningful assessment of the status of *Tumamoca macdougallii*. Dr. Daniel believes it is especially important to note that the preferred route of the GAP would bisect the largest known population of *Tumamoca macdougallii* and because we know virtually nothing of the effects of transplanting individuals on the population dynamics of the species, the most beneficial conservation measure for the species would be for the CAP to avoid the largest population. The Service is cognizant of the lack of data on the effect of transplantation and is considering this in cooperating with BR on the CAP.

Dr. H.S. Gentry, Research Director, Desert Botanical Garden (DBG), supports the proposal and indicates the Desert Botanical Garden's continued interest in cooperating with the Service on threatened and endangered plants. The Service appreciates the active interest of the DBG and we will keep DBG informed of the status of this and other plant species we are working with.

The Soil Conservation Service (SCS) informed the Service of a population they discovered on the Papago Indian Reservation while conducting a soil and

range survey for BIA. The SCS observed predation on the plants in the area by javelina (a pig-like mammal). The SCS also indicated that the people working on the soil survey are aware of the species and will be looking for it while out in the field. The Service is aware of the population and appreciates being kept informed of any new localities.

The Bureau of Reclamation (BR) commented that salvage may be necessary for *Tumamoca* plants in the CAP construction corridor. The Service will work with the BR to minimize impacts to *Tumamoca* and to the CAP project. Transplantation (salvage) of plants to avoid conflict is not the most desirable method for resolving species/project conflicts, but can be considered along with other alternatives. BR and the Service are working closely on the CAP to minimize impacts to the *Tumamoca* and all species which may be affected. The BR also provided Reichenbacher's (1985) extrapolated population estimates. As stated earlier, the Service bases its decisions to list on known observed population estimates. Rare species usually do not occur uniformly or continuously throughout the habitat types that they occupy. Therefore, extrapolated numbers rarely reflect accurate estimates where rare species are concerned. The Service will base its recommendations to BR on known observed population numbers. BR also provided Reichenbacher's (1985) data on *Tumamoca*'s preferred habitat type, javelina predation, nurse plant association and diversity, and geographical distribution. This information has been incorporated into the final rule. The Service will continue to work closely with BR to provide protection for the *Tumamoca* and to achieve proper planning for the CAP.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that *Tumamoca macdougallii* should be classified as an endangered species. Procedures found at section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations promulgated to implement the listing provisions of the Act (50 CFR Part 424) were followed. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Tumamoca macdougallii* J.N. Rose (Tumamoc globe-berry) are as follows:

A. *The present or threatened destruction, modification, or curtailment*

of its habitat or range. The historic range of the Tumamoc globe-berry extended about 193 kilometers (120 miles) west of Tucson, Arizona, to Gunsight, Arizona, and approximately 483 kilometers (300 miles) south to Guaymas, Sonora, Mexico. Much of the former range of *Tumamoca macdougallii* is presently being modified by agricultural development (near Carbo, Sonora, and in the Avra Valley, Pima County, Arizona) and urban expansion (on the west side of Tucson, Arizona). The formerly known population at Organ Pipe Cactus National Monument has not been relocated.

Presently, there are 30 known U.S. populations containing approximately 433 adults and 1,867 juveniles. Nine populations of *Tumamoca macdougallii* occur on private land; eight on city, county, State, and university administered land; and 13 are under Federal administration. Seventy-five percent of the plants occupy habitat on non-Federal land and modification of the habitat could occur and result in destruction or damage to these populations. During 1984, 53,500 acres of land in Avra Valley were surveyed for *Tumamoca macdougallii* and Reichenbacher (1985a) believes there is little chance of any other large populations being found in Avra Valley.

The State of Arizona has applied for the transfer to State ownership of 2,540 hectares (6,274 acres) of Bureau of Land Management (BLM) administered land in the Avra Valley. Some of this land has already been transferred to the State, including portions of two sections that contain two populations of *Tumamoca macdougallii*. All lands obtained under the State indemnity land selections are subject to disposal to generate revenue for the State. Thus, these lands are expected to undergo development; however, before the State leases to anyone with the intention of disturbing the surface, a botanical review is done by the Arizona Agriculture and Horticulture Commission (Randy Brenner, Arizona State Land Department, pers. comm., 1984).

The city of Tucson owns a parcel of land containing 31 plants of *Tumamoca macdougallii*. The land is administered by the Tucson Parks and Recreation Department and is scheduled to become a Native District Park by March, 1986. The Tucson Parks and Recreation Department (TPRD) is aware of the species and indicates it will be taken into consideration in the park planning process (Glen Dixon, TPRD, pers. comm., 1985). Development of this park will affect the species' habitat through

an increase in number of people using the area.

Currently, 22 adult plants and 71 juveniles are scattered throughout developed and undeveloped areas of the West Campus of Pima Community College. Erosion threatens some of the plants located on an embankment adjacent to the school's firing range. With the continuing growth of the Tucson area and the anticipated growth of the Community College, development of this *Tumamoca macdougallii* habitat could occur.

The Pan Quemado population of *Tumamoca macdougallii* on BLM administered land is in the vicinity of a land imprinting and seeding project on the Aqua Blanco Ranch. The project will avoid drainage areas; however, it will imprint the creosote-bush areas between the drainages. Suitable habitat for the globe-berry exists throughout the sections of land proposed for the project (Mary Butterwick, BLM, pers. comm., 1984). An inventory of 122 hectares (301 acres) disclosed a population of 33 plants on this BLM administered habitat (Reichenbacher 1985a). Five plants excavated and eaten by animals, presumably javelina, were also observed at the Pan Quemado site.

The FS identified a small population, 9 adults and 32 juveniles, on the Coronado National Forest, east of the Santa Cruz River. This population occurs in the middle of a picnic area which, fortunately, receives little use in the summer and fall when the plants are growing (Reichenbacher 1985a).

An additional threat to *Tumamoca macdougallii* and its habitat is the proposed construction of the CAP aqueduct, a BR water diversion project. Six adult plants were found in the proposed alignment during a 1983 field survey (Reichenbacher 1984). Intensive field surveys were conducted August–November of 1984 and 1985 to search the project area where the 6 adults were found in 1983. These surveys located a total of 736 plants with 102 adults (the largest known population) on land to be impacted by the CAP (Reichenbacher, pers. comm. 1985).

On the San Xavier and Papago Indian Reservations, habitat is also being lost to agricultural and housing development. The CAP includes allocation of water to farm 1,215 hectares (3,000 acres) on the Papago Reservation and 4,453 hectares (11,000 acres) on the San Xavier Reservation (Tom Gatz, BR, pers. comm. 1983).

The Papago Indian Tribe contracted with Franzoy Corey Engineers, Phoenix, Arizona to survey 28,000 acres for *Tumamoca macdougallii* in 1984. Three populations, consisting of 8 adults and

51 juveniles were found in the area planned for agricultural and, possibly, housing development (Reichenbacher 1985b).

Tumamoc Hill, the type locality of *Tumamoca macdougallii*, is a natural resource site administered by the University of Arizona. There are 35 adult plants and 143 juveniles on this property (Reichenbacher 1985a). This population was thought to be the most secure because the site was designated a National Historic Landmark in 1975, a National Environmental Study Area in 1976, and a State Scientific and Educational Natural Area in 1981 (Tumamoc Hill Planning Committee 1982). However, people have excavated plants from this site (Reichenbacher 1985a). In addition, with the population of the surrounding area growing, so too will the adverse impacts. Damage from dogs and four-wheel drive vehicles has been minor in the past, but with an increasing number of people in the area the damage may intensify.

B. Overutilization for commercial, recreational, scientific, or educational purposes. *Tumamoca macdougallii* is not known to be sought for commercial, recreational or educational purposes; however, the species is sought for scientific purposes. Several plants as well as a large number of seeds have been collected. To date, this has not been shown to be a significant problem but the potential problem is great. This species is very vulnerable because of low plant numbers and any taking would be detrimental to the populations. Due to its easily accessible locations, vandalism poses an additional threat to *Tumamoca macdougallii*.

C. Disease or predation. It has been observed that antelope jackrabbits (*Lepus alleni*) clip the stems, leaves, flowers, and fruits of *Tumamoca macdougallii* (Reichenbacher 1984). Although not observed, rodents are also suspected to browsing the plant (Toolin 1982). Reichenbacher (1985a) identified 54 plants excavated by javelina during the 1984 field survey. Javelina foraging pressure varies from population to population. During an August, 1985, general reconnaissance of an area on the Papago Indian Reservation south of Gu Komelik, javelina foraging was observed to be causing extensive mortality to the *Tumamoca macdougallii* population. This population occurs in an area that BIA included in a riparian management program in 1960. The intent of this program was to increase grasses along the Santa Rosa Wash by chaining (Bob Klink, BIA, pers. comm. 1985). Undoubtedly, this changed the local vegetational composition and it is speculated that the change favored

javelina. The javelina population in the area has expanded and is putting considerable pressure on the *Tumamoca macdougallii* population.

Livestock grazing may not directly affect the Tumamoc globe-berry; however, livestock take shelter under trees on warm days and could possibly trample plants which are located in the shade of trees or shrubs.

D. The inadequacy of existing regulatory mechanisms. Presently, there is no Federal or Arizona State law protecting *Tumamoca macdougallii*. The Tumamoc globe-berry is on the BLM Sensitive Species List and it is BLM policy to include Federal candidate species for consideration in its environmental assessments. Existing Federal regulations in 36 CFR 261.9 prohibit taking of this species in the Coronado National Forest. The Endangered Species Act would provide additional protection for this plant through section 7 (interagency cooperation) requirements and through section 9, which prohibits removal and reduction to possession of endangered species on Federal lands.

E. Other natural or manmade factors affecting its continued existence. The low number (493 adult plants and 1,867 juveniles) and limited distribution of *Tumamoca macdougallii* increase the species' vulnerability to natural or man-caused stresses. Although the reproductive biology is not fully understood, survival of all seedlings to maturity is doubtful, because the absence of well-developed root systems on young plants makes them vulnerable to periodic droughts common in the species' range (Toolin 1982). This seedling mortality is well illustrated by the present ratio of adults to seedlings.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to make this rule final. Based on this evaluation, the preferred action is to list *Tumamoca macdougallii* as endangered without critical habitat. Endangered status is appropriate because all populations except one are facing imminent threat from urban and agricultural expansion. Thus, *Tumamoca macdougallii* is in danger of extinction throughout a significant portion of its range and may soon disappear unless appropriate protection is extended. The reasons for not designating critical habitat are discussed below.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that to the maximum extent

prudent and determinable, the Secretary designate critical habitat at the time the species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for *Tumamoca macdougallii* because its restricted distribution and accessibility make it vulnerable to threats from taking. Publication of critical habitat descriptions and maps would call attention to this species, making it more vulnerable to taking and vandalism. Therefore, it would not be prudent to determine critical habitat for *Tumamoca macdougallii* at this time. The location of populations of this plant have been brought to the attention of appropriate agencies and other involved parties through regular communication. No benefit would accrue from designating critical habitat for this species.

Available Conservation Measures

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

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened, and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402, and are now under revision (see proposal at 48 FR 29990; June 29, 1983). Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service. The usual results of section 7 consultation, if jeopardy is found, are modification and not cancellation of a proposed action.

The CAP—Tucson Aqueduct Phase B Alignment will affect the Tumamoc globe-berry. The preferred route of the CAP aqueduct would cross the largest known population of *Tumamoca*. This population contains 102 adult and 634 juvenile plants. Of the 102 adult plants, 42 are in the aqueduct right-of-way, 29 are below the right-of-way, 11 are in the inundation zone and 20 are above the inundation zone. Juveniles in the population would receive the same impacts as the nearby adults. The BR is working with the Service to determine the status of *Tumamoca macdougallii* on the CAP route. The known population as well as potential habitat on BLM administered lands may be impacted by the land imprinting and seeding project or by the possibility of land transfers from BLM to State or private interests. Adequate surveys at appropriate times of the year need to be conducted prior to transfer of land from BLM to non-Federal interests. Urban and agricultural development on the Papago Indian Reservation could possibly impact 310 plants. Surveys have been conducted on the reservation. The BIA, BLM, and BR are all aware of the species on their lands and are actively planning for it. No other Federal activities are known or expected to affect this species.

The Act and its implementing regulations found at 50 CFR 17.61, 17.62, and 17.63 set forth a series of general trade prohibitions and exceptions that apply to all endangered plant species. With respect to *Tumamoca macdougallii*, all trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, sell or offer for sale this species in interstate or foreign commerce, or to remove and reduce to possession the species from areas under Federal jurisdiction. Certain exceptions can apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered species under certain circumstances. International and interstate commercial trade in *Tumamoca macdougallii* is not known to exist. It is anticipated that few permits would ever be sought or issued since the species is not common in cultivation or in the wild. Requests for copies of the regulations on plants and inquiries regarding them may be addressed to the Federal Wildlife Permit Office, U.S. Fish

and Wildlife Service, Washington, DC 20240 (703/235-1903).

National Environmental Policy Act

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

References Cited

- Reichenbacher, F.W. 1984. Rare plants of the Central Arizona Project Aqueduct Phase B, final report. Arizona Game and Fish Department, Phoenix, Arizona. 61 pp.
- Reichenbacher, F.W. 1985a. Status and distribution of the Tumamoc globe-berry (*Tumamoca macdougallii*). F.W. Reichenbacher and Associates, Tucson, Arizona. 83 pp.
- Reichenbacher, F.W. 1985b. Rare plant survey of the Papago Indian Reservation, draft final report. F.W. Reichenbacher and Associates, Tucson, Arizona. 57 pp.
- Rose, J.N. 1912. *Tumamoca*, a new genus of Cucurbitaceae. Contributions from the U.S. National Herbarium 16:21.
- Toolin, L.J. 1982. Status report on *Tumamoca macdougallii*. U.S. Fish and Wildlife Service, Office of Endangered Species, Albuquerque, New Mexico. 11 pp.
- Tumamoc Hill Advisory Committee. 1982. Tumamoc Hill Policy Plan. University of Arizona, Tucson, Arizona. 70 pp.

Author

The primary author of this final rule is Peggy Olwell, Endangered Species Office, U.S. Fish and Wildlife Service, Department of the Interior, P.O. Box 1306, Albuquerque, New Mexico 87103 (505/766-3972 or FTS 474-3972). The editor is LaVerne Smith, Office of Endangered Species, Washington, DC 20240 (703/235-1975 or FTS 235-1975). Status information was provided by Dr. L. J. Toolin, Arizona Natural Heritage Program, Tucson, Arizona, and by Frank Reichenbacher, F.W. Reichenbacher and Associates, Tucson, Arizona.

List of Subjects in 50 CFR Part 17

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

Regulation Promulgation

PART 17—[AMENDED]

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

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

Authority: Pub. L. 93-205, 87 Stat. 884; Pub. L. 94-359, 90 Stat. 911; Pub. L. 95-632, 95 Stat. 3751; Pub. L. 96-159, 93 Stat. 1225; Pub. L. 97-

304, 96 Stat. 1411 (16 U.S.C. 1531 *et seq.*).

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

§ 17.12 Endangered and threatened plants.

* * * * *
(h) * * *

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
Cucurbitaceae—Gourd family:						
<i>Tumamoca mactougalii</i>	Tumamoc globe-berry	U.S.A. (AZ), Mexico (Sonora)	E	226	NA	NA

Dated: April 3, 1986.
 Susan Recce,
 Deputy Assistant Secretary for Fish and
 Wildlife and Parks.
 [FR Doc. 86-9527 Filed 4-28-86; 8:45 am]
 BILLING CODE 4310-55-M

Proposed Rules

Federal Register

Vol. 51, No. 82

Tuesday, April 29, 1986

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

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 212

Documentary Requirements for Nonimmigrants; Waivers for Certain Inadmissible Aliens

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Proposed rule.

SUMMARY: This rule would revise § 212.3 to provide that approval of a 212(c) waiver may be granted for a five-year period. The waiver would be in effect only for the specific grounds of exclusion or deportation listed in the application. This rule change would reduce the paperwork burden for frequent travelers and the number of applications requiring adjudication by the Service.

DATE: Comments must be received on or before June 30, 1986.

ADDRESS: Please submit written comments in duplicate to the Director, Policy Directives and Instructions, Immigration and Naturalization Service, 425 I Street, NW., Room 2011, Washington, DC 20536.

FOR FURTHER INFORMATION CONTACT:

For General Information: Loretta J. Shogren, Director, Policy Directive and Instructions, Immigration and Naturalization Service, 425 I Street, NW., Washington, D.C. 20536, Telephone: (202) 633-3048.

For Specific Information: Margaret M. Smitherman, Immigration Examiner, Immigration and Naturalization Service, 425 I Street, NW., Washington, D.C. 20536, Telephone: (202) 633-3320.

SUPPLEMENTARY INFORMATION: Section 212(c) of the Immigration and Nationality Act of 1952, as amended, evolved from the seventh proviso to section 13 of the 1917 Immigration Act, which provided exclusionary relief, to include relief from deportation. The

section provides that aliens lawfully admitted for permanent residence who temporarily proceed abroad voluntarily and not under an order of deportation, and who are returning to a lawful unrelinquished domicile of seven consecutive years, may be admitted in the discretion of the Attorney General without regard to the exclusionary provisions of paragraphs (1) through (25) and paragraphs (30) and (31) of section 212(a) of the Act. These permanent residents, despite their inadmissibility, may submit Form I-191, Application for Advance Permission to Return to Unrelinquished Domicile, to the Service office having jurisdiction over their place of residence for a waiver of the ground of excludability.

The waiver of excludability has generally been granted only for single entry unless the grant was sufficiently broad to cover future entries. *Matter of Wolf*, 12 I & N Dec. 736 (BIA 1968), held that waiver must be somewhat limited in time, and can not be for an indefinite period, but set no specific time limit. The Service proposes to grant 212(c) waivers in increments of up to five years. It believes that this is not inconsistent with *Matter of Wolf* and would reduce the need for repeated readjudication of 212(c) applications for travellers who frequently go abroad for business or personal reasons and are eligible for these waivers.

In accordance with 5 U.S.C. 605(b), the Commissioner of Immigration and Naturalization certifies that this rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. This rule would not be a major rule within the meaning of section 1(b) of E.O. 12291.

List of Subject in 8 CFR Part 212

Aliens, Exclusion, Waivers of inadmissibility.

Accordingly, it is proposed to amend Chapter I of Title 8 of the Code of Federal Regulations as follows:

PART 212—DOCUMENTARY REQUIREMENTS; NONIMMIGRANTS; WAIVERS; ADMISSION OF CERTAIN INADMISSIBLE ALIENS; PAROLE

1. The authority citation for Part 212 continues to read as follows:

Authority: Secs. 101, 103, 212, 214, 235, 236, 238 and 242 of the Immigration and Nationality Act, as amended (8 U.S.C. 1101,

1103, 1182, 1184, 1225, 1226, 1228, 1252, 1182b and 1182c).

2. Section 212.3 would be revised to read as follows:

§ 212.3 Application for the exercise of discretion under section 212(c).

(a) *Jurisdiction.* An application for the exercise of discretion under section 212(c) of the Act shall be submitted on Form I-191, Application for Advance Permission to Return to Unrelinquished Domicile, to the district director in charge of the area in which the applicant's intended or actual place of residence in the United States is located prior to, at the time of, or at any time subsequent to the applicant's arrival in the United States.

(b) *Validity.* The approval of an application may, in the discretion of the district director, be granted for a period not to exceed five years. The approval is intended to cover only the specific grounds of exclusion or deportability contained in the application. If the applicant subsequently becomes excludable or deportable under the same or a new ground, a new application must be filed with the appropriate district director.

(c) *Decision.* The applicant shall be notified of the decision and, if the application is denied, of the reason therefore and of the right to appeal to the Board within 15 days after the mailing of the notification of decision in accordance with the provisions of Part 3 of this chapter. If denied, the denial shall be without prejudice to renewal of the application in the course of proceedings before an immigration judge under section 235, 236, and 242 of the Act and this chapter. An application for the exercise of discretion under section 212(c) of the Act may be submitted by the applicant to an immigration judge in the course of proceedings under sections 235, 236, and 242 of the Act and this chapter, and shall be adjudicated by the immigration judge in such proceedings, regardless of whether the applicant has made such application previously to the district director. When an appeal may not be taken from a decision of an immigration judge excluding an alien but the alien has applied for the exercise of discretion under section 212(c) of the Act, the alien may appeal to the Board from a denial of such application in accordance with the provisions of § 236.5(b) of this chapter.

Dated: April 17, 1986.

Richard E. Norton,

Associate Commissioner, Examinations,
Immigration and Naturalization Service.

[FR Doc. 86-9510 Filed 4-28-86; 8:45 am]

BILLING CODE 4410-10-M

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 94

[Docket No. 86-049]

Importation of Certain Pork Hams

AGENCY: Animal and Plant Health
Inspection Service, USDA.

ACTION: Reopening of comment period
for proposed rule.

SUMMARY: This document reopens the
comment period for a proposed rule
which proposed to amend the
regulations concerning the importation
into the United States of certain pork
hams. This action is needed to allow
industry representatives and other
interested persons adequate time in
which to prepare comments.

DATE: Written comments must be
received on or before May 29, 1986.

ADDRESS: Written comments should be
submitted to Thomas O. Gessel,
Director, Regulatory Coordination Staff,
APHIS, USDA, Room 728, Federal
Building, 6505 Belcrest Road,
Hyattsville, MD 20782. Comments
should state that they are in response to
Docket Number 84-095. Written
comments received may be inspected at
Room 728 of the Federal Building
between 8 a.m. and 4:30 p.m., Monday
through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT:
Dr. Mark Dulin, Import-Export Animals
and Products Staff, VS, APHIS, USDA,
Room 841, Federal Building, 6505
Belcrest Road, Hyattsville, MD 20782,
301-436-8499.

SUPPLEMENTARY INFORMATION: The
regulations in 9 CFR Part 94 (referred to
below as the regulations), among other
things, regulate the importation into the
United States of pork and pork products
in order to prevent the introduction into
the United States of rinderpest, foot-
and-mouth disease, African swine fever,
hog cholera, and swine vesicular
disease.

The Parma Ham Consortium in Italy
requested that the regulations be
amended to allow the importation into
the United States of pork hams
processed in accordance with certain
procedures used by the Consortium.

Under the current regulations, such
hams are not allowed to be imported
into the United States from Italy
because of foot-and-mouth disease,
African swine fever, hog cholera, and
swine vesicular disease.

The Department considered this
request and conducted research
concerning the procedures used by the
Parma Ham Consortium. Further, the
Department developed provisions which
are designed to allow the importation of
such pork hams from countries where
foot-and-mouth disease, African swine
fever, hog cholera, or swine vesicular
disease exist, without presenting a
significant risk of introducing these
diseases. These provisions were
published as a proposal in the *Federal
Register* on February 18, 1986 (51 FR
5716-5720).

The proposed rule provided for receipt
of comments on or before April 21, 1986.
An industry representative has
requested additional time to review the
proposal and offer substantive
comments. It has been determined that
additional time is needed to allow
industry representatives and other
interested persons adequate time in
which to prepare comments. Therefore,
the comment period is reopened for an
additional 30 days. Accordingly, any
additional written comments must be
received on or before May 29, 1986.

Any comments received between the
original closing date for the receipt of
comments and the publication of this
notice will also be considered in
determining what action to take
concerning the proposal.

Done at Washington, D.C., this 24th day of
April 1986.

B.G. Johnson,

Acting Deputy Administrator, Veterinary
Services.

[FR Doc. 86-9554 Filed 4-28-86; 8:45 am]

BILLING CODE 3410-34-M

9 CFR Parts 161 and 162

[Docket No. 84-114]

Standards for Accredited Veterinarians

AGENCY: Animal and Plant Health
Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: This document proposes to
amend the regulations concerning
accreditation of veterinarians and the
suspension or revocation of such
accreditation. It is proposed to amend
the regulations to add a statement of
purpose; to clarify that accreditation of
veterinarians is on a State-by-State

basis; to require that, as a condition for
being accredited or reaccredited, a
veterinarian must be licensed to practice
without supervision in the State in
which he or she wishes to be accredited;
and to require that veterinarians pass an
examination administered by the
Animal and Plant Health Inspection
Service, as a condition for obtaining
accreditation within five years prior to
applying for accreditation in the State in
which he or she wishes to be accredited.
These proposed amendments appear to
be necessary to clarify the regulations,
and to help ensure that veterinarians
acting as accredited veterinarians are
qualified to perform their duties.

DATE: Written comments must be
received on or before June 30, 1986.

ADDRESSES: Written comments
concerning this proposed rule should be
submitted to Thomas O. Gessel,
Director, Regulatory Coordination Staff,
APHIS, USDA, Room 728, Federal
Building, 6505 Belcrest Road,
Hyattsville, MD 20782. Comments
should state that they are in response to
docket number 84-114. Written
comments received may be inspected at
Room 728 of the Federal Building
between 8 a.m. and 4:30 p.m., Monday
through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT:
Dr. William T. Hubbert, Professional
Development Staff, VS, APHIS, USDA,
Room 800, Federal Building, 6505
Belcrest Road, Hyattsville, MD 20782,
301-436-7649.

SUPPLEMENTARY INFORMATION: The
regulations in 9 CFR Subchapter I
(referred to below as the regulations)
contain provisions concerning the
accreditation of veterinarians and the
suspension or revocation of such
accreditation.

Statement of Purpose

It is proposed to add a "Statement of
Purpose" to the regulations to read as
follows:

This subchapter concerns a program
administered by the Service [Veterinary
Services, Animal and Plant Health Inspection
Service] to accredit veterinarians and thereby
authorize them to perform, on behalf of the
Service, certain activities specified in this
chapter. This program is intended to ensure
that an adequate number of qualified
veterinarians are available in the United
States to perform such activities.

Accreditation

Section 161.1(a) of the regulations sets
forth the criteria for the accreditation of
veterinarians, and § 161.1(b) of the
regulations sets forth corresponding
criteria for the reaccreditation of

veterinarians whose accreditation has been revoked.

Section 161.1(a) of the regulations currently provides as follows:

(a) The Deputy Administrator is hereby authorized to accredit a veterinarian when he determines that such veterinarian (1) is a graduate of a college of veterinary medicine; (2) is licensed to practice veterinary medicine in the State in which he wishes to be accredited; (3) has made formal application for accreditation on Form 1-36A, "Application for Veterinary Accreditation"; (4) has passed an examination administered by the Service; and (5) has been jointly recommended by the State Animal Health Official and the Veterinarian-in-Charge for the State in which the veterinarian is licensed and wishes to be accredited.

As indicated in item (2) above, veterinarians are not accredited on a nationwide basis, but instead are accredited on a State-by-State basis. Consistent with this concept, it is intended that an accredited veterinarian perform official duties as an accredited veterinarian only in the State or States in which the veterinarian is accredited. The regulations would be changed in various places to reflect this intent.

As noted above, as a condition of being designated as an accredited veterinarian, an individual, among other things, must be "licensed to practice veterinary medicine." The same condition must be met for a veterinarian to be reaccredited. Some States grant temporary licenses to allow graduates of veterinary medical schools to practice under the supervision of another veterinarian. Normally such licenses are valid until the next Veterinary Board examinations are given in the State. The term "accredited veterinarian" was intended to include only veterinarians who are licensed to practice without supervision in the State in which the veterinarian wishes to be accredited. It appears that this status is a necessary condition to help ensure that veterinarians acting as accredited veterinarians are fully qualified to perform their duties. Therefore, it is proposed to amend the regulations to require, as a condition for being accredited or reaccredited, that a veterinarian must be licensed to practice without supervision in the State in which he or she wishes to be accredited.

In addition, as noted above, as a condition of being designated as an accredited veterinarian, an individual must also pass an examination administered by the Service. The examination tests a veterinarian's skills and knowledge of procedures relevant to his or her functions as an accredited veterinarian. In order to ensure that the test is relevant concerning the

applicant's current skills and knowledge of procedures, it is proposed to provide that the applicant must have passed an examination administered by the Service within five years prior to applying for accreditation in the State in which he or she wishes to be accredited.

Executive Order and Regulatory Flexibility Act

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

It appears that the proposed requirements contained in this document are consistent with the current practices of the vast majority of accredited veterinarians and applicants for accreditation.

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

Paperwork Reduction Act

In accordance with section 3507 of the Paperwork Reduction Act of 1980 (44 U.S.C. 3507), the information collection provisions that are included in this rule have been approved by the Office of Management and Budget (OMB) and have been given the OMB control number 0579-0032.

List of Subjects in 9 CFR Parts 161 and 162

Administrative practice and procedures, Veterinarians.

PART 161—REQUIREMENTS AND STANDARDS FOR ACCREDITED VETERINARIANS AND SUSPENSION OR REVOCATION OF SUCH ACCREDITATION

1. The authority citation for Part 161 would continue to read as follows:

Authority: 15 U.S.C. 1828; 21 U.S.C. 105, 111-114, 114a, 114a-1, 116, 120, 121, 125, 134b and 134f; 7 CFR 2.17, 2.51, and 371.2(d).

2. Sections 161.1, 161.2, and 161.3 would be redesignated as §§ 161.2, 161.3

and 161.4, and a new § 161.1 would be added to read as follows:

§ 161.1 Statement of purpose.

This subchapter concerns a program administered by the Service to accredit veterinarians and thereby authorize them to perform, on behalf of the Service, certain activities specified in this chapter. This program is intended to ensure that an adequate number of qualified veterinarians are available in the United States to perform such activities.

3. In redesignated § 161.2, paragraphs (a) and (b) would be revised to read as follows:

§ 161.2 Requirements for accreditation.

(a) The Deputy Administrator is hereby authorized to accredit a veterinarian in a given State when he or she determines that such veterinarian: (1) is a graduate of a college of veterinary medicine; (2) is licensed to practice veterinary medicine without supervision in the State in which he or she wishes to be accredited; (3) has made formal application for accreditation on Form 1-36A, "Application for Veterinary Accreditation"; (4) within five years prior to applying for accreditation, has passed an examination administered by the Service for the State in which he or she wishes to be accredited; and (5) has been jointly recommended by the State Animal Health Official and Veterinarian in Charge for the State in which the veterinarian is licensed and wishes to be accredited.

(b) The Deputy Administrator is hereby authorized to reaccredit a veterinarian whose accreditation has been revoked when the revocation has been in effect for not less than two years and he or she determines that such veterinarian (1) is licensed to practice veterinary medicine without supervision in the State in which he or she wishes to be accredited; (2) has made formal application for accreditation on Form I-36A, "Application for Veterinary Accreditation"; (3) has been jointly recommended by the State Animal Health Official and the Veterinarian-in-Charge for the State in which the veterinarian is licensed and wishes to be accredited; (4) has furnished adequate assurance that he or she will faithfully fulfill the duties of an accredited veterinarian in the future; and (5) has passed an examination administered by the Service for the State in which he or she wishes to be accredited.

* * * * *

4. In redesignated § 161.3, the introductory portion of the section would be revised to read as follows:

§ 161.3 Standards for accredited veterinarians.

An accredited veterinarian shall perform the functions of an accredited veterinarian only in the State or States in which such veterinarian is accredited. An accredited veterinarian shall perform the functions of an accredited veterinarian subject to the supervision and direction of the Veterinarian-in-Charge and the State Animal Health Official and shall observe the following specific standards:

* * * * *

§ 161.4 [Amended.]

5. In paragraph (a) of redesignated § 161.4, the reference to "§ 161.2" would be changed to "§ 161.3".

PART 162—RULES OF PRACTICE GOVERNING REVOCATION OF SUSPENSION OF VETERINARIANS' ACCREDITATION

6. The authority for Part 162 would continue to read as follows:

Authority: 15 U.S.C. 1828; 21 U.S.C. 105, 111, 114a-1, 115, 116, 120, 121, 125, and 134f; 7 CFR 2.17, 2.51, and 371.2(d).

§ 162.10 [Amended.]

7. In § 162.10, the reference to "9 CFR 161.2" would be changed to "§ 161.3 of this chapter".

§ 162.11 [Amended.]

8. In § 162.11, the reference to "9 CFR 161.2" would be changed to "§ 161.3 of this chapter".

Done at Washington, D.C., this 23rd day of April 1986.

B.G. Johnson,

Acting Deputy Administrator, Veterinary Services.

[FR Doc. 86-9555 Filed 4-28-86; 8:45 am]

BILLING CODE 3410-34-M

Petition for Rulemaking filed on November 6, 1984 by Common Cause. 50 FR 477 (Jan. 4, 1985). The petition requested that the Commission revise several regulatory provisions to address the alleged improper use of "soft money", particularly funds ostensibly raised for use in state and local elections, to influence federal elections.

EFFECTIVE DATE: April 29, 1986.

FOR FURTHER INFORMATION CONTACT:

Ms. Susan E. Propper, Assistant General Counsel 999 E Street, NW., Washington, DC 20463, (202) 376-5690 or toll-free (800) 424-9530.

SUPPLEMENTARY INFORMATION: On November 4, 1984, Common Cause filed a petition for rulemaking with the Commission. The petition requested that the Commission initiate a rulemaking to address the alleged improper use of "soft money", purportedly raised for use in nonfederal elections, to influence federal elections. The Commission has made several efforts to solicit comments on the petition. First, the Commission invited public comment on the petition by issuing a Notice of Availability. 50 FR 477 (Jan. 4, 1985). Five written comments were received in response to the notice, including a supplementary statement from Common Cause that contained proposed rules.

The Commission also issued a Notice of Inquiry seeking further comment on the broad range of factual and legal questions presented by the assertions that have been made by Common Cause and others concerning the use of "soft money" to influence federal elections. 50 FR 51535 (Dec. 18, 1985). The Commission sent copies of the notice to election officials in all 50 states, national party committees and previous commentators on the petition. Seventeen submissions were received from 15 commentators. In addition, a public hearing was held on January 29, 1986 at which testimony from three witnesses was presented.

After reviewing the comments on the petition and evaluating the implications of the proposed revisions, the Commission has decided to deny Common Cause's petition for rulemaking. Common Cause has not presented evidence of instances in which "soft money" has been used to influence federal elections sufficient to justify the stringent rules proposed in its petition. Most of the examples it cites to support its allegations consist of anecdotal and boastful comments of party committee officials and campaign staff that have been quoted in the press.

These statements do not constitute concrete evidence demonstrating that the Commission's regulations have been abused so that funds purportedly raised for use in nonfederal elections have in fact been transferred to the state and local level with the intent that they be used to influence federal elections. Indeed, other evidence presented during this proceeding indicates that many transfers to the state and local levels were made from federal funds and were reported to the Commission.

Therefore, at its open meeting of April 17, 1986, the Commission voted to deny the petition for rulemaking filed by Common Cause. Copies of the General Council's recommendation on which the Commission's decision was based are available for public inspection and copying in the Commission's Public Records Office, 999 E Street NW., Washington, DC 20463, (202) 376-3140 or toll-free (800) 424-9530.

Dated: April 17, 1986.

Joan D. Aikens,

Chairman, Federal Election Commission.

[FR Doc. 86-9496 Filed 4-28-86; 8:45 am]

BILLING CODE 6715-01-M

DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Part 655

Labor Certification Process for the Temporary Employment of Aliens in Agriculture; Adverse Effect Wage Rate Methodology

Correction

In FR Doc. 86-8376 beginning on page 12872 in the issue of Wednesday, April 16, 1986, make the following corrections:

1. On page 12872, in the first column, in the eleventh line of the SUMMARY, the comma should be removed. In the seventeenth line of the SUMMARY, "adjustments" was misspelled.

2. On page 12873, in the second column, in the first line of the first paragraph beginning with a •, "and" should read "as".

3. On the same page, in the third column, in the fourth line from the bottom of the first complete paragraph, "EOL" should read "DOL".

4. On page 12874, in the second column, in the fourteenth line from the bottom of the page, "or" should read "of".

FEDERAL ELECTION COMMISSION

11 CFR Ch. 1

[NOTICE 1986-1]

Rulemaking Petition; Notice of Disposition

AGENCY: Federal Election Commission.

ACTION: Notice of Disposition of Rulemaking Petition.

SUMMARY: The Federal Election Commission announces its denial of a

5. On the same page, in the third column, in the third line of the first paragraph beginning with a •, "ADWRs" should read "AEWRs".

6. On page 12875, in the first line of the third column, "has" should read "had".

BILLING CODE 1505-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 868

[Docket No. 85N-0030]

Medical Devices; Invitation for Offers to Submit or Develop a Performance Standard for Continuous Ventilator and Ventilator Tubing

Correction

In FR Doc. 86-7376 beginning on page 11516 in the issue of Thursday, April 3, 1986 make the following corrections:

1. On page 11516 in the second column, in the second complete paragraph, in the eleventh line, the date should read "July 8, 1983".

2. On the same page, in the third column, beginning in the ninth line from the bottom of the page, the FR citation should read "(see 50 FR 43060, 43072; Oct. 23, 1985)".

3. On page 11518, in the third column, in the third complete paragraph, in the seventh line, "2" should read "1".

BILLING CODE 1505-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1, 20, 54, 301, and 602

[EE-96-85]

Income, Excise, and Estate and Gift Taxes; Effective Dates and Other Issues Arising Under the Employee Benefit Provisions of the Tax Reform Act of 1984; Public Hearing on Proposed Regulations

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of public hearing on proposed regulations.

SUMMARY: This document provides notice of a public hearing on proposed regulations relating to effective dates and certain other issues arising under the employee benefit provisions of the Tax Reform Act of 1984.

DATES: The public hearing will be held on Thursday, June 26, 1986, beginning at

10:00 a.m. Outlines of oral comments must be delivered or mailed by Thursday, June 12, 1986.

ADDRESS: The public hearing will be held in the I.R.S. Auditorium, Seventh Floor, 7400 Corridor, Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC. The requests to speak and outlines of oral comments should be submitted to the Commissioner of Internal Revenue, Attn: CC:LR:T (EE-96-85), Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Faye Easley of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC 20224, telephone 202-566-3935 (not a toll-free call).

SUPPLEMENTARY INFORMATION: The subject of the public hearing is proposed regulations under sections 72, 79, 125, 133, 162, 402, 404, 419, 419A, 461(h), 463, 505, 512, 1042, 2039, 4976, 4978, and 7701(a)(46) of the Internal Revenue Code of 1954. The proposed regulations appeared in the *Federal Register* for Tuesday, February 4, 1986 (51 FR 4391).

The rules of § 601.601(a)(3) of the "Statement of Procedural Rules" (26 CFR Part 601) shall apply with respect to the public hearing. Persons who have submitted written comments within the time prescribed in the notice of proposed rulemaking and who also desire to present oral comments at the hearing on the proposed regulations should submit, not later than Thursday, June 12, 1986, an outline of oral comments to be presented at the hearing and the time they wish to devote to each subject.

Each speaker will be limited to 10 minutes for an oral presentation exclusive of the time consumed by questions from the panel for the government and answers to these questions.

Because of controlled access restrictions attendees cannot be admitted beyond the lobby of the Internal Revenue Building until 9:45 a.m.

An agenda showing the scheduling of the speakers will be made after outlines are received from the speakers. Copies of the agenda will be available free of charge at the hearing.

By direction of the Commissioner of Internal Revenue.

James J. McGovern,
Director, Employee Plans and Exempt Organizations Division.

[FR Doc. 86-9567 Filed 4-28-86; 8:45 am]

BILLING CODE 4830-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[AD-FRL-2939-9]

Standards of Performance for New Stationary Sources; Calciners and Dryers in Mineral Industries

Correction

IN FR Doc. 86-8842 beginning on page 15438 in the issue of Wednesday, April 23, 1986, the DATES section in the first column of page 15438 contained an error. For the convenience of the reader, the complete text is correctly printed as follows:

DATES: *Comments.* Comments must be received on or before July 7, 1986.

Public Hearing. If anyone contacts EPA requesting to speak at a public hearing by May 14, 1986, a public hearing will be held on June 9, 1986, beginning at 10:00 a.m. Persons interested in attending the hearing should call Ms. Shelby Journigan at (919) 541-5578 to verify that a hearing will be held.

Request To Speak at Hearing. Persons wishing to present oral testimony must contact EPA by May 14, 1986.

BILLING CODE: 1505-01-M

40 CFR Part 261

[SW-FRL-3010-1]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Proposal to Deny Petitions

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule and request for comment.

SUMMARY: The Environmental Protection Agency (EPA) today is proposing to deny the petitions submitted by 16 petitioners and revoke 2 temporary exclusions to exclude their waste from the hazardous waste lists. This action responds to delisting petitions 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 lists.

Based on an initial review of the petitions submitted by the generating

facilities, additional information has been requested to enable the Agency to determine if permanent exclusions should be granted. Most of these petitioners have not provided the requested additional information. For those facilities that provided some information, the Agency has determined that the additional information submitted is insufficient to make a final decision. Our basis, therefore, for denying these petitions is that all of these petitions are incomplete (*i.e.*, the Agency does not have sufficient information to determine the hazardous or non-hazardous nature of the waste). The effect of this action, if promulgated, would be to deny the petitions to exclude certain wastes generated at particular facilities from being listed as hazardous wastes under 40 CFR Part 261. Thus, all of the petitioned wastes would continue to be considered hazardous.

DATES: EPA will accept public comments on our tentative decision to deny these petitions and revoke these temporary exclusions until June 13, 1986. Any person may request a hearing on these decisions by filing a request with Eileen B. Claussen, whose address appears below, by May 14, 1986. The request must contain the information prescribed in 40 CFR 260.20(d).

ADDRESSES: Send two copies of your comments to EPA. One copy should be sent to the Docket Clerk, Office of Solid Waste (WH-562B), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. A second copy should be sent to Jim Kent, Delisting Section, Waste Identification Branch, CAD/OSW (WH-562B), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. Identify your comments at the top with this statement: "Section 3001—Delisting Petition; Proposed Mass Denial Published in the Federal Register on April 29, 1986."

Requests for a hearing should be addressed to Eileen B. Claussen, Director, Characterization and Assessment Division, Office of Solid Waste (WH-562B), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

The public docket for these petitions (including the Agency's requests for additional information) is located in Room S-212, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, and is available for public viewing from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding holidays.

FOR FURTHER INFORMATION CONTACT: RCRA Hotline, toll free at (800) 424-

9346, or at (202) 382-3000. For technical information, contact Lori DeRose, Office of Solid Waste (WH-562B), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 382-5096.

SUPPLEMENTARY INFORMATION:

Background

On January 16, 1981, as part of its final and interim 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 261.11(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, which meets 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 of 1984 (HSWA) 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.¹

In evaluating these petitions, the Agency first determines whether the waste (for which the petition was submitted) is non-hazardous based on the criteria for which the waste was originally listed. If the Agency believes that 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, however, it will then evaluate the waste with respect to any other factors or criteria, if there is a reasonable basis to believe that such additional factors could cause the waste to be hazardous.

In some instances, the Agency has already granted a temporary exclusion for certain of the petitioned wastes pursuant to 40 CFR 260.22(m) (no longer in effect, see 50 FR 28702, July 15, 1985). Temporary exclusions were granted whenever the petition review concluded that there was a substantial likelihood that the wastes were non-hazardous based on the criteria for which they were listed and that an exclusion eventually would be granted. The granting of a temporary exclusion did not relieve the petitioning facility from providing any additional information which may be required by the Agency to complete its evaluation of the petition and make a definitive determination to grant or deny the petition. The additional information required under section 222 of HSWA was generally requested from the petitioning facilities through written correspondence. (See the public docket for specific information requests.) The acquisition and analysis of this additional information by the Agency is necessary before a tentative determination (*i.e.*, a proposal to exclude or deny exclusion) can be made for the petitioned wastes. Two of the petitioners in today's proposed denial notice have temporary exclusions, which the Agency is also proposing to revoke.

In addition to those petitions for which temporary exclusions were granted, the Agency's Office of Solid Waste (OSW) evaluated two more petitions, using the pre-HSWA criteria, and made preliminary decisions to exclude their waste. These petitioners were given what became known as informal exclusions, and were notified by letter that their waste probably would be delisted some time in the near future. Specifically, the Office of Enforcement informed the Regional enforcement office and petitioners of OSW's findings. The letter requested that some discretion be exercised during the interim period until the Assistant Administrator for Solid Waste and Emergency Response (the official delegated delisting authority by the Administrator) exclusions to those facilities was never published. Instead, the Assistant Administrator for Solid Waste and Emergency Response decided not to grant these facilities a temporary exclusion due to the anticipated changes in delisting criteria

¹ In addition, residues from the treatment, storage, or disposal of listed hazardous wastes are eligible for exclusion. The substantive standard for delisting these wastes is the same as for excluding the listed wastes.

that were to be brought on by HSWA in 1984. Subsequently, these facilities were asked to submit the additional information, required under HSWA, to evaluate the petitions. Thus, these facilities never received temporary exclusions and their waste has always been considered a hazardous waste. A letter was sent in March 1986 to all the facilities having informal exclusions, withdrawing the informal exclusion and notifying them of the status of their petition. Two such petitions (*i.e.*, formerly having informal exclusions) are included in today's notice, which proposes to deny several petitions based on non-receipt of the needed information to complete their petitions. These two petitions are indicated by an asterisk on the list in today's notice of those petitions we are proposing to deny.

Basis for Denying Exclusion Petitions

The Agency has experienced lengthy delays in receiving the additional information requested from petitioning facilities, including those that have been granted temporary and informal exclusions for their wastes. The additional information has been requested because of the Hazardous and Solid Waste Amendments (*i.e.*, the Agency now must 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). Such delays have disrupted the continuity of the petition review process and have created a backlog of petitions awaiting review. For example, in some instances the Agency has been waiting for years for petitioners to submit the additional information, and still the requested information has not been submitted. In other cases, some information was submitted to the Agency in response to our request for additional information; however, these responses were sufficient to enable the Agency to make a decision on whether or not to grant the exclusion.

To mitigate the problems that have been created by this situation, the Agency gave notice in two earlier Federal Register notices, stating that if a complete petition is not submitted within a reasonable period of time from the date that EPA first requests the additional information (including those petitions granted temporary exclusions, now subject to HSWA), the Agency will propose to deny the petition as incomplete. (See 50 FR 47764, November 20, 1985, and 51 FR 2528, January 17, 1986.) The Agency is therefore proposing today to deny petitions which have

failed to provide all the additional information requested within a reasonable period of time.

In most of these cases, the Agency has made a number of requests for information from these facilities. The Agency made at least two written requests for information indicating the specific type of information the petitioner was to supply in order for the Agency to complete its valuation. In addition, the Agency published a notice in the Federal Register of its intent to collect this information (49 FR 4802-4803, February 8, 1984).

Some of these facilities were again informed individually in September 1985 that the additional information requested must be received by a certain date to permit complete petition processing and final determination (exclusion or exclusion denial) before the Congressionally mandated deadline of November 8, 1986.

The Agency believes that we have given these petitioners a reasonable period of time to provide this information. Since the necessary information has not been submitted, and the petitions remain incomplete (*i.e.*, the Agency does not have sufficient information to determine the hazardous or non-hazardous nature of the waste), thus, we are proposing to deny these petitions as incomplete. (See the RCRA docket for an explanation of why the information requested is required.)

Today's Proposal

The Agency intends to make final today's tentative decisions to deny these petitions, unless the petitioners provide the necessary information during the comment period (*i.e.*, the Agency then has a complete petition). The Agency, however, solicits comments on all aspects of today's proposal, including the reasonableness of the information requested.

EPA today proposed to deny the following petitions (two are temporarily excluded and are indicated by a dagger; two were informally excluded and are indicated by an asterisk):

Petition No. and Petitioner's Name

- 0220*—Imperial Cleveite, Caldwell, OH
- 0274†—Hytec, Incorporated, Tumwater, WA
- 0297†—ACR Electronics, Inc., Hollywood, FL
- 0302*—American Chrome & Chemicals, Incorporated, Corpus Christi, TX
- 0343—Iowa Industries, Inc., Burlington, IA
- 0509—Ford Motor Company, Sterling Heights, MI
- 0511—Ford Motor Company, Norfolk, VA
- 0512—Ford Motor Company, Sandusky, OH
- 0513—Ford Motor Company, Louisville, KY
- 0514—Ford Motor Company, Lorain, OH
- 0515—Ford Motor Company, Indianapolis, IN

- 0516—Ford Motor Company, Brookpark, OH
- 0517—Ford Motor Company, Avon Lake, OH
- 0519—Ford Motor Company, Chicago, IL
- 0521—Ford Motor Company, Romeo, MI
- 0527—Ford Motor Company, Wixom, MI

These petitions are being proposed for denial because the Agency has not received the additional information that was requested. This information has been outstanding for over one year. The Agency has previously stated its intention to deny petitions that have exceeded this one-year limit. (See 50 FR 47763, November 20, 1985, and 51 FR 2528, January 17, 1986.)

Regulatory Impact

Under Executive Order 12291, EPA must judge whether a regulation is "major" and, therefore, subject to the requirement of a Regulatory Impact Analysis. This proposal, which would revoke temporary exclusions and would deny the exclusion petitions submitted by certain facilities, is not major. The affect of this proposal would increase the overall costs for the facilities which currently have a temporary exclusion. The actual costs to these companies, however, would not be significant. In particular, in calculating the amount of waste that is generated by the 2 facilities that currently have temporary exclusions and considering a disposal cost of \$300/ton, the increased cost to these facilities is approximately \$3,650, well under the \$100 million level constituting a major regulation. In addition these companies are large and, therefore, the impact of this rule will be relatively small. This proposal is not a major regulation, therefore, no Regulatory Impact Analysis is required.

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, it 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 not change the overall costs of EPA's hazardous waste regulations. Accordingly, I hereby certify that this proposed regulation will not have a significant impact on a substantial number of small entities.

This regulations, therefore, does not require a regulatory flexibility analysis.

List of Subjects in 40 CFR Part 261

Hazardous waste, Recycling.

Dated: April 22, 1986.

J. W. McGraw,

Acting Assistant Administrator, Office of Solid Waste and Emergency Response.

[FR Doc. 86-9521 Filed 4-28-86; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

42 CFR Part 7

Distribution of Reference Biological Standards and Biological Preparations; Proposed User Charge

AGENCY: Centers for Disease Control, Public Health Service, HHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Public Health Service is proposing to develop new regulations governing the distribution of reference biological standards and biological preparations by the Centers for Disease Control (CDC). In this program, private entities would be assessed a charge to cover the cost to CDC of producing and distributing the products.

DATE: Comments on the proposed rule must be received on or before May 29, 1986.

ADDRESS: Comments should be addressed in writing to the Centers for Disease Control, Building 1, Room 6013, 1600 Clifton Road, Atlanta, Georgia 30333. Comments will be available for public inspection between 9 a.m. and 4 p.m., Monday through Friday (except holidays). All relevant comments received during the comment period will be considered in developing the final rule.

FOR FURTHER INFORMATION CONTACT: William Knox Harrell, Ph.D., Biological Products Program, Center for Infectious Diseases, Centers for Disease Control, 1600 Clifton Road, Atlanta, Georgia 30333, telephone (404) 329-3352, or FTS 236-3352.

SUPPLEMENTARY INFORMATION: CDC has been delegated the authority under section 352 of the Public Health Service (PHS) Act (42 U.S.C. 263), as amended, to produce and distribute biological products in the conduct of its functional responsibilities. We are proposing that a new Part 7 be added to Title 42 of the Code of Federal Regulations to initiate a program that would impose a user

charge upon private entities which request reference biological standards or biological preparations for their own comparative performance tests. The user charge would be assessed to cover the cost to CDC of developing and distributing the products.

Statutory Authority for User Charge

Under Title V of the Independent Offices Appropriation Act (IOAA) of 1952, 31 U.S.C. 9701 (formerly 31 U.S.C. 483a), a Federal agency may charge for the services it provides when such services confer a special benefit upon an identifiable recipient. The head of each agency is authorized to prescribe regulations establishing charges for such services.

Applicability of User Charges to CDC Activities

CDC has examined the applicability of user charges to activities performed under section 352 of the PHS Act and concluded that a user charge is appropriate. This notice proposes only that charges be imposed on private entities to cover the cost to CDC of producing and distributing reference biological standards and biological preparations.

The precedent for charging private entities and not charging public entities is set in section 311(b) of the Public Health Service Act (42 U.S.C. 243). Under this provision, the Secretary is authorized to train personnel for State and local health work but may charge only private entities reasonable fees for training their personnel.

Proposed User Charge

CDC is proposing to develop regulations governing the distribution of biological products (42 CFR Part 7) by imposing a user charge for these services to private entities. Based on the same level of services as in the past, these user charges would be expected to generate about \$95,000 annually toward the cost of producing and distributing reference biological standards and biological preparations. CDC has estimated that currently it costs an average of \$24 to produce and distribute a unit of reagents to these agencies.

Under the IOAA, a user charge is appropriate if an identifiable individual obtains a specific benefit. The benefit accruing to a private entity is that a national standard for microbiological and immunological in vitro diagnostic products is available for comparing the product with this standard.

User charges for CDC's production and distribution of reference material have been under consideration for some time. For example, a 1982 General

Accounting Office report entitled "Centers for Disease Control Should Charge Fees for Various Diagnostic Laboratory Services" (GAO/HRD-82-70) urged that user charges be instituted. Upon consideration of the policy issues and legal questions presented by user charges, CDC has concluded that implementation of a program of user charges would be appropriate and consistent with applicable law.

Computation of User Charge

Under the IOAA, each identifiable recipient may be assessed a reasonable charge for a measurable unit of Government service from which it derives a special benefit.

1. *Program cost.* The cost to CDC for producing and distributing reference biological standards and biological preparations to private entities is estimated to be \$95,000 in Fiscal Year 1985. This cost includes both direct costs such as salaries and equipment, and indirect costs such as rent, telephone service, and a proportionate share of management and supervisory costs.

2. *Computation of user charge.* In this program, CDC is attempting to generate, through a user charge, a sum equal to the \$95,000 in program costs. CDC receives requests from private entities for approximately 4,000 units of reference biological standards and biological preparations each year. For purposes of this program, CDC is proposing to impose an average user charge of \$24 per unit distributed. The cost will vary, depending upon the type of preparation requested.

Exemptions

CDC is not proposing to impose a user charge on State and local health departments, governmental institutions (e.g., State hospitals and universities), the World Health Organization, or ministries of health of foreign governments because these materials are provided to those agencies for public health reasons and not for the benefit of the requesters. CDC believes imposing a user charge on these public agencies would not be appropriate. The precedent for charging private entities and not charging public entities is set in section 311(b) of the Public Health Service Act (42 U.S.C. 243). Under this provision, the Secretary is authorized to train personnel for State and local health work but may charge only private entities reasonable fees for training their personnel.

Terms of Payment

CDC proposes to require a purchase order at the time the request for the

materials is received. The organization will be billed at the end of each month for materials distributed. If a requester fails to pay the charge, CDC would withhold future distribution of the reference material.

Economic Impact

The Secretary has determined that this proposed rule does not significantly impact on a substantial number of small entities and therefore does not require preparation of a regulatory flexibility analysis under the Regulatory Flexibility Act, Pub. L. 96-354.

The Secretary has also determined that this proposed rule is not a "major rule" under Executive Order 12291. Thus, a regulatory impact analysis is not required because it will not:

- (1) Have an annual effect on the economy of \$100 million or more;
- (2) Impose a major increase in costs or prices for consumers; individual industries; Federal, State, or local government agencies; or geographic regions; or
- (3) Result in 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.

List of Subjects in 42 CFR Part 7

Administrative practice and procedure.

It is, therefore, proposed to amend Title 42 of the Code of Federal Regulations by adding a new Part 7 to Subchapter A as set forth below.

Dated: October 22, 1985.

James O. Mason,

Acting Assistant Secretary for Health.

Approved: March 4, 1986.

Otis R. Bowen,

Secretary.

PART 7—DISTRIBUTION OF REFERENCE BIOLOGICAL STANDARDS AND BIOLOGICAL PREPARATIONS

Sec.

- 7.1 Applicability.
- 7.2 Establishment of user charge.
- 7.3 Definitions.
- 7.4 Schedule of charges.
- 7.5 Payment procedures.
- 7.6 Exemptions.

Authority: Sec. 215, 58 Stat. 690, as amended (42 U.S.C. 216); Title V of the Independent Offices Appropriation Act of 1952 (31 U.S.C. 9701); and Sec. 352 of the Public Health Service Act, as amended (42 U.S.C. 263).

§ 7.1 Applicability.

The provisions of this Part are applicable to private entities requesting from the Centers for Disease Control (CDC) reference biological standards and biological preparations for use in their laboratories.

§ 7.2 Establishment of a user charge.

Except as otherwise provided in § 7.6, a user charge shall be imposed on private entities to cover the cost to CDC of producing and distributing reference biological standards and biological preparations.

§ 7.3 Definitions.

"Biological standards" means a uniform and stable reference biological substance which allows measurements of relative potency to be made and described in a common currency of international and national units of activity.

"Biological preparations" means a reference biological substance which may be used for a purpose similar to that of a standards, but which has been established without a full collaborative study, or where a collaborative study has shown that it is not appropriate to establish the preparation as an international standard.

§ 7.4 Schedule of charges.

The charges imposed in § 7.2 are based on the amount published in CDC's price list of available products. An up-to-date schedule of charges is available from the Biological Products Program, Center for Infectious Diseases, Centers for Disease Control, 1600 Clifton Road, Atlanta, Georgia 30333.

§ 7.5 Payment procedures.

The requester shall submit a purchase order when submitting the request for reference biological standards and preparations. The requester will be billed at the end of each month for materials distributed. Payment shall be made in the form of a check or money order payable to the "Centers of Disease Control," and mailed to the Financial Management Office, Buckhead Facility, Room 200, Centers for Disease Control, 1600 Clifton Road, Atlanta, Georgia 30333. If CDC does not receive full payment for the user charge, distribution of future products will be withheld.

§ 7.6 Exemptions.

State and local health departments, governmental institutions (e.g., State hospitals and universities), the World Health Organization, and ministries of

health of foreign governments are exempt from paying user charges.

[FR Doc. 86-9466 Filed 4-28-86; 8:45 am]

BILLING CODE 4160-18-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA-6709]

Proposed Flood Elevation Determinations; Arkansas et al.

AGENCY: Federal Emergency Management Agency.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations and proposed modified base flood elevations listed below for selected locations in the nation. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

ADDRESSES: See table below.

FOR FURTHER INFORMATION CONTACT: John L. Matticks, Acting Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, DC 20472 (202) 646-2767.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the proposed determinations of base (100-year) flood elevations and modified base flood elevations for selected locations in the nation, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1938 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-488)), 42 U.S.C. 4001-4128, and 44 CFR 67.4(a).

These elevations together with the flood plain management measures required by § 60.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The

community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that the proposed flood elevation determinations, if promulgated, will not have a significant economic impact on a substantial number of small entities. A flood elevation determination under section 1363 forms the basis for new local ordinances, which, if adopted by a local community, will govern future construction within the flood plain area. The elevation determinations, however, impose no restriction unless and until the local community voluntarily adopts flood plain ordinances in accord with these elevations. Even if ordinances are adopted in compliance with Federal standards, the elevations prescribe how high to build in the flood plain and do not proscribe development. Thus, this action only forms the basis for future local actions. It imposes no new requirement; of itself it has no economic impact.

List of Subjects in 44 CFR Part 67

Flood insurance, Flood plains.

The authority citation for Part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq.,

Reorganization Plan No. 3 of 1978, E.O. 12127.

The proposed base (100-year) flood elevations for selected locations are:

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS	
Source of flooding and location	#Depth in feet above ground. Elevation in feet (NGVD)
ARKANSAS	
Clinton (City), Van Buren County	
<i>South Fork Little Red River:</i>	
At downstream corporate limits	*500
At confluence of Archay Creek Fork	*509
At upstream corporate limits	*534
Approximately 0.9 mile upstream of corporate limits	*537
<i>Airport Branch:</i>	
At confluence with South Fork Little Red River	*509
Approximately 150 feet upstream of State Route 16	*520
Approximately 1,500 feet upstream of State Route 16	*540

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued	
Source of flooding and location	#Depth in feet above ground. Elevation in feet (NGVD)
<i>Archey Creek Fork:</i>	
At confluence with South Fork Little Red River	*509
At confluence of Town Branch	*510
Approximately 60 feet upstream of U.S. Route 65	*522
At upstream corporate limits	*536
Approximately 650 feet upstream of upstream corporate limits	*537
<i>Town Branch:</i>	
At confluence with Archey Creek Fork	*510
Upstream side of Park Street	*513
Upstream side of U.S. Route 65	*519
Upstream side of City Street	*559
Approximately 0.44 feet upstream of City Street	*602
<i>Big Branch:</i>	
Upstream side of U.S. Route 65	*539
At downstream corporate limits	*561
Approximately 1,360 feet upstream of downstream corporate limits	*608
Maps available for inspection at 404 Main, Clinton, Arkansas.	
Send comments to The Honorable Charles Bradley, Mayor of the City of Clinton, Van Buren County, P.O. Box 277, Clinton, Arkansas 72031.	

COLORADO	
Chaffee (County)	
<i>South Arkansas River:</i> Approximately 100 feet upstream from the center of U.S. Highway 50 bridge	
	*7,016
<i>Poncha Creek:</i> At Town of Poncha Springs corporate limits, approximately 200 feet west of the intersection of County Road 115 and Pinyon Drive	
	*7,477
<i>Chalk Creek:</i> Immediately upstream of U.S. Highway 285 bridge	
	*7,685
<i>Cottonwood Creek:</i> Approximately 60 feet upstream from the center of County Road 361 bridge	
	*8,155
Maps are available for review at the County Administrator's Office, Chaffee County Courthouse, 123 Crestone, Salida, Colorado.	
Send comments to The Honorable Edward Bradbury, Chairman, County Board of Commissioners, Box 699, Salida, Colorado 81201.	

Larimer County	
<i>Big Thompson River:</i> Approximately 25 feet upstream from center of Marys Lake Road bridge	
	*7,627
<i>Fall River:</i> Approximately 120 feet upstream from center of Fish Hatchery Road bridge	
	*8,010
<i>Black Canyon Creek:</i> Approximately 25 feet downstream from center of McGregor Avenue Bridge	
	*7,611
Maps are available for review at the Flood Plain Administrator's Office, 218 West Mountain Avenue, Fort Collins, Colorado.	
Send comments to The Honorable Courtlyn W. Hotchkiss, Chairman, Larimer County Board of Commissioners, Box 1190, Fort Collins, Colorado 80522.	

Poncha Springs (Town)	
<i>South Arkansas River:</i> Approximately 80 feet upstream of the center of Highway 285	
	*7,448
<i>Poncha Creek:</i> Approximately 125 feet downstream of the center of Hot Springs Road	
	*7,470
Maps are available for review at the Mayor's Office, 330 Burnett Street, Poncha Springs, Colorado.	
Send comments to The Honorable Steve Hall, Mayor, Town of Poncha Springs, Box 56, Poncha Springs, Colorado 81201.	

FLORIDA	
Branford (Town), Suwannee County	
<i>Suwannee River:</i>	
About 1,200 feet downstream of U.S. Route 27	*36
About 2,000 feet upstream of U.S. Route 27	*37

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued	
Source of flooding and location	#Depth in feet above ground. Elevation in feet (NGVD)
Maps available for inspection at the City Clerk's Office, City Building, P.O. Box 822, Branford, Florida.	
Send comments to The Honorable Gene Broome, Mayor, Town of Branford, City Building, P.O. Box 822, Branford, Florida 32008-0577.	
Columbia County (Unincorporated Areas)	
<i>Suwannee River:</i>	
About 3.3 miles downstream of State Road 136	*85
Just downstream of northern state boundary	*108
Maps available for inspection at the County Coordinator's Office, County Courthouse, Lake City, Florida.	
Send comments to The Honorable Kenneth Witt, Chairman, County Board of Commissioners, Columbia County, County Courthouse, P.O. Drawer 1529, Lake City, Florida 32056.	

Eustis (City), Lake County	
<i>Lake Hermosa:</i> Within community	*74
<i>Lake Joanna:</i> Within community	*155
<i>Lake Louise:</i> Within community	*80
<i>Lake Maggie:</i> Within community	*155
<i>Lake Nettie:</i> Within community	*65
<i>Ponding Area H5B:</i> Within community	*71
<i>Lake Willie:</i> Within community	*105
<i>West Crooked Lake System (East and West Crooked Lakes):</i> Within community	*74
<i>Lake Woodward:</i> Within community	*75
<i>Lake Yale:</i> Within community	*61
Maps available for inspection at the City Manager's Office, City Building, P.O. Box 68, Eustis, Florida.	
Send comments to The Honorable Michael Stearman, City Manager, City of Eustis, City Building, P.O. Box 68, Eustis, Florida 32726.	

Lafayette County (Unincorporated Areas)	
<i>Suwannee River:</i>	
About 2.92 miles downstream of Simms Landing	*30
About 2.4 miles upstream of Norfolk Southern Railway	*60
Maps available for inspection at the County Clerk's Office, Lafayette County Courthouse, Mayo, Florida.	
Send comments to The Honorable Norman Jackson, Chairman, County Commission, County Courthouse, P.O. Box 88, Mayo, Florida 32066.	

Suwannee County (Unincorporated Areas)	
<i>Suwannee River:</i>	
At confluence of Santa Fe River	*32
Just upstream of State Road 250	*59
About 3.5 miles upstream of Interstate 75	*85
Maps available for inspection at the County Coordinator's Office, Suwannee County Courthouse, Live Oak, Florida.	
Send comments to The Honorable W.W. Jernigan, Chairman, County Commission, Suwannee County, County Courthouse, Live Oak, Florida 32060.	

GEORGIA	
Hinesville (City), Liberty County	
<i>Mill Creek:</i>	
About 1.1 miles downstream of confluence of Mill Creek Tributary No. 2	*72
About 0.9 mile upstream of confluence of Mill Creek Tributary No. 2	*77
<i>Mill Creek Tributary No. 2:</i>	
At mouth	*75
About 2,500 feet upstream of Pineland Avenue	*84
<i>Peacock Creek:</i>	
At confluence of Peacock Creek Tributary No. 1	*18
At northern corporate limits	*26

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued		PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued		PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued	
Source of flooding and location	#Depth in feet above ground. Elevation in feet (NGVD)	Source of flooding and location	#Depth in feet above ground. Elevation in feet (NGVD)	Source of flooding and location	#Depth in feet above ground. Elevation in feet (NGVD)
IDAHO					
Cambridge (City), Washington County					
Rush Creek: Approximately 15 feet north of the center of Superior Street, along Rush Creek.....					
*2,642					
Maps available for review at the City Hall, Cambridge, Idaho.					
Send comments to: The Honorable Clyde Snell, Mayor, City of Cambridge, Box 248, Cambridge, Idaho 83610.					
Midvale (City), Washington County					
Weiser River: At Bridge Street.....					
*2,538					
Maps are available for review at the City Hall, Midvale, Idaho.					
Send comments to the Honorable Jay Langer, Mayor, City of Midvale, City Hall, Midvale, Idaho 83645.					
Washington County (Unincorporated Areas)					
Snake River: Approximately 600 feet downstream from center of U.S. Highway 30N Bridge.....					
*2,102					
Weiser River: Approximately 50 feet upstream from center of U.S. Highway 95-30N Bridge.....					
*2,106					
Monroe Creek: Approximately 50 feet upstream from Calloway Canal.....					
*2,146					
Rush Creek: Approximately 25 feet upstream from center of Union Pacific Railroad.....					
*2,839					
Maps are available for review at the County Courthouse, 258 East Court Street, Weiser, Idaho.					
Send comments to the Honorable Jack Gardner, Chairman, Washington County Board of Commissioners, P.O. Box 8, Cambridge, Idaho 83610.					
Weiser (City), Washington County					
Snake River: Approximately 660 feet downstream from the center of U.S. Highway 30N Bridge.....					
*2,102					
Weiser River: Approximately 30 feet upstream from the center of East Eleventh Street, along the Union Pacific Railroad.....					
*2,109					
Monroe Creek: Approximately 20 feet upstream of and parallel to East Park Street.....					
*2,125					
Maps are available for review at the City Planning and Zoning Department, 55 West Idaho, Weiser, Idaho.					
Send comments to the Honorable Dale Thomason, Mayor, City of Weiser, 55 West Idaho, Weiser, Idaho 83672.					
INDIANA					
Milford (Town), Kosciusko County					
Turkey Creek:					
Just upstream of Orr Road.....					
*822					
About 0.24 mile upstream of Conrail.....					
*828					
Maps available for inspection at the Office of the Clerk Treasurer, Town Hall, P.O. Box 456, Milford, Indiana.					
Send comments to The Honorable Jean Treesh, Town Board President, Town of Milford, Milford Town Hall, P.O. Box 456, Milford, Indiana 46542.					
North Webster (Town), Kosciusko County					
Webster Lake: Within community.....					
*855					
Maps available for inspection at the Office of the Clerk Treasurer, Town Hall, Rt. #13, North Webster, Indiana.					
Send comments to the Honorable Myron Clark, Town Board President, Town of North Webster, Town Hall, Rt. #13, North Webster, Indiana 46555.					
Peacock Creek Tributary No. 1:		Rocky Creek Tributary No. 7:		Rocky Creek Tributary No. 8:	
At confluence with Peacock Creek.....		At mouth.....		At mouth.....	
*18		Just downstream of Fort Gordon Highway.....		*190	
Just downstream of U.S. Route 82.....		Just upstream of Fort Gordon Highway.....		*201	
*51		Just downstream of North Leg Road.....		*206	
Maps available for inspection at the City Hall, 115 East South Street, Hinesville, Georgia.		Just upstream of North Leg Road.....		*240	
Send comments to The Honorable Carl Dykes, Mayor, City of Hinesville, City Hall, 115 East South Street, Hinesville, Georgia 31313.		Just downstream of Georgia Railroad.....		*248	
		Just upstream of Georgia Railroad.....		*271	
		Just downstream of Bobby Jones Expressway.....		*285	
		Just upstream of Bobby Jones Expressway.....		*316	
		About 1,900 feet upstream of Sharon Road.....		*332	
				*357	
Richmond County (Unincorporated Areas)		Rocky Creek Tributary No. 8:		Rocky Creek Tributary No. 9:	
Savannah River:		At mouth.....		At mouth.....	
At downstream county boundary.....		Just downstream of Bobby Jones Expressway.....		About 1,500 feet upstream of mouth.....	
*108		Just upstream of Bobby Jones Expressway.....		*335	
About 0.9 mile upstream of Sandbar Ferry Road.....		Just downstream of Georgia Railroad.....		*375	
*140		Just upstream of Georgia Railroad.....		Rocky Creek Tributary No. 10:	
Spirit Creek:		Just downstream of Barton Chapel Road.....		At mouth.....	
At mouth.....		Just upstream of Barton Chapel Road.....		About 1,400 feet upstream of mouth.....	
*125		About 0.85 mile upstream of Barton Chapel Road.....		*326	
Just downstream of Richmond Factory Pond Dam.....				*353	
*183		Rocky Creek Tributary No. 11:		At mouth.....	
Just upstream of Richmond Factory Pond Dam.....		At mouth.....		About 1,500 feet upstream of mouth.....	
*192		Ates Creek:		*143	
About 0.5 mile upstream of Birdwell Road.....		At mouth.....		*145	
*246		Just downstream of Olive Road.....		Oates Creek Tributary No. 1:	
Spirit Creek Tributary No. 1:		At mouth.....		At mouth.....	
At mouth.....		Just downstream of Olive Road.....		At mouth.....	
*156				Just downstream of Olive Road.....	
About 1.25 miles upstream of McDade Farm Road.....				*124	
*204				*147	
Spirit Creek Horsepen Branch:		Raes Creek:		About 1,700 feet downstream of Lake Shore Loop.....	
At mouth.....		About 1,700 feet downstream of Lake Shore Loop.....		*159	
*217		Just downstream of foot bridge (about 1,800 feet downstream of Berckmans Road).....		*164	
Just downstream of Willis Foreman Road.....		Just upstream of foot bridge (about 1,800 feet downstream of Berckmans Road).....		*173	
*237		Just downstream of Boy Scout Road.....		*201	
Just upstream of Willis Foreman Road.....		Just upstream of Boy Scout Road.....		*208	
*242		Just downstream of Lake Aumond Dam.....		*255	
About 1.0 mile upstream of Willis Foreman Road.....		Just upstream of Lake Aumond Dam.....		*260	
*276		Just downstream of Jackson Road.....		*281	
Butler Creek:		Just upstream of Jackson Road.....		*288	
About 1200 feet upstream of mouth.....		Just downstream of Maddox Road.....		*376	
*119		Crane Creek:		At mouth.....	
Just downstream of dam for Fort Gordon Reservoir.....		At mouth.....		Just downstream of Skinner Mill Road.....	
*231		Just downstream of Skinner Mill Road.....		*220	
Just upstream of dam for Fort Gordon Reservoir.....		Just upstream of Warren Road.....		*243	
*256		Just downstream of Pleasant Home Road.....		*255	
Just downstream of Fort Gordon Highway.....		Just upstream of Pleasant Home Road.....		*285	
*275		Just upstream of Pleasant Home Road Extension.....		*292	
Butler Creek Tributary No. 1:		No Name Creek:		At mouth.....	
At mouth.....		At mouth.....		Just downstream of Ashland Drive.....	
*198		Just downstream of Ashland Drive.....		*184	
About 0.9 mile upstream of Morgan Road.....		Just downstream of Oberlin Road.....		*198	
*262				*206	
Butler Creek Tributary No. 2:		Raes Creek Tributary No. 1:		Just upstream of Oberlin Road.....	
At mouth.....		At mouth.....		*250	
*263		About 1,000 feet upstream of Wrightsboro Road.....		*337	
Just downstream of Fort Gordon Highway.....		Raes Creek Tributary No. 2:		At mouth.....	
*273		At mouth.....		About 0.8 mile upstream of mouth.....	
Just upstream of Fort Gordon Highway.....		About 0.8 mile upstream of mouth.....		*337	
*281				*381	
Just downstream of Georgia Railroad.....		Raes Creek Tributary No. 3:		At mouth.....	
*285		At mouth.....		Just upstream of Maddox Road.....	
Just upstream of Georgia Railroad.....		Just upstream of Maddox Road.....		*351	
*294				*406	
Just downstream of dam.....		Beaver Dam Ditch:		At mouth.....	
*310		At mouth.....		At confluence of Oates Creek.....	
About 400 feet upstream of dam.....		At confluence of Oates Creek.....		*119	
*325				*124	
Rocky Creek:		Maps available for inspection at the Augusta Richmond County Planning Commission, 525 Telfair Street, Augusta, Georgia.			
At mouth.....		Send comments to The Honorable George Patty, Executive Director, Augusta Richmond County Planning Commission, 525 Telfair Street, Augusta, Georgia 30911.			
Just downstream of Old Savannah Road.....					
*121					
Just upstream of Old Savannah Road.....					
*134					
Just downstream of Old McDuffie Road.....					
*139					
Just upstream of Old McDuffie Road.....					
*204					
Just downstream of Rosedale Dam.....					
*213					
Just upstream of Rosedale Dam.....					
*220					
Just downstream of Fort Gordon Highway.....					
*240					
Just upstream of Fort Gordon Highway.....					
*287					
Just downstream of Barton Chapel Road.....					
*294					
Just upstream of Barton Chapel Road.....					
*304					
Just downstream of Georgia Railroad.....					
*311					
Just downstream of Georgia Railroad.....					
*318					
Rocky Creek Tributary No. 1:					
At mouth.....					
*122					
About 2,200 feet upstream of Norfolk Southern Railway.....					
*129					
Rocky Creek Tributary No. 2:					
At mouth.....					
*129					
Just south of Nixon Road.....					
*130					
Rocky Creek Tributary No. 3:					
At mouth.....					
*126					
Just north of Nixon Road.....					
*128					
Rocky Creek Tributary No. 4:					
At mouth.....					
*130					
Just downstream of Windsor Spring Road.....					
*152					
Rocky Creek Tributary No. 5:					
At mouth.....					
*136					
About 1,100 feet upstream of Peach Orchard Road.....					
*149					
Rocky Creek Tributary No. 6:					
At mouth.....					
*178					
About 800 feet upstream of Fort Gordon Highway.....					
*195					

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued		PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued		PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued	
Source of flooding and location	#Depth in feet above ground. Elevation in feet (NGVD)	Source of flooding and location	#Depth in feet above ground. Elevation in feet (NGVD)	Source of flooding and location	#Depth in feet above ground. Elevation in feet (NGVD)
Syracuse (Town), Kosciusko County		Send comments to the Honorable Charles Childers, Mayor, City of Stanton, Government Building, Box 326, Stanton, Kentucky 40380.		Send comments to The Honorable Andrea Manor, Chairman, Lyon County Board of Commissioners, 15 South Main Street, Yerington, Nevada 89447.	
<i>Turkey Creek:</i>		MAINE		Storey County (Unincorporated Areas)	
About 2,700 feet downstream of Syracuse-Webster Road.....	*853	Greenville (Town), Piscataquis County		<i>Truckee River:</i> Approximately 100 feet downstream from center of McCarren Ranch Road.....	*4,291
Just upstream of Henry Street.....	*856	<i>Moosehead Lake:</i> Entire shoreline affecting community.....		Maps are available for review at the Storey County Courthouse, Virginia City, Nevada.	
<i>Syracuse Lake:</i> Within community.....	*860	Maps available for inspection At the Town Office, Minden Street, Greenville Maine.		Send comments to Mr. Mark Schrader, Chairman, Board of Commissioners, County of Storey, Courthouse, Virginia City, Nevada 89440.	
<i>Lake Wawasee:</i> Within community.....	*860	Send comments to The Honorable David Cota, Town Manager of Greenville, Piscataquis County, Minden Street, Greenville, Main 04441.			
Maps available for inspection at the Town Hall, 500 South Huntington Street, Syracuse, Indiana.		MASSACHUSETTS		NEW YORK	
Send comments to the Honorable James Hughes, Town Board President, Town of Syracuse, Town Hall, 500 South Huntington Street, Syracuse, Indiana 46567.		Hanson (Town), Plymouth County		Delaware (Town), Sullivan County	
Warsaw (City), Kosciusko County		<i>Poor Meadow Brook:</i>		<i>Delaware River:</i>	
<i>Walnut Creek:</i>		Downstream corporate limits.....		At downstream corporate limits.....	*748
Just upstream of Lincoln Highway.....	*810	Downstream side of West Washington Street.....		At confluence of Callicoon Creek.....	*756
Just downstream of 100 South Road.....	*817	Approximately 0.88 mile upstream of West Washington Street.....		Approximately 150 feet upstream of Tower Road.....	*760
<i>Eagle Creek:</i> Within community.....	*813	Maps available for inspection at the Planning Board, 542 Liberty Street, Hanson, Massachusetts.		At upstream corporate limits.....	*790
<i>Deeds Creek:</i>		Send comments to The Honorable Joseph Nugent, Executive Secretary of the Town of Hanson, Plymouth County, 542 Liberty Street, Hanson, Massachusetts 02341.		<i>North Branch Callicoon Creek:</i>	
At mouth.....	*812	MINNESOTA		At confluence with Callicoon Creek.....	*786
About 700 feet upstream of U.S. Route 30.....	*819	Belle Plaine (Borough), Scott County		Approximately 1,180 feet upstream of Town Route 18 bridge.....	*821
<i>Lones Ditch:</i> Within community.....	*811	<i>Minnesota River:</i>		Maps available for inspection at the Town Hall, Hortonville, New York.	
<i>Pike Lake:</i> Within community.....	*812	About 1.8 miles downstream of State Highway 25.....		Send comments to The Honorable William Dirie, Supervisor of the Town of Delaware, Sullivan County, Box 2, Hortonville, New York 12745.	
<i>Winona Lake:</i> Within community.....	*814	About 2.0 miles upstream of State Highway 25.....		Highland Falls (Village), Orange County	
<i>Center Lake:</i> Within community.....	*808	Maps available for inspection at the Municipal Building, 426 East Main, Belle Plaine, Minnesota.		<i>Hudson River:</i> Entire shoreline within community.....	*8
Maps available for inspection at the office of the City Planner, City Hall, 794 West Center Street, Warsaw, Indiana.		Send comments to The Honorable Francis Schuman, Mayor, City of Belle Plaine, Municipal Building, 426 East Main, Belle Plaine, Minnesota 56011.		Maps available for inspection at the Village Hall, 180 Main Street, Highland Falls, New York.	
Send comments to the Honorable Jeff Plank, Mayor, City of Warsaw, City Hall, 794 West Center Street, Warsaw, Indiana 46580.		MORTON (City), Renville County		Send comments to The Honorable Inga M. Quaintance, Deputy Mayor of the Village of Highland Falls, Village Hall, 180 Main Street, Highland Falls, New York 10928.	
Winona Lake (Town), Kosciusko County		<i>Minnesota River:</i>		Otego (Town), Otsego County	
<i>Winona Lake:</i> within community.....	*814	About 0.5 mile downstream of Chicago and North Western Railroad.....		<i>Susquehanna River:</i>	
Maps available for inspection at the Town Hall, P.O. Box 338, Winona Lake, Indiana.		Just downstream of State Highway 19.....		Downstream corporate limits.....	*1,049
Send comments to the Honorable David Wolkins, Town Board President, Town of Winona Lake, Town Hall, P.O. Box 338, Winona Lake, Indiana 46590.		Maps available for inspection at the City Hall, Box 127, Morton, Minnesota.		Confluence of Otsdawa Creek.....	*1,056
KANSAS		Send comments to The Honorable John Seehausen, Mayor, City of Morton, City Hall, Box 127, Morton, Minnesota 56270.		Upstream corporate limits.....	*1,058
Florence (City), Marion County		North Redwood (City), Redwood County		<i>Flax Island Creek:</i>	
<i>Cottonwood River:</i>		<i>Minnesota River:</i>		Confluence with the Susquehanna River.....	*1,055
About 750 feet downstream of Atchison, Topeka and Santa Fe Railway.....	*1,271	About 1.4 miles downstream of confluence of Redwood River.....		Upstream corporate limits of the Village of Otego.....	*1,072
About 0.9 mile upstream of U.S. Highway 50.....	*1,275	About 0.6 mile upstream of confluence of Redwood River.....		Approximately 800' upstream of the Village of Otego corporate limits.....	*1,092
Maps available for inspection at the City Hall, 100 East Fourth Street, Florence, Kansas 66851.		Maps available for inspection at the Mayor's Home, 105 River Road, North Redwood, Minnesota.		Approximately 1,520' upstream of the Village of Otego corporate limits.....	*1,107
Send comments to the Honorable Rodney Williams, Mayor, City of Florence, City Hall, 100 East Fourth Street, Florence, Kansas 66851.		Send comments to The Honorable Ken Borke, Mayor, City of North Redwood, 105 River Road, North Redwood, Minnesota 56283.		Otsdawa Creek:	
KENTUCKY		NEVADA		Confluence with the Susquehanna River.....	*1,056
Corbin (City), Knox and Whitley Counties		Lyon County (Unincorporated Areas)		Extreme upstream corporate limits of the Village of Otego.....	*1,072
<i>Lynn Camp Creek:</i>		<i>Walker River:</i> Approximately 25 feet downstream from Goldfield Avenue.....		Maps available for inspection at the Otego Town Hall, River Street, Otego, New York.	
About 4,000 feet downstream of Laurel Avenue.....	*1,063	Maps are available for review at the Department of Public Works and Engineering, 15 South Main Street, Yerington, Nevada.		Send comments to The Honorable C. Roderick Dutcher, Supervisor of the Town of Otego, Otego County, R.D. 2, Box 207, Otego, New York 13825.	
About 1,500 feet upstream of East Barbourville Street.....	*1,070			Otego (Village), Otsego County	
Maps available for inspection at the City Hall, 805 South Main Street, Corbin, Kentucky.				<i>Susquehanna River:</i>	
Send comment to the Honorable Thomas R. Thurston, Mayor, City of Corbin, City Hall, 805 South Main Street, Corbin, Kentucky 40701.				Approximately 0.64 mile downstream of corporate limits.....	*1,054
Stanton (City), Powell County				Confluence of Flax Island Creek.....	*1,055
<i>Red River:</i>				Upstream corporate limits.....	*1,056
About 1.4 miles downstream of State Route 213.....	*642			<i>Flax Island Creek:</i>	
About 2.7 miles upstream of State Route 213.....	*652			Confluence with Susquehanna River.....	*1,055
Maps available for inspection at the Government Building, Box 326, Stanton, Kentucky.				Downstream side of Main Street.....	*1,057
				Approximately 400 feet upstream of Main Street..	*1,065
				Upstream corporate limits.....	*1,072
				<i>Otsdawa Creek:</i>	
				Downstream corporate limits.....	*1,058
				Approximately 1,300 feet upstream of Main Street.....	*1,058

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued		PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued		PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued	
Source of flooding and location	#Depth in feet above ground. Elevation in feet (NGVD)	Source of flooding and location	#Depth in feet above ground. Elevation in feet (NGVD)	Source of flooding and location	#Depth in feet above ground. Elevation in feet (NGVD)
Approximately 2,040 feet upstream of Main Street.....	*1,062	River Bend (Town), Craven County		Send comments to The Honorable Ervin Schulte, Mayor, City of Center, P.O. Box 76, Center, North Dakota 58530.	
Extreme upstream corporate limits.....	*1,072	<i>Atlantic Ocean/Pamlico Sound/Neuse River/Trent River: Along the Southern Extraterritorial Limits.....</i>	*9		
Maps available for inspection at the Otego Village Hall, River Street, Otego, New York.		<i>Samuels Creek/Rocky Run:</i>		Fargo (City), Cass County	
Send comments to The Honorable Gary Goff, Mayor of the Village of Otego, Otego County, Jeannette Drive, Otego, New York 13825.		From confluence with Trent River to U.S. Highway 7.....	*9	<i>Red River of the North: At center of Main Avenue.....</i>	*899
		Just upstream of SR 1221.....	*14	<i>Shayenne River: Approximately 50 feet downstream from center of Interstate 94 Bridge.....</i>	*906
Tusten (Town), Sullivan County		Maps available for inspection at the Town Hall, 50 Shoreline Drive, River Bend, North Carolina.		<i>Shallow Ponding: Between County Roads 14 and 20, west of 45th Street North.....</i>	*904
<i>Delaware River:</i>		Send comments to The Honorable Robert Runge, Mayor, Town of River Bend, Town Hall, 50 Shoreline Drive, River Bend, North Carolina 28560.		Maps are available for review at the Engineering Department, 306 North 4th Street, Fargo, North Dakota.	
Approximately 1.1 miles downstream of Tenmile River.....	*665			Send comments to The Honorable Jon G. Lindgren, Mayor, City of Fargo, 200 North 3rd Street, Fargo, North Dakota 58102.	*894
At the confluence of Tenmile River.....	*672	Washington (City), Beaufort County			
Approximately 100 feet upstream of CONRAIL bridge.....	*679	<i>Cherry Run:</i>			
Approximately 2.4 miles downstream of U.S. Route 652 bridge.....	*690	At confluence with Tranters Creek.....	*10		
Approximately 500 feet upstream of U.S. Route 652 bridge.....	*700	About 0.63 mile upstream of Market Street Extension.....	*41		
Approximately 1.8 miles upstream of U.S. Route 652 bridge.....	*708	<i>Cherry Run Tributary 1:</i>		Mandan (City), Morton County	
At upstream corporate limits.....	*715	At confluence with Cherry Run.....	*14	<i>Missouri River: 900 feet upstream from centerline of Burlington Northern Railroad Bridge.....</i>	*1,836
Maps available for inspection at the Town Clerk's Office, Narrowsburg, New York.		About 0.93 mile upstream of confluence with Cherry Run.....	*31	<i>Heart River—With Consideration of Levees: 50 feet upstream from State Highway 6 (10th Avenue SW) bridge.....</i>	*1,856
Send comments to The Honorable Richard Lander, Supervisor of the Town of Tusten, P.O. Box 376, Narrowsburg, New York 12764.		<i>Cherry Run Tributary 2:</i>		<i>Heart River—Without Consideration of Levees: At the intersection of 3rd Street SW and State Highway 6 (10th Avenue SW).....</i>	*1,650
		At confluence with Cherry Run.....	*20	Maps are available for review at the City Engineer's Office, 205 2nd Avenue, NW, Mandan, North Dakota.	
NORTH CAROLINA		Just downstream of State Road 1510.....	*30	Send comments to The Honorable Sharon Schafar, 205 2nd Avenue, NW, Mandan, North Dakota 58554.	
Bath (Town), Beaufort County		<i>Cherry Run Tributary 3:</i>			
<i>Atlantic Ocean: At confluence of Back Creek with Bath Creek.....</i>	*10	At confluence with Cherry Run Tributary 2.....	*23		
Maps available for inspection at the Town Hall, P.O. Box 6, Bath, North Carolina.		Just downstream of State Road 1516.....	*42		
Send comments to The Honorable Ray Brooks, Mayor, Town of Bath, Town Hall, P.O. Box 6, Bath, North Carolina 27808.		<i>Pineygrove Branch:</i>			
		At confluence with Herring Run.....	*15		
Creswell (Town), Washington County		Just upstream of Lodge Road.....	*28		
<i>Atlantic Ocean/Pamlico Sound/Albemarle Sound/Scuppernon River: Within community.....</i>	*5	<i>Runyon Creek:</i>			
Maps available for inspection at the Town Hall, P.O. Box 115, Creswell, North Carolina.		At confluence with Pamlico River.....	*11		
Send comments to The Honorable Reginald Phelps, Mayor, Town of Creswell, Town Hall, P.O. Box 115, Creswell, North Carolina 27928.		About 0.35 mile upstream of U.S. Highway 264.....	*11		
		<i>Herring Run:</i>			
Unincorporated Areas of Hyde County		At confluence with Runyon Creek.....	*11		
<i>Atlantic Ocean:</i>		About 0.64 mile upstream of Lodge Road.....	*27		
At the confluence of New Lake Fork with Alligator River.....	*4	<i>Atlantic Ocean:</i>			
Just east of intersection of 6th Avenue East and U.S. Highway 264.....	*5	At confluence of Kennedy Creek and Tar River.....	*10		
At the intersection of State Road 1110 and State Road 1111.....	*5	Just south of intersection of SR 1165 and Norfolk Southern Railway.....	*10		
At the confluence of Alligator River canal with Winn Bay.....	*6	At confluence of Rodman Creek and Pamlico River.....	*11		
Along the northern shoreline of Cockrel Creek Island.....	*6	Just south of North Shores Road.....	*11		
At Windmill Point.....	*7	Maps available for inspection at the City Hall, Box 1988, Washington, North Carolina.			
At the confluence of Hydeland Canal with Juniper Bay Creek.....	*7	Send comments to The Honorable Stencil Lilly, Mayor, City of Washington, City Hall, Box 1988, Washington, North Carolina 27889-1988.			
Just west of Ocracoke Island Landing Field.....	*8				
Along shoreline of Church Creek.....	*8	Washington Park (Town), Beaufort County			
Along southeast shoreline of Ocracoke Island.....	*9	<i>Atlantic Ocean/Pamlico River/Runyon Creek/ Snode Creek: Within community.....</i>	*11		
At the confluence of Shingle Creek with Swanquarter Bay.....	*9	Maps available for inspection at the Town Hall, P.O. Box 632, Washington Park, North Carolina.			
At the confluence of Cowpen Creek with Swanquarter Bay.....	*10	Send comments to The Honorable Tom Richter, Mayor, Town of Washington Park, Town Hall, P.O. Box 632, Washington Park, North Carolina.			
At southwest point of Great Island.....	*11				
At the confluence of Willow Creek with Pamlico River.....	*12	NORTH DAKOTA			
Maps available for inspection at the County Courthouse, P.O. Box 188, Swan Quarter, North Carolina 27885.		Center (City), Oliver County			
Send comments to The Honorable Clifford Swindell, County Manager, Hyde County, County Courthouse, P.O. Box 188, Swan Quarter, North Carolina 27885.		<i>Square Butte Creek: Approximately 50 feet upstream from center of State Highway 25 Bridge.....</i>	*1,967		
		<i>Tributary 1: Immediately upstream of State Highway 25 Bridge.....</i>	*1,978		
		<i>Tributary 2: Approximately 250 feet upstream from center of State Highway 25 Bridge.....</i>	*1,966		
		<i>Tributary 3: Approximately 50 feet upstream from center of treatment plant access road bridge.....</i>	*1,970		
		<i>Tributary 4: Immediately upstream of Third Street Bridge.....</i>	*1,980		
		<i>Tributary 1 Overflow: Along overflow channel, approximately 300 feet west of Tributary 1.....</i>	*1,972		
		Maps are available for review at the City Hall, 312 Lincoln Avenue North, Center, North Dakota.			
				Coshocton (City), Coshocton County	
				<i>Muskingum River:</i>	
				About 350 feet downstream of Randle Bridge.....	*748
				Just downstream of Chestnut Street.....	*753
				<i>Tuscarawas River:</i>	
				Just upstream of Chestnut Street.....	*753
				About 1.5 miles upstream of Bridge Street.....	*755

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
<i>Walhonding River:</i>	
Just downstream of Chestnut Street.....	*753
Just downstream of County Road Bridge.....	*755
Maps available for inspection at the City Hall, 760 Chestnut Street, Coshocton, Ohio.	
Send comments to The Honorable Daniel Moody, Mayor, City of Coshocton, City Hall, 760 Chestnut Street, Coshocton Ohio 43812.	
Coshocton County (Unincorporated Areas)	
<i>Muskingum River:</i>	
About 3.0 miles downstream of Norfolk Southern Railway.....	*734
About 2.0 miles upstream of State Route 6.....	*753
<i>Tuscarawas River:</i>	
About 7.7 miles downstream of Norfolk Southern Railway.....	*753
About 0.8 mile upstream of County Route 9.....	*792
<i>Walhonding River:</i>	
About 0.75 mile downstream of State Route 36... ..	*753
About 2.65 miles upstream of County Route 23... ..	*770
<i>Shallow Flooding (ponding from rainfall):</i>	
About 600 feet south of the intersection of South Sixth Street and Cedar Street.....	*747
About 1,000 feet east of the intersection of Magnolia Street and Cottonwood Street.....	*749
About 1,500 feet east of the intersection of South Sixth Street and Fir Street.....	*750
Maps available for inspection at the County Commissioner's Office, Courthouse Annex, 349 1/2 Main Street, Coshocton, Ohio.	
Send comments to The Honorable James R. Ross, President County Commissioners, Coshocton County, Courthouse Annex, 349 1/2 Main Street, Coshocton, Ohio 43812.	
Dennison (Village), Tuscarawas County	
<i>Little Stillwater Creek:</i>	
About 1.07 miles downstream of Grant Street.....	*848
About 0.78 mile upstream of Taylor Avenue.....	*854
Maps available for inspection at the Village Hall, 302 Grant Street, Dennison, Ohio.	
Send comments to The Honorable Greg DiDonato, Mayor, Village of Dennison, Village Hall, 302 Grant Street, Dennison, Ohio 44621.	
Dover (City), Tuscarawas County	
<i>Tuscarawas River:</i>	
About 0.3 mile downstream of Chessie System.....	*867
About 0.64 mile upstream of Wooster Avenue.....	*871
<i>Sugar Creek:</i>	
At mouth.....	*868
About 150 feet upstream of Tuscarawas Avenue.....	*877
Maps available for inspection at the City Hall, East Third Street, Dover, Ohio.	
Send comments to The Honorable Guy M. Smith, Mayor, City of Dover, City Hall, East Third Street Dover, Ohio 44622.	
Gnadenhutten (Village), Tuscarawas County	
<i>Tuscarawas River:</i>	
About 3,000 feet downstream of County Route 39.....	*827
Just upstream of Conrail.....	*828
Maps available for inspection at the Village Hall, Walnut & Main Streets, Gnadenhutten, Ohio.	
Send comments to The Honorable Charles Miller, Mayor, Village of Gnadenhutten, Village Hall, Walnut & Main Streets, Gnadenhutten, Ohio 44629.	
Newcomerstown (Village), Tuscarawas County	
<i>Tuscarawas River:</i>	
Just upstream of County Boundary.....	*792
About 1.3 miles upstream of Conrail.....	*797

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Maps available for inspection at the Mayor's Office, 124 West Church Street, Newcomerstown, Ohio.	
Send comments to The Honorable C.R. Yingling, Mayor, Village of Newcomerstown, 124 West Church Street, Newcomerstown, Ohio 43832.	
New Philadelphia (City), Tuscarawas County	
<i>Tuscarawas River:</i>	
About 4.0 miles downstream of State Route 416.....	*851
About 3.8 miles upstream of State Route 39.....	*872
<i>Beaverdam Creek:</i>	
About 1.75 miles downstream of University Drive.....	*851
About 0.5 miles downstream of University Drive... ..	*868
About 0.4 miles downstream of University Drive... ..	*873
About 0.9 miles upstream of Beaver Avenue.....	*900
Maps available for inspection at the City Hall, 166 East High Avenue, New Philadelphia, Ohio.	
Send comments to The Honorable Leo Benjamin, Mayor, City of New Philadelphia, City Hall, 166 East High Avenue, New Philadelphia, Ohio 44663.	
Reading (City), Hamilton County	
<i>Mill Creek:</i>	
Just upstream of Galbraith Road.....	*538
About 925 feet upstream of Conrail.....	*558
Maps available for inspection at the Municipal Building, 1000 Market Street, Reading, Ohio.	
Send comments to The Honorable Anthony J. Gertz, Mayor, City of Reading, Municipal Building, 1000 Market Street, Reading, Ohio 45215.	
Sharonville (City), Hamilton County	
<i>Mill Creek:</i>	
About 1,200 feet downstream of Sharon Road.....	*575
About 925 feet upstream of East Crescentville Road.....	*585
<i>East Fork Mill Creek:</i>	
At mouth.....	*581
Just downstream of East Crescentville Road.....	*586
<i>Sharon Creek:</i>	
About 1,500 feet downstream of Sharon Road.....	*578
About 2,600 feet upstream of Reading Road.....	*601
About 2,800 feet upstream of Reading Road.....	*609
About 3,500 feet upstream of Reading Road.....	*612
About 3,700 feet upstream of Reading Road.....	*619
About 3,800 feet upstream of Reading Road.....	*623
<i>Sharon Creek Tributary:</i>	
About 1,900 feet downstream of Reading Road... ..	*578
Just downstream of Thornview Drive.....	*632
Maps available for inspection at the City Director's Office, 10900 Reading Road, Sharonville, Ohio.	
Send comments to The Honorable John S. Dowlin, Mayor, City of Sharonville, 10900 Reading Road, Sharonville, Ohio 45241.	
Uhrichsville (City), Tuscarawas County	
<i>Stillwater Creek:</i>	
Just upstream of Chessie System.....	*844
About 0.35 mile upstream of Dennison Water Supply Company Dam.....	*853
<i>Little Stillwater Creek:</i>	
At mouth.....	*848
About 0.5 mile upstream of First Street.....	*851
Maps available for inspection at the City Hall, 305 East Second Street, Uhrichsville, Ohio.	
Send Comments to The Honorable Robert Kilpatrick, Mayor, City of Uhrichsville, City Hall, 305 East Second Street, Uhrichsville, Ohio 44683.	

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
SOUTH CAROLINA	
Burnettown (Town), Aiken County	
<i>Horse Creek:</i>	
About 1.2 miles downstream of dam at State Route 254.....	*155
About 0.9 miles downstream of dam at State Route 254.....	*157
Maps available for inspection at the City Hall, 1111 Third Street, Langley, South Carolina.	
Send comments to the Honorable M.B. Ferguson, Mayor, Town of Burnettown, Burnettown City Hall, 1111 Third Street, Langley, South Carolina 29834.	
TENNESSEE	
Centerville (Town), Hickman County	
<i>Duck River:</i>	
About 1.4 miles downstream of State Route 50... ..	*481
About 1.1 miles upstream of State Routes 48 and 100.....	*490
Maps available for inspection at the City Hall, P.O. Box 226, Centerville, Tennessee.	
Send comments to the Honorable Bill Steber, Mayor, Town of Centerville, City Hall, P.O. Box 226, Centerville, Tennessee 37033.	
Graysville (City), Rhea County	
<i>Roaring Creek:</i>	
About 1,850 feet downstream of Harrison Street... ..	*730
About 3,700 feet upstream of Harrison Street.....	*802
Maps available for inspection at the City Hall, P.O. Box 100, Graysville, Tennessee.	
Send comments to the Honorable Andy Beene, Mayor, City of Graysville, City Hall, P.O. Box 100, Graysville, Tennessee 37336.	
Oakdale (City), Morgan County	
<i>Emory River:</i>	
About 3,700 feet downstream of West Main Street.....	*793
about 3,700 feet upstream of West Main Street... ..	*802
Maps available for inspection at the City Hall, P.O. Box 116, Oakdale, Tennessee.	
Send comments to the Honorable Jeanette Powers, Mayor, City of Oakdale, City Hall, P.O. Box 116, Oakdale, Tennessee 37829.	
Pulaski (City), Giles County	
<i>Richland Creek:</i>	
About 1.2 miles downstream of Mill Street.....	*653
About 2.9 miles upstream of Mill Street.....	*661
<i>Pleasant Run Creek:</i>	
At mouth.....	*654
Just upstream of Mitchell Street.....	*706
<i>Tributary A:</i>	
About 3,000 feet downstream of Magazine Road.....	*654
About 400 feet upstream of Longmeadow Drive... ..	*699
<i>Tributary B:</i>	
At mouth.....	*656
About 500 feet upstream of east College Street... ..	*684
Maps available for inspection at the City Hall, 203 South First Street, Pulaski, Tennessee.	
Send comments to the Honorable Stacy A. Garner, Mayor, City of Pulaski, City Hall, 203 South First Street, Pulaski, Tennessee 38478.	
Waynesboro (City), Wayne County	
<i>Green River:</i>	
At confluence of Hurricane Creek.....	*701
About 2,150 feet upstream of Helton Street.....	*733
<i>Rocky Mill Branch:</i>	
At confluence with Green River.....	*722
Just downstream of U.S. Route 64.....	*767
Just upstream of U.S. Route 64.....	*772
About 400 feet upstream of U.S. Route 64.....	*775

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued		PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued		PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued			
Source of flooding and location	#Depth in feet above ground. Elevation in feet (NGVD)	Source of flooding and location	#Depth in feet above ground. Elevation in feet (NGVD)	Source of flooding and location	#Depth in feet above ground. Elevation in feet (NGVD)		
Hurricane Creek:							
At mouth.....	*701	Dismal Creek:					
About 0.6 mile upstream of U.S. Route 64.....	*732	Approximately 1.76 miles downstream of State Route 628.....	*1,562	At Corporate Limit of Town of St. Charles.....	*1,538		
Maps available for inspection at the City Hall, P.O. Box 491, Waynesboro, Tennessee.		Upstream side of State Route 628.....	*1,602	At confluence of Fawn Branch.....	*1,566		
Send comments to The Honorable Floyd S. Merriman, Mayor, City of Waynesboro, City Hall, P.O. Box 491, Waynesboro, Tennessee 38485.		Approximately 1 mile upstream of State Route 628.....	*1,618	Approximately 50' upstream of State Route 717.....	*1,635		
VERMONT		Approximately 2.15 miles upstream of State Route 628.....	*1,650	Approximately 1,040' downstream of State Route 717.....	*1,661		
Burlington (City), Chittenden County		Big Prater Creek/Trace Fork Branch:					
Winooski River:		At confluence with Levisa Fork.....	*1,128	Wallen Creek:			
At confluence with Lake Champlain.....	*102	Approximately 1.04 miles upstream confluence with Levisa Fork.....	*1,170	Approximately 0.31 mile upstream of State Routes 612 and 828 extended.....	*1,567		
Upstream side of Central Vermont Railway.....	*114	Approximately 0.57 mile downstream confluence of Big Lick Branch.....	*1,200	Approximately 0.5 mile southwest on State Route 612 from County Road Intersection.....	*1,598		
Upstream side of U.S. Routes 2 and 7.....	*150	At confluence of Big Lick Branch.....	*1,244	At confluence of Dry Creek.....	*1,614		
At upstream corporate limits.....	*166	Approximately 0.61 mile upstream confluence of Big Lick Branch.....	*1,300	Approximately 0.28 mile upstream of U.S. Route 58 and 421.....	*1,629		
Maps available for inspection at the Planner's Vault, City Hall, Burlington, Vermont.		Tug Fork:					
Send comments to The Honorable Bernard Sanders, Mayor of the City of Burlington, Chittenden County, City Hall, Burlington, Vermont 05402.		At downstream State boundary.....	*829	Dry Creek:			
Winooski (City), Chittenden County		Approximately 1.92 miles upstream of the downstream State boundary.....	*961	At confluence with Wallen Creek.....	*1,614		
Winooski River:		At upstream State boundary.....	*919	At U.S. Route 58 and 421.....	*1,640		
Approximately 875 feet downstream of downstream corporate limits.....	*113	Maps available for inspection at the County Administrator's Office, County Courthouse, Main Street, Grundy, Virginia.					
Upstream side of U.S. Routes 2 and 7.....	*150	Send comments to The Honorable Joseph Bland, Buchanan County Administrator, P.O. Drawer 950, Grundy, Virginia 24614.					
Approximately 75 feet upstream of upstream corporate limits.....	*168	Iron Gate (Town), Allegheny County					
Maps available for inspection at the City Clerk's Vault, City Hall, 27 West Allen Street, Winooski, Vermont.		Jackson River:					
Send comments to The Honorable Brennen Kelleher, Manager of the City of Winooski, Chittenden County, City Hall, 27 West Allen Street, Winooski, Vermont 05404.		Approximately 800 feet upstream of County boundary.....	*1,015	Poor Valley Branch:			
VIRGINIA		Approximately 100 feet downstream of upstream corporate limits.....	*1,025	At confluence with Martin Creek.....	*1,393		
Buchanan County		Maps available for inspection at the Town Hall, Iron Gate, Virginia.					
Levisa Fork:		Send comments to The Honorable Joy Nicely, Mayor of the Town of Iron Gate, Allegheny County, Town Hall, P.O. Box 199, Iron Gate, Virginia 24448.					
Downstream County boundary.....	*870	Lebanon (Town), Russell County					
Upstream side of State Route 645.....	*907	Little Cedar Creek:					
Upstream side of State Route 609.....	*966	Approximately 1,550 feet downstream of U.S. Route 19 bridge.....	*1,929	Approximately 525' downstream of Louisville and Nashville Railroad.....	*1,406		
Confluence of Looney Creek.....	*1,008	Approximately 50 feet upstream of Fields Street bridge.....	*1,969	Indian Creek:			
At downstream Grundy corporate limits.....	*1,044	Approximately .45 mile upstream of State Route 71 bridge.....	*2,039	Approximately 750' downstream of U.S. Route 58.....	*1,309		
Upstream side of State Route 617.....	*1,098	Maps available for inspection at the Lebanon Town Office, Lebanon, Virginia.					
Upstream side of State Route 83.....	*1,128	Send comments to The Honorable Carl Tankersley, Acting Town Manager of Lebanon, Russell County, P.O. Box 426, Lebanon, Virginia 24266.					
Upstream side of Norfolk and Western Railway (4th upstream crossing).....	*1,183	Lee County					
Approximately 0.72 mile upstream of State Route 684.....	*1,220	Straight Creek:					
Approximately 1.93 miles upstream of State Route 684.....	*1,268	At confluence with North Fork Powell River.....	*1,435	Cane Creek:			
Upstream side of State Route 668.....	*1,323	At State Route 352.....	*1,471	At Corporate Limits of Town of Pennington Gap.....	*1,369		
Approximately 100 feet downstream confluence of Bridge Branch.....	*1,368	At Private Road.....	*1,485	Downstream of State Route 643.....	*1,391		
Upstream side of U.S. Route 460.....	*1,435	Downstream Corporate Limit of Town of St. Charles.....	*1,521	Approximately 1 mile upstream of second crossing of U.S. Alternate Route 58.....	*1,411		
Approximately 0.8 mile upstream of U.S. Route 460.....	*1,476	Upstream Corporate Limit of Town of St. Charles.....	*1,538	Approximately 0.5 mile upstream of State Route 644.....	*1,430		
Knox Creek:		At confluence of Gin Creek.....	*1,586	At State Route 644 and U.S. Alternate 58.....	*1,455		
Approximately 425 feet downstream of State Route 697.....	*925	At Southern Railway.....	*1,666	Approximately 350' upstream of U.S. Alternate Route 58.....	*1,466		
Upstream side of State Route 646.....	*967	Approximately 900' upstream of confluence of Miller Cove Creek.....	*1,750	North Fork Powell River:			
Approximately 1.3 miles upstream of State Route 650.....	*1,016	Gin Creek:					
Upstream side of State Route 643 (2nd upstream crossing).....	*1,083	At confluence with Straight Creek.....	*1,586	Confluence with Powell River.....	*1,345		
Upstream side of State Route 706.....	*1,138	At County Road.....	*1,615	At State Route 633.....	*1,352		
Upstream side of State Route 652.....	*1,171	At State Route 635.....	*1,630	Downstream Corporate Limits of Town of Pennington Gap.....	*1,353		
Approximately 1.13 miles upstream of State Route 652.....	*1,220	Approximately 400' upstream of County Road.....	*1,736	Upstream Corporate Limits of Town of Pennington Gap.....	*1,355		
Approximately 2.23 miles upstream of State Route 652.....	*1,278	Big Branch:					
Russell Fork:		At confluence with Straight Creek.....	*1,520	Approximately 1,000' southeast from State Route 621 on State Route.....	*1,358		
Approximately 640 feet downstream of State Route 80.....	*1,432	At State Route 628.....	*1,592	At State Route 82 (new).....	*1,376		
Approximately 1.7 miles upstream of State Route 80.....	*1,465	Approximately 0.52 mile upstream of Town of St. Charles.....	*1,635	At Southern Railway.....	*1,401		
Approximately 2.55 miles upstream of State Route 80.....	*1,502	Maps available for inspection at the County Administrator's Office, County Courthouse, Main Street, Grundy, Virginia.					
		Send comments to The Honorable Joseph Bland, Buchanan County Administrator, P.O. Drawer 950, Grundy, Virginia 24614.					

PROPOSED BASE (100-YEAR) FLOOD
ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. Elevation in feet (NGVD)
Fawn Branch:	
At confluence with Bailey Trace	*1,571
At County Road	*1,618
At State Route 637	*1,646
Approximately 0.3 mile upstream of State Route 637	*1,705
Dry Branch:	
At confluence with North Fork Powell River	*1,351
At confluence of Ely Creek	*1,389
Approximately 100' downstream of County Road	*1,482
Poor Valley Creek:	
At confluence with North Fork Powell River	*1,371
At Farm Road	*1,429
Approximately 0.24 mile upstream of second crossing of State Route 621	*1,600
Maps available for inspection at the County Administrator's Office, Jonesville, Virginia.	
Send comments to The Honorable Steven B. Myner, Lee County Administrator and County Attorney, P.O. Box 367, Jonesville, Virginia 24263.	
WISCONSIN	
Crandon (City), Forest County	
Peshigo Lake: Within community	*1,591
Clear Lake: Within community	*1,599
Lake Metonga: Within community	*1,599
Surprise Lake: Within community	*1,608
Clear Lake Outlet:	
At mouth	*1,591
At Clear Lake Shoreline	*1,599
Surprise Lake Outlet:	
At mouth	*1,599
At Surprise Lake Shoreline	*1,608
Maps available for inspection at the City Hall, P.O. BOX 333, Crandon, Wisconsin.	
Send comments to The Honorable Kenneth Aubol, Mayor, City of Crandon, City Hall, P.O. Box 333, Crandon, Wisconsin 54520.	
Hixton (Village), Jackson County	
Trempealeau River:	
About 0.7 mile downstream of County Highway FF	*916
Just downstream of Interstate 94	*925
Maps available for inspection at the Village Hall, 145 East Main, Hixton, Wisconsin.	
Send comments to The Honorable Allan Olson, Village President, Village of Hixton, Village Hall, 145 East Main, Hixton, Wisconsin 54635.	
Rusk County (Unincorporated Areas)	
Chippewa River:	
At county boundary	*1,045
About 4.1 miles upstream of County Highway E	*1,060
Flambeau River:	
At mouth	*1,056
About 6.0 miles upstream of mouth	*1,073
About 2.3 miles downstream of County Highway G	*1,098
About 1.5 miles upstream of Highway 8	*1,117
Maps available for inspection at the Zoning Administrator's Office, Rusk County Courthouse, 311 Mines Street, Ladysmith, Wisconsin.	
Send comments to The Honorable Marvin Hanson, Chairman, County Board, Rusk County, County Courthouse, 311 Mines Street, Ladysmith, Wisconsin 54848.	

Issued: April 16, 1986.

Jeffrey S. Bragg,
Administrator, Federal Insurance
Administration.
[FR Doc. 86-9378 Filed 4-28-86; 8:45 am]

BILLING CODE 6718-03-M

FEDERAL COMMUNICATIONS
COMMISSION

47 CFR Part 73

[MM Docket No. 86-144; FCC 86-169]

Broadcast Services; Review of
Technical Parameters For FM
Allotments RulesAGENCY: Federal Communications
Commission.

ACTION: Proposed rule.

SUMMARY: This action proposes to review certain FM technical rules. Specifically, the Commission proposes to clarify the power and antenna height requirements for the different classes of stations, allow other classes of station to operate on the reserved Class A channels, let the community listed in the FM Table of Allotments be the determining factor for a station's class, and add more precision to the method for predicting coverage. In short, this proceeding is intended to review and simplify the FM allocation rules.

DATES: Comments are due on or before June 12, 1986, and reply comments are due on or before June 27, 1986.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Kathryn Hosford or Michael Lewis, Mass Media Bureau, (202) 632-9660.

SUPPLEMENTARY INFORMATION: This is a summary of Commission's *Notice of Proposed Rule Making* adopted April 11, 1986, and Released on April 21, 1986.

The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Docket Branch (Room 230), 1919 M Street, Northwest, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW, Suite 140, Washington, DC 20037.

Summary of Notice of Proposed Rule
Making

1. This proceeding reviews various technical FM rules for stations operating in the commercial FM band (channels 221-300). A review of these rules is particularly appropriate in light of adoption of the *Report and Order (Report)* in BC Docket 80-90 (48 FR 29486, June 27, 1983; recon., 49 FR 10260, March 20, 1984) which revised the FM allotment scheme to permit an increase in the number of FM stations. However, some of these rule changes have resulted in station classification anomalies in the licensing process.

Additionally, questions have arisen regarding the requirements applicable to stations that were licensed prior to the adoption of Docket 80-90. The purpose of the *Notice of Proposed Rule Making (Notice)* is to address such issues and simplify certain technical rules for licensing FM stations.

2. The FM rules originally contained definitive power and antenna height requirements for three classes or commercial FM station. However, after the *Report* doubled the number of classes from three to six, applications were received requesting certain combinations of powers and antenna heights which did not correspond to any station class. In response to this situation, the Commission proposes to replace the current method of defining the different station classes (by defining minimum and maximum power and antenna heights for each class) with a classification scheme based on a formula reflecting the maximum permitted distance to the expected service contour (1 mV/m) of each class. This proposal would clarify our station classification requirements and provide a continuous range of technical facilities for all classes of stations.

3. The *Notice* also proposes to increase flexibility by allowing any class of FM station on any commercial FM channel. Twenty channels are now reserved for Class A operation. These channels were reserved to assure a sufficient number of allotments for local FM service in small communities by eliminating the preclusionary effect of higher powered stations. However, the Commission has found that retention of the 20 reserved channels creates unnecessary restrictions on existing stations operating on these channels, that want to upgrade their facilities. Therefore, the *Notice* proposes to provide additional operating flexibility for those Class A stations operating in the reserved channels that want to increase their facilities, by lifting the restriction on these 20 channels.

4. Finally, the *Notice* proposes to determine an FM station's class by the location of the city of license, as opposed to its transmitter location. Station class for channels 221-300 is currently defined by the FM Table of Allotments (Table) found in § 73.202(b) of the Commission's Rules. The class listed in the Table of Allotments is generally based on the zone location of the community named in the allotment. However, § 73.206(c) inconsistently indicates that a station's class is to be determined by the location of the transmitter site. A discrepancy can arise when the transmitter site and the city of

allotment are located in different zones. The *Notice* proposes to resolve this anomaly by removing the transmitter site reference and requiring a station's class to conform with the class designated in the Table of Allotments. (Any existing discrepancies would be grandfathered.)

5. This is a non-restricted notice and comment rule making proceeding. See § 1.1231 of the Commission's Rules, 47 CFR 1.1231, for rules governing permissible *ex parte* contacts.

6. Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 603, the *Notice* contains one proposal (to replace the minimum power and antenna height restrictions with equations that would represent a continuous range of facility options) that could have a minimal negative impact on 49 FM stations currently in the process of expanding their facilities to avoid the reclassification deadline of March 1, 1987, as detailed in Docket 80-90. This action is proposed to offset the confusion caused when certain combinations of power and antenna heights do not correspond to any of the station classes defined in Docket 80-90. Although the proposed solution could cause some stations to be designated in a less desirable station class than expected, the current conflict between these requirements and the classification scheme enacted in Docket 80-90 demands rectifying. The affected stations will, however, retain the classifications they originally anticipated. Therefore, this action will have no adverse impact. The Commission has evaluated both the positive and negative impacts this proposal could have on existing stations and believes that the proposed equations will minimize the possible negative effects of this modification, while still providing a satisfactory solution to the problem. Public comment is requested on the initial regulatory flexibility analysis set out in full in the Commission complete decision.

7. As required by section 603 of the Regulatory Flexibility Act, the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the expected impact on small entities of the proposals advanced in the *Notice*. Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing deadlines as comments on the rest of the *Notice*, but they must have a separate and distinct heading designating them as responses to the Regulatory Flexibility Analysis. The Secretary shall cause a copy of the *Notice*, including the Initial Regulatory Flexibility Analysis, to

be sent to the Chief Counsel for Advocacy of the Small Business Administration in accordance with section 603 (a) of the Regulatory Flexibility Act (Pub. L. No. 96-354, 94 Stat. 1164, 5 U.S.C. Section 601 *et seq.*, (1981)).

8. The proposal contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980 and found to contain no new or modified form, information collection and/or record keeping, labeling, disclosure, or record retention requirement; and except for a small adjustment due to the additional applications expected to be received, the proposed rules would not increase or decrease burden hours imposed on the public.

9. Pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's Rules, 47 CFR 1.415 and 1.419, interested parties may file comments on or before June 12, 1986, and reply comments on or before June 27, 1986.

All relevant and timely comment will be considered by the Commission before final action is taken in this proceeding.

10. It is proposed, pursuant to the authority contained in sections 4 and 303 of the Communications Act of 1934, as amended, that Part 73 of the Commission's Rules be amended as set forth at the end of this document.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

It is proposed to amend Title 47 CFR Part 73 as follows:

11. The authority citation for Part 73 would continue to read as follows:

Authority: 47 U.S.C. 154 and 303.

§ 73.206 [Removed]

12. Section 73.206 would be removed.

§ 73.207 [Amended]

13. Section 73.207 would be amended by revising the fourth column of TABLE A entitled "10.6/10.8 MHz" which follows paragraph (b)(1) and the first column is republished to read as follows:

§ 73.207 Minimum distance separation between stations.

* * * * *

(b) * * *

(1) * *

TABLE A—MINIMUM DISTANCE SEPARATION REQUIREMENTS IN KILOMETERS (MILES)

(no changes to these columns)	Relation			
	Co-channel	200 kHz	400/600 kHz	10.6/10.8 MHz
A to A				8 (5)
A to B1				12 (7)
A to B				16 (10)
A to C2				15 (9)
A to C1				23 (14)
A to C				32 (20)
B1 to B1				15 (9)
B1 to B				18 (11)
B1 to C2				18 (11)
B1 to C1				26 (16)
B1 to C				34 (21)
B to B				24 (15)
B to C2				22 (14)
B to C1				29 (18)
B to C				40 (25)
C2 to C2				22 (14)
C2 to C1				29 (18)
C2 to C				37 (23)
C1 to C1				37 (23)
C1 to C				45 (28)
C to C				48 (30)

* * * * *

14. Section 73.208 would be amended by revising the equations in paragraphs (c)(3) and (4) to read as follows:

§ 73.208 Reference points and distance computations.

* * * * *

(c) * * *

(3) * * *

$$LAT_k = 111.13209 - 0.56605 \cos(2LAT_m) + 0.00120 \cos(4LAT_m)$$

(4) * * *

$$LONG_k = 111.41513 \cos(LAT_m) - 0.09455 \cos(3LAT_m) + 0.00012 \cos(5LAT_m)$$

* * * * *

15. Section 73.211 would be revised to read as follows:

§ 73.211 Classes of stations; power and antenna height requirements.

(a) The rules applicable to a particular station, including minimum distance separations and maximum facility requirements, are determined by its class. The class permitted must conform with that designated in the Table of FM Allotments (see § 73.202). Stations designated as Class A, B1, and B may be authorized in Zones I and I-A. Classes A, C2, C1, and C may be authorized in Zone II.

(b) The minimum permitted effective radiated power is 0.1 kW. A station's power, index, or power/height combination must exceed the maximum of the next lower class for its zone of operation.

(c) The maximum effective radiated power (ERP) in any direction, the height above average terrain (HAAT) associated with those values of ERP, and the maximum index for the various classes of stations are listed below. Other combinations of ERP and HAAT

are permitted if the ERP is less than the maximum and the maximum index is not exceeded.

MAXIMUMS

Class	ERP(kilowatts)	HAAT (meters)	Index
A	3	100	52
B1	25	100	60
B	50	150	68
C2	50	150	68
C1	100	299	77
C	100	600	85

(d) The station index is determined using the following formula. When an antenna height is less than 30 meters, a minimum of 30 meters must be assumed.

$$I = 10 \log P + 23 \log H$$

Where:

I=index rounded to nearest whole number,
P=effective radiated power in kilowatts, and
H=antenna height above average terrain in meters.

(e) In Puerto Rico and the Virgin Islands, the following maximums can be used as an option to those specified in paragraph (c) of this section. Other combinations of ERP and HAAT are permitted, if the ERP of the Class B1 and B station do not exceed 25 and 50 kW, respectively, and the index does not exceed its maximum.

MAXIMUMS

Class	ERP (kilowatts)	HAAT (meters)	Index
A	3	335	63
B1	5	335	65
B	25.5	600	79

(f) Stations authorized prior to March 1, 1984, with facilities in excess of those specified for station Classes A, B or C in this section may continue to operate as authorized. Changes to these stations would be permitted if they do not increase their effective radiated powers or extend their 1 mV/m field strength contour beyond their present authorization. NOTE: Authorized stations that do not conform to the requirements of this section, may continue as authorized until March 1, 1987. Thereupon, stations will be classified in accordance with the provisions of this section reflecting their authorized, or applied for, facilities.

16. Section 73.213 would be revised to read as follows:

§ 73.213 Stations at spacings below the minimum separations.

Stations authorized prior to November 16, 1984, at locations that do not meet the minimum distances specified in Section 73.207, may continue to operate

as authorized. Changes to these stations would be permitted if they do not increase their effective radiated power or extend their 1 mV/m field strength contour beyond their present authorization.

17. Section 73.313 would be amended by revising paragraph (c)(2) to read as follows:

§ 73.313 Prediction of coverage.

(c) * * *

(2) To use the chart for other powers, the ordinate scale should be converted by the appropriate adjustment in dB. For example, the ordinate scale for a power of 50 kW (17 dB above 1 kW) should be adjusted by 17 dB and, therefore, a field strength of 40 dBu would be converted to 57 dBu. In predicting the distance to the field strength contours, the effective radiated power to be used is the maximum ERP of the main radiated lobe regardless of orientation, in the pertinent direction. In predicting other field strengths over areas not in horizontal plane, the effective radiated power to be used is the power in the direction of such areas; the appropriate vertical plane radiation pattern must, of course, be considered in determining this power.

§ 73.1030 [Amended]

18. Section 73.1030 would be amended by revising the phrase "(in the vicinity of coordinates 40°07'50" N Latitude, 105°14'40" W Longitude)" of paragraph (b) to read "(within the area bounded by 40°09'10" N on the north, 105°13'31" W on the east, 40°07'05" N on the south, and 105°15'13" W on the west)".

19. Section 73.1690 would be amended by revising paragraph (c)(1) to read as follows:

§ 73.1690 Modification of transmission systems.

(c) * * *

(1) Replacement of a non-directional antenna with one of the same or different type or number of bays, provided that the height above ground of the center of radiation is within ± meters of that specified in the station authorization, the parameters are within that permitted by its class designation, and there is no change in the maximum effective radiated power.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 86-9452 Filed 4-28-86; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Proposal to Determine *Penstemon Haydenii* To Be an Endangered Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Service proposes to determine *Penstemon haydenii* (blowout penstemon) to be an endangered species under the authority of the Endangered Species Act of 1973, as amended. The blowout penstemon is known from small populations in Cherry (230 individuals), Hooker (60 individuals), and Garden (660 individuals) Counties, Nebraska. Approximately 25 percent of the plants are located on private and State lands, and 75 percent are located on U.S. Fish and Wildlife Service lands. The stabilization of blowout complexes leads to declining numbers of the species. The low probabilities of seed fertilization, maturation, and dispersal and seedling establishment may also be contributing factors to the decline of the species. This proposal, if made final, would implement protection provided by the Endangered Species Act. The Service is requesting comments on this action.

DATES: Comments from all interested parties must be received by June 30, 1986. Public hearing requests must be received by June 13, 1986.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Regional Director, U.S. Fish and Wildlife Service, P.O. Box 25486, Denver Federal Center, Denver, Colorado 80225. Comments and materials received will be available for public inspection, by appointment, during normal business hours of the Service's Regional Endangered Species Division at 134 Union Boulevard, fourth floor, Lakewood, Colorado.

FOR FURTHER INFORMATION CONTACT: Dr. James L. Miller, Regional Botanist, at the above address, (303/236-7398 or FTS 776-7398).

SUPPLEMENTARY INFORMATION:

Background

Penstemon haydenii (blowout penstemon) was described by Sereno Watson (1891), based on a collection by H.L. Webber near the Dismal River in Thomas County, Nebraska. The plant

was also found there in 1889 by Webber, and perhaps earlier by F.V. Hayden.

Penstemon haydenii is a member of the snapdragon family. It is a hairless perennial that grows 1 to 2 feet high. The stems are often decumbent, simple or branched, and very leafy. The stem leaves are linear to lanceolate, entire, 3 to 5 inches long by 1 to 3 inches wide, sessile and clasping. The inflorescence is a compactly crowded thyrse. Floral bracts are ovate to lanceolate, nearly equaling the flower. The corolla is blue and 1.5 to 2 inches long. *Penstemon haydenii* can be distinguished from *P. angustifolia* by its larger and lighter blue flowers. The species flowers from mid-May to late June. The flowers have a strong persistent fragrance that lures several kinds of bees and other pollinators.

Historically, *Penstemon haydenii* probably was widely scattered throughout the central part of the sandhills of Nebraska. All herbarium specimens and most literature citations indicate that it has never been collected outside of Nebraska. A purported Wyoming collection of Hayden was reported as being from Nebraska by Pennell (1935, p. 269), while reports of the species from Kansas are believed to be based on misidentifications (Craig Freeman, University of Connecticut, personal communication) and are not accepted in the *Atlas of the Flora of the Great Plains* (Barkley 1977).

The species is restricted to active blowouts in the sandhills of Cherry, Hooker, and Garden Counties Nebraska, and many historic locations do not support the species today because of elimination of the habitat due to stabilization of the sand dunes as a range-management practice.

The known sites of the blowout penstemon have population sizes that vary from 50 to 600 individuals. All the sites are well-developed blowouts in dune complexes with active sand and accompanying environmental extremes in wind, temperature, evapotranspiration, and soil moisture stress. *Penstemon haydenii* is found most frequently in microsities that are, or recently have been, zones of sand accumulation. The plant appears to be successional; it is not a primary invader and does not last when a blowout becomes completely vegetated (Pool 1914). The species survives burial in sand by sending off shoots at successively higher nodes. It withstands initial erosion, but does not have the rhizomatous system or extensive lateral roots to survive erosion that uncovers much more than a few inches of root length.

On December 15, 1980, Service published a notice of review for plants in the *Federal Register* (45 FR 82480); *Penstemon haydenii* was included. No comments on this species have been received in response to the notice. All taxa in the 1980 notice are treated as under petition (48 FR 53641). On February 15, 1983, the Service published a notice in the *Federal Register* (48 FR 6752) of its prior finding that the petitioned action on this species may be warranted in accord with section 4(b)(3)(A) of the Endangered Species Act of 1973 as amended (Act).

On October 13, 1983, October 12, 1984, and October 11, 1985, petition findings were made that listing *Penstemon haydenii* was warranted but precluded by other pending listing actions, in accordance with section 4(b)(3)(B)(iii) of the Act. Such a finding requires a recycling of the petition pursuant to a section 4(b)(3)(C)(i) of the Act. The Service now finds that the petitioned action is warranted and hereby publishes a proposed rule to implement the action, in accord with section 4(b)(3)(B)(ii) of the Act.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations promulgated to implement the listing provisions of the Act (50 CFR Part 424) set forth the procedures for adding species to the Federal lists. A species may be determined to be an endangered or threatened species due to one of more of the five factors described in section 4(a)(1). These factors and their application to *Penstemon haydenii* S. Watson, blowout penstemon, are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* Successful control of unstable sand dunes has resulted in restriction of the required blowout habitats of *Penstemon haydenii*. The blowouts where the species grow are conical or irregularly shaped craters that are scooped out of sand by the swirling action of prevailing westerly winds. Because of successful dune stabilization programs that protect farmlands in the sandhills, the species does not have adequate habitat to invade. The decrease in extent of blowouts has also made dispersal of the species more difficult to the fewer remaining natural blowouts.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* The species is attractive and has been cultivated. Horticultural collecting is a potential threat for such a species known from so few individuals.

C. *Disease of predation.* None known.

D. *The inadequacy of existing regulatory mechanisms.* *Penstemon haydenii* is not protected by any State laws or regulations. Approximately 75 percent of known populations are found on Fish and Wildlife Service refuge land and 25 percent on State and private lands. The Service provides, under the provisions of 50 CFR Parts 25 through 28, some protection for the species on refuge lands. The species has no protection on State or private lands. The Endangered Species Act offers possibilities for protection of this species through section 7 (interagency cooperation) requirements and through section 9, which prohibits removal and reduction to possession of listed plants on areas under Federal jurisdiction.

E. *Other natural or manmade factors affecting its continued existence.* *Penstemon haydenii* comprises several small populations that consist of a total of approximately 950 individuals. The small population size makes the species vulnerable to localized environmental changes. In addition, the species occupies a successional niche in the development and eventual revegetation of blowout habitats. As the vegetational cover in these areas increases, *P. haydenii* undergoes local extirpation. Not only is the species rare, but it does not appear vigorous at the known localities, possibly because these blowouts have reached a stage of revegetation that exceeds the optimum for the species.

The Service has carefully assessed the best scientific information available regarding the past, present, and future threats faced this species in determining to propose this rule. Based on this evaluation, the preferred action is to list *Penstemon haydenii* as endangered. With only about 950 individuals known, and control of sand dunes occurring at the known locales, endangered status seems an accurate assessment of the species' condition.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that to the maximum extent prudent and determinable, the Secretary designate any habitat of a species which is considered to be critical habitat at the time the species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for this species at this time. *P. haydenii* depends on early successional stages in the revegetation of sandhill blowouts for its habitat. Such blowouts are transient features of the sandhill topography, and a critical habitat designation reflecting the

present habitat occupied by the species would quickly become inappropriate as present blowouts become stabilized and new ones develop. Even supposing that critical habitat could be kept in a state of revision to reflect the varying range of the species, such public identification of habitat would be inadvisable for such an attractive flowering plant, which could easily be exposed to vandalism or horticultural collecting. The Service thus concludes that designation of critical habitat for this species would be neither practical nor beneficial to its conservation and therefore is not prudent.

Available Conservation Measures

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

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened, and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402, and are now under revision (see proposal at 48 FR 29990; June 29, 1983). Section 7(a)(4) requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is subsequently listed, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service. Some management actions, such as stabilization of sand dunes by the U.S. Fish and Wildlife Service and

the Soil Conservation Service, may adversely impact this species, since stabilization deprives the plant of suitable habitat on which to grow.

The Act and its implementing regulations found at 50 CFR 17.61, 17.62, and 17.63 set forth a series of general trade prohibitions and exceptions that apply to all endangered plant species. With respect to *Penstemon haydenii*, all prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, would apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export any endangered plant, transport it in interstate or foreign commerce in the course of a commercial activity, sell it or offer it for sale in interstate or foreign commerce, or remove it from land under Federal jurisdiction and reduce it to possession. Certain exceptions can apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.62 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered species under certain circumstances. It is anticipated that few permits would ever be sought or issued since the species is not common in cultivation or in the wild. Requests for copies of the regulations on plants and inquiries regarding them may be addressed to the Federal Wildlife Permit Office, U.S. Fish and Wildlife Service, Washington, D.C. 20240 (703/235-1903).

Public Comments Solicited

The Service intends that any final rule adopted will be accurate and as effective as possible in the conservation of endangered or threatened species. Therefore, any comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning any aspect of this proposed rule are hereby solicited. Comments particularly are sought concerning:

- (1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to *Penstemon haydenii*;
- (2) The location of any additional populations of *Penstemon haydenii* and the reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act;
- (3) Additional information concerning the range and distribution of this species; and
- (4) Current or planned activities in the subject area and their possible impacts on *Penstemon haydenii*.

Final promulgation of a regulation on *Penstemon haydenii* will take into consideration the comments and any additional information received by the Service, and such communications may lead to adoption of a final regulation that differs from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be filed within 45 days of the date of the proposal. Such requests must be made in writing and addressed to the Regional Director, U.S. Fish and Wildlife Service, P.O. Box 25486, Denver Federal Center, Denver, Colorado 80225.

National Environmental Policy Act

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

References

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- Pennell, F.W. 1935. Scrophulariaceae of East Temperate North America. Academy of Natural Sciences, Philadelphia Monograph. 1:267-269.
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- Smyth, B. 1899. Additions to the Flora of Kansas. Proceedings and Transactions of the Kansas Academy of Science. 6:158-167.
- Watson, S. 1891. *Penstemon Haydenii*, n. sp.. Botanical Gazette. 16:311.

Author

The primary author of this proposed rule is Dr. James L. Miller, Endangered Species Division, U.S. Fish and Wildlife Service, P.O. Box 25486, Denver Federal Center, Denver, Colorado 80225. A status report was prepared by Mr. Robert W. Lichvar of the Wyoming Heritage Program, Cheyenne, Wyoming.

List of Subjects in 50 CFR Part 17

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

Proposed Regulation Promulgation

PART 17—[AMENDED]

Accordingly, it is hereby proposed to amend Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, as set forth below:

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

Authority: Pub. L. 93-205, 87 Stat. 884; Pub. L. 94-359, 90 Stat. 911; Pub. L. 95-632, 92 Stat. 3751; Pub. L. 96-159, 93 Stat. 1225; Pub. L. 97-304, 96 Stat. 1411 (16 U.S.C. 1531 *et seq.*).

2. It is proposed to amend § 17.12(h) by adding the following in alphabetical order under the family Scrophulariaceae, to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species	Common name	Historic range	Status	When listed	Critical habitat	Special rules
Scrophulariaceae—Snapdragon family: <i>Penstemon haydeni</i>	Blowout penstemon	U.S.A. (NE)	E		NA	NA

Dated: March 28, 1986.

P. Daniel Smith,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 86-9526 Filed 4-28-86; 8:45 am]

BILLING CODE 4310-55-M

Notices

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 COMMERCE

Bureau of the Census

Census Advisory Committees; Public Meetings

Pursuant to the Federal Advisory Committee Act (Pub. L. 92-463 as amended by Pub. L. 94-409), we are giving notice of a joint meeting followed by separate and jointly held (described below) meetings of the CAC on the American Indian and Alaska Native Populations for the 1990 Census, CAC on the Asian and Pacific Islander Populations for the 1990 Census, CAC on the Black Population for the 1990 Census, and the CAC on the Hispanic Population for the 1990 Census. The joint meeting will convene on May 19 and 20, 1986, at the Westpark Hotel, 1900 North Fort Myer Drive, Arlington, Virginia 22209.

Each of these committees is composed of 9 members appointed by the Secretary of Commerce. They provide an organized and continuing channel of communications between the communities they represent and the Bureau of Census on the problems and opportunities of the 1990 Decennial Census.

The committees will draw on the knowledge and insight of their members to provide advice during the planning of the 1990 Census of Population and Housing on such elements as improving the accuracy of the population count, suggesting areas of research, recommending subject content and tabulations of particular use to the populations they represent, expanding the dissemination of census results among present and potential users of census data in their communities, and generally improving the usefulness of the census product.

The agenda for the May 19 combined meeting that will begin at 8:45 a.m. and end at 4 p.m. is: (1) Opening remarks by the Director, Bureau of the Census; (2)

summary description of Census Bureau programs, including Census Bureau organization, demographic fields, field operations, economic fields, statistical standards and methodology, and management services; (3) overview of the 1980 census; (4) status and overview of 1990 census planning, including (a) the Address List Compilation Test, (b) 1985 tests in Jersey City, New Jersey and Tampa, Florida, (c) 1986 tests in Los Angeles County, California, and in Mississippi, (d) 1987 test in North Dakota, and (e) the 1988 dress rehearsal; (5) discussion of the 1990 census; (6) 1990 outreach plans; and (7) race and ethnicity testing program.

The agenda for the four committees in their separate meetings that will begin at 4:15 p.m. and end at 5 p.m. on May 19 is the election of chairpersons and chairpersons-elect, and identification of committee-specific issues.

The agenda for the May 20 combined meeting that will begin at 8:30 a.m. and end at 9 a.m. is committee reports.

The agenda for the four committees in their separate meetings that will begin at 9 a.m. and end at 12 noon are:

The CAC on the American Indian and Alaska Native Populations for the 1990 Census: (1) Enumeration plans for Reservation and urban Areas, (2) development and discussion of recommendations, and (3) plans and suggested agenda items for the next meeting.

The CAC on the Asian and Pacific Islander Populations for the 1990 Census: (1) Enumerating recent immigrants, (2) development and discussion of recommendations, and (3) plans and suggested agenda items for the next meeting.

The CAC on the Black Population for the 1990 Census: (1) Enumerating inner cities and the rural South, (2) development and discussion of recommendations, and (3) plans and suggested agenda items for the next meeting.

The CAC on the Hispanic Population for the 1990 Census: (1) Enumerating recent immigrants, (2) development and discussion of recommendations, and (3) plans and suggested agenda items for the next meeting.

The agenda for the combined meeting that will begin at 1:15 p.m. and adjourn at 3:30 p.m. is: (1) Discussion of the 1990 census, and (2) presentation and

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discussion of committees' recommendations.

All meetings are open to the public, and a brief period is set aside on May 20 for public comment and questions. Those persons with extensive questions or statements must submit them in writing to the Census Bureau official named below at least 3 days before the meeting.

Persons wishing additional information concerning these meetings or who wish to submit written statements may contact Mr. Russell L. Valentine, Assistant Chief for Outreach and Program Information, Decennial Planning Division, Bureau of the Census, Room 3637, Federal Building 3, Suitland, Maryland. (Mailing address: Washington, DC 20233). Telephone (301)763-4358.

Dated: April 24, 1986.

John G. Keane,

Director, Bureau of the Census.

[FR Doc. 86-9604 Filed 4-28-86; 8:45 am]

BILLING CODE 3510-07-M

International Trade Administration

[A-423-601]

Mirrors in Stock Sheet and Lehr End Sizes from Belgium; Initiation of Antidumping Duty Investigation

AGENCY: International Trade Administration, Import, Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the United States Department of Commerce, we are initiating an antidumping duty investigation to determine whether mirrors in stock sheet and Lehr end sizes (mirrors) from Belgium as described in the "Scope of Investigation" section of this notice, are being, or are likely to be, sold in the United States at less than fair value. We are notifying the United States International Trade Commission (ITC) of this action so that it may determine whether imports of the subject merchandise from Belgium materially injure, or threaten material injury to, a United States industry. If this investigation proceeds normally, the ITC will make its preliminary determination on or before May 16, 1986, and we will

make ours on or before September 8, 1986.

EFFECTIVE DATE: April 29, 1986.

FOR FURTHER INFORMATION CONTACT: Mary S. Clapp, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377-1769.

SUPPLEMENTARY INFORMATION:

The Petition

On April 1, 1986, we received a petition in proper form filed by the National Association of Mirror Manufacturers. The petition was filed on behalf of the United States industry producing mirrors. In compliance with the filing requirements of § 353.36 of the Commerce Regulations (19 CFR 353.36), the petition alleges that imports of the subject merchandise from Belgium are being, or are likely to be, sold in United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act), and that these imports materially injure, or threaten material injury to, a United States industry.

Initiation of Investigation

Under section 732(c) of the Act, we must determine, within 20 days after a petition is filed, whether the petition sets forth the allegations necessary for the initiation of an antidumping duty investigation and, further, whether it contains information reasonably available to the petitioner supporting the allegations.

We have examined the petition on mirrors from Belgium and have found that it meets the requirements of section 732(b) of the Act. Therefore, in accordance with section 732 of the Act, we are initiating an antidumping duty investigation to determine whether mirrors are being, or are likely to be, sold in the United States at less than fair value. If our investigation proceeds normally, we will make our preliminary determination on or before September 8, 1986.

Scope of Investigation

The products covered by this investigation are unfinished glass mirrors 15 square feet or more in reflecting area, which have not been subjected to any finishing operation such as beveling, etching, edging, or framing, classifiable in the Tariff Schedules of the United States Annotated (TSUSA) under item 544.5400 and made of any of the glass described in TSUS items 541.11 through 544.41.

United States Price and Foreign Market Value

The petitioners based United States price on average unit values, f.o.b. origin, of U.S. imports of mirrors from Belgium derived from the Bureau of Census import statistics and price quotes obtained by U.S. manufacturers. Using price quotes petitioners arrived at average unit values, f.o.b. origin of U.S. imports by subtracting estimated charges for ocean freight, U.S. dealer markup, insurance, customs duties and U.S. inland freight.

Petitioners based home market price on actual transaction prices delivered to Belgium wholesalers in the home market. Petitioners then compared home market price with the cost of production derived from the cost components of a Belgium mirror manufacturer. Home market prices were shown to be below cost. Therefore, petitioners have alleged sales below the cost of production. We will investigate this allegation. The petitioners, therefore, based foreign market value on a weighted-average constructed value equal to the cost of production, as derived from the Belgium manufacturer, plus eight percent profit.

Based on the comparison of these estimated values, petitioners allege average dumping margins for 1985 ranging from 19.96 percent to 39.83 percent.

Notification of ITC

Section 732(d) of the Act requires us to notify the ITC of this action and to provide it with the information we used to arrive at this determination. We will notify the ITC and make available to it all nonprivileged and nonconfidential information. We will also allow the ITC access to all privileged and confidential information in our files, provided it confirms that it will not disclose such information either publicly or under an administrative protective order without the written consent of the Deputy Assistant Secretary for Import Administration.

Preliminary Determination by ITC

The ITC will determine by May 16, 1986, whether there is a reasonable indication that imports of mirrors from Belgium materially injure, or threaten material injury to, a United States industry. If its determination is negative, this investigation will terminate; otherwise, it will proceed according to the statutory procedures.

Dated: April 21, 1986.

Gilbert B. Kaplan,
Deputy Assistant Secretary for Import Administration.

[FR Doc. 86-9500 Filed 4-28-86 8:45 am]

BILLING CODE 3510-DS-M

[A-428-603]

Mirrors in Stock Sheet and Lehr End Sizes from the Federal Republic of Germany: Initiation of Antidumping Duty Investigation

AGENCY: International Trade Administration, Import Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the United States Department of Commerce, we are initiating an antidumping duty investigation to determine whether mirrors in stock sheet and lehr end sizes from the Federal Republic of Germany (FRG), as described in the "Scope of Investigation" section of this notice, are being, or are likely to be, sold in the United States at less than fair value. We are notifying the United States International Trade Commission (ITC) of this action so that it may determine whether imports of the subject merchandise from the FRG materially injure, or threaten material injury to, a United States industry. If this investigation proceeds normally, the ITC will make its preliminary determination on or before May 16, 1986, and we will make ours on or before September 8, 1986.

EFFECTIVE DATE: April 29, 1986.

FOR FURTHER INFORMATION CONTACT: Mary S. Clapp, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377-1769.

SUPPLEMENTARY INFORMATION:

The Petition

On April 1, 1986, we received a petition in proper form filed by the National Association of Mirror Manufacturers. The petition was filed on behalf of the United States industry producing mirrors in stock sheet and lehr end sizes. In compliance with the filing requirements of § 353.36 of the Commerce Regulations (19 CFR 353.36), the petition alleges that imports of the subject merchandise from the FRG are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the

Tariff Act of 1930, as amended (the Act), and that these imports materially injure, or threaten material injury to, a United States industry.

Initiation of Investigation

Under section 732(c) of the Act, we must determine, within 20 days after a petition is filed, whether the petition sets forth the allegation necessary for the initiation of an antidumping duty investigation and, further, whether it contains information reasonably available to the petitioner supporting the allegations.

We have examined the petition on mirrors in stock sheet and lehr end sizes from the FRG and have found that it meets the requirements of section 732(b) of the Act. Therefore, in accordance with section 732 of the Act, we are initiating an antidumping duty investigation to determine whether mirrors in stock sheet and lehr end sizes are being, or are likely to be, sold in the United States at less than fair value. If our investigation proceeds normally, we will make our preliminary determination on or before September 8, 1986.

Scope of Investigation

The products covered by this investigation are unfinished glass mirrors 15 square feet or more in reflecting area, which have not been subjected to any finishing operation such as beveling, etching, edging, or framing, classifiable in the Tariff Schedule of the United States Annotated (TSUSA) under item 544.5400 and made of any of the glass described in TSUS items 541.11 through 544.41.

United States Price and Foreign Market Value

The petitioner based U.S. price on actual sales or offers made by German producers to U.S. purchasers. Using this price data, the petitioner arrived at average unit values, f.o.b. origin, of U.S. imports by subtracting estimated charges for ocean freight, insurance, customs duties, and U.S. inland freight.

The petitioner based home market price on actual transaction prices, delivered to wholesalers in the FRG. The petitioner then compared home market price with an average German cost of production from the estimated cost components of German mirror producers. Since home market price was shown, on average, to be below the cost of production, there is an allegation of sales below the cost of production. We will investigate this allegation. The petitioner based foreign market value on constructed value equal to the cost of production plus eight percent profit.

Based on the comparison of these estimated values, petitioner alleges average dumping margins ranging from 12.77 percent to 47.06 percent.

Notification of ITC

Section 732(d) of the Act requires us to notify the ITC of this action and to provide it with the information we used to arrive at this determination. We will notify the ITC and make available to it all nonprivileged and nonconfidential information. We will also allow the ITC access to all privileged and confidential information in our files, provided it confirms that it will not disclose such information either publicly or under an administrative protective order without the written consent of the Deputy Assistant Secretary for Import Administration.

Preliminary Determination by ITC

The ITC will determine by May 16, 1986, whether there is a reasonable indication that imports of mirrors in stock sheet and lehr end sizes from the FRG materially injure, or threaten material injury to, a United States industry. If its determination is negative, this investigation will terminate; otherwise, it will proceed according to the statutory procedures.

April 21, 1986.

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 86-9501 Filed 4-29-86; 8:45 am]

BILLING CODE 3501-DS

[A-475-602]

Mirrors in Stock Sheet and Lehr End Sizes From Italy: Initiation of Antidumping Duty Investigation

AGENCY: International Trade Administration, Import Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: On the basis of a petition filed in a proper form with the United States Department of Commerce, we are initiating an antidumping duty investigation to determine whether mirrors in stock sheet and lehr end sizes (mirrors) from Italy as described in the "Scope of Investigation" section of this notice, are being, or are likely to be, sold in the United States at less than fair value. We are notifying the United States International Trade Commission (ITC) of this action so that it may determine whether imports of the subject merchandise from Italy materially injure, or threaten material injury to, a United States industry. If this

investigation proceeds normally, the ITC will make its preliminary determination on or before May 16, 1986, and we will make ours on or before September 8, 1986.

EFFECTIVE DATE: April 29, 1986.

FOR FURTHER INFORMATION CONTACT: Mary S. Clapp, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377-1769.

SUPPLEMENTARY INFORMATION:

The Petition

On April 1, 1986, we received a petition in proper form filed by the National Association of Mirror Manufacturers. The petition was filed on behalf of the United States industry producing mirrors. In compliance with the filing requirements of § 353.36 of the Commerce Regulations (19 CFR 353.36), the petition alleges that imports of the subject merchandise from Italy are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act), and that these imports materially injure, or threaten material injury to, a United States industry.

Initiation of Investigation

Under section 732(c) of the Act, we must determine, within 20 days after a petition is filed, whether the petition sets forth the allegations necessary for the initiation of an antidumping duty investigation and, further, whether it contains information reasonably available to the petitioner supporting the allegations.

We have examined the petition on mirrors from Italy and have found that it meets the requirements of section 732(b) of the Act. Therefore, in accordance with section 732 of the Act, we are initiating an antidumping duty investigation to determine whether mirrors are being, or are likely to be, sold in the United States at less than fair value. If our investigation proceeds normally, we will make our preliminary determination on or before September 8, 1986.

Scope of Investigation

The products covered by this investigation are unfinished glass mirrors 15 square feet or more in reflecting area, which have not been subjected to any finishing operation such as beveling, etching, edging, or framing, classifiable in the Tariff Schedules of the United States

Annotated (TSUSA) under item 544.5400 and made of any of the glass described in TSUS items 541.11 through 544.41.

United States Price and Foreign Market Value

The petitioners based United States price on average unit values, f.o.b. origin, of U.S. imports of mirrors from Italy derived from the Bureau of Census import statistics and price quotes obtained by U.S. manufacturers. Using price quotes petitioners arrived at average unit values, f.o.b. origin of U.S. imports by subtracting estimated charges for ocean freight, U.S. dealer markup, insurance, customs duties and U.S. inland freight.

Petitioners based home market price on price quotes for products delivered to Italian wholesalers in the home market. Petitioners then compared home market price with an average producer's cost of production derived from the cost components of an Italian mirror manufacturer. Home market price was shown to be below cost. Therefore, petitioners have alleged sales below the cost of production. We will investigate this allegation. The petitioners based foreign market value on weighted-average constructed value equal to the cost of production, as derived from an Italian manufacturer and European float glass producer, plus eight percent profit.

Based on the comparison of these estimated values, petitioners allege average dumping margins by quarters for 1985 ranging from 13.94 percent to 103 percent.

Notification of ITC

Section 732(d) of the Act requires us to notify the ITC of this action and to provide it with the information we used to arrive at this determination. We will notify the ITC and make available to it all nonprivileged and nonconfidential information. We will also allow the ITC access to all privileged and confidential information in our files, provided it confirms that it will not disclose such information either publicly or under an administrative protective order without the written consent of the Deputy Assistant Secretary for Import Administration.

Preliminary Determination by ITC

The ITC will determine by May 16, 1986, whether there is a reasonable indication that imports of mirrors from Italy materially injure, or threaten material injury to, a United States industry. If its determination is negative, this investigation will terminate;

otherwise, it will proceed according to the statutory procedures.

April 21, 1986.

Gilbert B. Kaplan,
Deputy Assistant Secretary for Import
Administration.

[FR Doc. 86-9502 Filed 4-29-86; 8:45 am]

BILLING CODE 3510-DS

[A-588-603]

Mirrors in Stock Sheet and Lehr End Sizes From Japan; Initiation of Antidumping Duty Investigation

AGENCY: International Trade Administration, Import Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the United States Department of Commerce, we are initiating an antidumping duty investigation to determine whether mirrors in stock sheet and lehr end sizes (mirrors) from Japan as described in the "Scope of Investigation" section of this notice, are being, or are likely to be, sold in the United States at less than fair value. We are notifying the United States International Trade Commission (ITC) of this action so that it may determine whether imports of the subject merchandise from Japan materially injure, or threaten material injury to, a United States industry. If the investigation proceeds normally, the ITC will make its preliminary determination on or before May 16, 1986, and we will make ours on or before September 8, 1986.

EFFECTIVE DATE: April 29, 1986.

FOR FURTHER INFORMATION CONTACT: Mary S. Clapp, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377-1769.

SUPPLEMENTARY INFORMATION:

The Petition

On April 1, 1986, we received a petition in proper form filed by the National Association of Mirror Manufacturers. The petition was filed on behalf of the United States industry producing mirrors. In compliance with the filing requirements of § 353.36 of the Commerce Regulations (19 CFR 353.36), the petition alleges that imports of the subject merchandise from Japan are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act),

and that these imports materially injure, or threaten material injury to, a United States industry.

Initiation of Investigation

Under section 732(c) of the Act, we must determine, within 20 days after a petition is filed, whether the petition sets forth the allegations necessary for the initiation of an antidumping duty investigation and, further, whether it contains information reasonably available to the petitioner supporting the allegations.

We have examined the petition on mirrors from Japan and have found that it meets the requirements of section 732(b) of the Act. Therefore, in accordance with section 732 of the Act, we are initiating an antidumping duty investigation to determine whether mirrors are being, or are likely to be, sold in the United States at less than fair value. If our investigation proceeds normally, we will make our preliminary determination on or before September 8, 1986.

Scope of Investigation

The products covered by this investigation are unfinished glass mirrors, 15 feet or more in reflecting area, which have not been subjected to any finishing operation such as beveling, etching, edging, or framing, classifiable in the Tariff Schedule of the United States Annotated (TSUSA) under item 544.5400 and made of any of the glass described in TSUS items 541.11 through 544.41.

United States Price and Foreign Market Value

The petitioners based United States price on average unit values, f.o.b. origin, of United States imports of mirrors from Japan derived from the Bureau of Census, Import statistics.

The petitioners based foreign market value on average unit values of delivered home market prices. Petitioners also made comparisons basing foreign market value on weighted-average constructed value.

Based on the comparison of these estimated values, petitioners allege average dumping margins ranging from 24.39 percent to 70.05 percent.

Notification of ITC

Section 732(d) of the Act requires us to notify ITC of this action and to provide it with the information we used to arrive at this determination. We will notify the ITC and make available to it all nonprivileged and nonconfidential information. We will also allow the ITC access to all privileged and confidential

information in our files, provided it confirms that it will not disclose such information either publicly or under an administrative protective order without the written consent of the Deputy Assistant Secretary for Import Administration.

Preliminary Determination by ITC

The ITC will determine by May 16, 1986, whether there is a reasonable indication that imports of mirrors from Japan materially injure, or threaten material injury to, a United States industry. If its determination is negative, this investigation will terminate; otherwise, it will proceed according to the statutory procedures.

Gilbert B. Kaplin,

Deputy Assistant Secretary for Import Administration.

April 21, 1986.

[FR Doc. 86-9503 Filed 4-29-86; 8:45 am]

BILLING CODE 3510-DS-M

[A-471-601]

Mirrors in Stock Sheet and Lehr End Sizes From Portugal; Initiation of Antidumping Duty Investigation

AGENCY: International Trade Administration, Import Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the United States Department of Commerce, we are initiating an antidumping duty investigation to determine whether mirrors in stock sheet and Lehr end sizes from Portugal as described in the "Scope of Investigation" section of this notice, are being, or are likely to be, sold in the United States at less than fair value. We are notifying the United States International Trade Commission (ITC) of this action so that it may determine whether imports of the subject merchandise from Portugal materially injure, or threaten material injury to, a United States industry. If this investigation proceeds normally, the ITC will make its preliminary determination on or before May 16, 1986, and we will make ours on or before September 8, 1986.

EFFECTIVE DATE: April 29, 1986.

FOR FURTHER INFORMATION CONTACT:

Mary S. Clapp, Office of Investigation, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377-1759.

SUPPLEMENTARY INFORMATION:

The Petition

On April 1, 1986, we received a petition in proper form filed by the National Association of Mirror Manufacturers. The petition was filed on behalf of the United States industry producing mirrors in stock sheet and Lehr end sizes. In compliance with the filing requirements of § 353.36 of the Commerce Regulations (19 CFR 353.36), the petition alleges that imports of the subject merchandise from Portugal are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act), and that these imports materially injure, or threaten material injury to, a United States industry.

Initiation of Investigation

Under section 732(c) of the Act, we must determine, within 20 days after a petition is filed, whether the petition sets forth the allegations necessary for the initiation of an antidumping duty investigation and, further, whether it contains information reasonably available to the petitioner supporting the allegations.

We have examined the petition on mirrors in stock sheet and Lehr end sizes from Portugal and have found that it meets the requirements of section 732(b) of the Act. Therefore, in accordance with section 732 of the Act, we are initiating an antidumping duty investigation to determine whether mirrors in stock sheet and Lehr end sizes are being, or are likely to be, sold in the United States at less than fair value. If our investigation proceeds normally, we will make our preliminary determination on or before September 8, 1986.

Scope of Investigation

The products covered by this investigation are unfinished glass mirrors 15 square feet or more in reflecting area, which have not been subjected to any finishing operation such as beveling, etching, edging, or framing, currently classifiable in the Tariff Schedules of the United States Annotated (TSUSA) under item 544.5400 and made of any of the glass described in TSUS items 541.11 through 544.41.

United States Price and Foreign Market Value

The petitioner based United States price on average unit values, f.o.b. origin, of United States imports of mirrors from Portugal as derived from the Bureau of Census import statistics.

The petitioner based foreign market value on average unit values of import prices of European Economic Community mirrors as being

representative of prices in the home market. Petitioner also made comparisons basing foreign market value on weighted-average constructed value.

Based on the comparison of these estimated values, the alleged average dumping margins range from 57.15 percent to 88.13 percent.

Notification of ITC

Section 732(d) of the Act requires us to notify the ITC of this action and to provide it with the information we used to arrive at this determination. We will notify the ITC and make available to it all nonprivileged and nonconfidential information. We will also allow the ITC access to all privileged and confidential information in our files, provided it confirms that it will not disclose such information either publicly or under an administrative protective order without the written consent of the Deputy Assistant Secretary for Import Administration.

Preliminary Determination by ITC

The ITC will determine by May 16, 1986 whether there is a reasonable indication that imports of mirrors in stock sheet and Lehr end sizes from Portugal materially injure, or threaten material injury to, a United States industry. If its determination is negative, this investigation will terminate; otherwise, it will proceed according to the statutory procedures.

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

April 21, 1986.

[FR Doc. 86-9504 Filed 4-29-86; 8:45 am]

BILLING CODE 3510-D-M

[A-412-601]

Mirrors in Stock Sheet and Lehr End Sizes From the United Kingdom: Initiation of Antidumping Duty Investigation

AGENCY: International Trade Administration, Import Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the United States Department of Commerce, we are initiating an antidumping duty investigation to determine whether mirrors in stock sheet and Lehr end sizes from the United Kingdom (U.K.), as described in the "Scope of Investigation" section of this notice, are being, or are likely to be, sold in the

United States at less than fair value. We are notifying the United States International Trade Commission (ITC) of this action so that it may determine whether imports of the subject merchandise from the U.K. materially injure, or threaten material injury to, a United States industry. If this investigation proceeds normally, the ITC will make its preliminary determination on or before May 16, 1986, and we will make ours on or before September 8, 1986.

EFFECTIVE DATE: April 29, 1986.

FOR FURTHER INFORMATION CONTACT: Mary S. Clapp, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 377-1769.

SUPPLEMENTARY INFORMATION:

The Petition

On April 1, 1986, we received a petition in proper form filed by the National Association of Mirror Manufacturers. The petition was filed on behalf of the United States industry producing mirrors in stock sheet and lehr end sizes. In compliance with the filing requirements of § 353.36 of the Commerce Regulations (19 CFR 353.36), the petition alleges that imports of the subject merchandise from the U.K. are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act), and that these imports materially injure, or threaten material injury to, a United States industry.

Initiation of Investigation

Under section 732(c) of the Act, we must determine, within 20 days after a petition is filed, whether the petition sets forth the allegations necessary for the initiation of an antidumping duty investigation and, further, whether it contains information reasonably available to the petitioner supporting the allegations.

We have examined the petition on mirrors in stock sheet and lehr end sizes from the U.K. and have found that it meets the requirements of section 732(b) of the Act. Therefore, in accordance with section 732 of the Act, we are initiating an antidumping duty investigation to determine whether mirrors in stock sheet and lehr end sizes are being, or are likely to be, sold in the United States at less than fair value. If our investigation proceeds normally, we will make our preliminary determination on or before September 8, 1986.

Scope of Investigation

The products covered by this investigation are unfinished glass mirrors 15 square feet or more in reflecting area, which have not been subjected to any finishing operation such as beveling, etching, edging, or framing, classifiable in the Tariff Schedules of the United States Annotated (TSUSA) under item 544.5400 and made of any of the glass described in TSUS items 541.11 through 544.41.

United States Price and Foreign Market Value

The petitioner based U.S. price on actual sales or offers made by a U.K. producer to U.S. purchasers. Using this price data, the petitioner arrived at average unit values, f.o.b. origin, of U.S. imports by subtracting estimated charges for ocean freight, insurance, customs duties, and U.S. inland freight.

The petitioner based foreign market value on transaction prices, delivered to wholesalers in the United Kingdom.

Based on the comparison of these estimated values, the petitioner alleges average dumping margins ranging from 50.01 percent to 60.35 percent.

Notification of ITC

Section 732(d) of the Act requires us to notify the ITC of this action and to provide it with the information we used to arrive at this determination. We will notify the ITC and make available to it all nonprivileged and nonconfidential information. We will also allow the ITC access to all privileged and confidential information in our files, provided it confirms that it will not disclose such information either publicly or under an administrative protective order without the written consent of the Deputy Assistant Secretary for Import Administration.

Preliminary Determination by ITC

The ITC will determine by May 16, 1986, whether there is a reasonable indication that imports of mirrors in stock sheet and lehr end sizes from the U.K. materially injure, or threaten material injury to, a United States industry. If its determination is negative, this investigation will terminate; otherwise, it will proceed according to the statutory procedures.

April 21, 1986.

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 86-9505 Filed 4-29-1986; 8:45 am]

BILLING CODE 3510-DS-M

[A-570-505]

Certain Small Diameter Welded Carbon Steel Pipes and Tubes From the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value

AGENCY: International Trade Administration, Import Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: We have preliminarily determined that certain small diameter welded carbon steel pipes and tubes (pipes and tubes) from the People's Republic of China (PRC), are being, or are likely to be, sold in the United States at less than fair value, and have notified the U.S. International Trade Commission (ITC) of our determination. We have also directed the U.S. Customs Service to suspend the liquidation of all entries of pipes and tubes from the PRC that are entered, or withdrawn from warehouse, for consumption, on or after the date of publication of this notice, and to require a cash deposit or bond for each entry in an amount equal to the estimated dumping margin as described in the "Suspension of Liquidation" section of this notice.

If this investigation proceeds normally, we will make a final determination by July 7, 1986.

EFFECTIVE DATE: April 29, 1986.

FOR FURTHER INFORMATION CONTACT: Jess M. Bratton or John Brinkmann, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, DC 20230; telephone: (202) 377-1778, or (202) 377-3965.

SUPPLEMENTARY INFORMATION:

Preliminary Determination

We have preliminarily determined that pipes and tubes from the PRC are being, or are likely to be, sold in the United States at less than fair value, as provided in section 733 of the Tariff Act of 1930, as amended (19 U.S.C. 1673b) (the Act). The margin preliminarily found for the company investigated is listed in the "Suspension of Liquidation" section of this notice. If this investigation proceeds normally, we will make our final determination by July 7, 1986.

Case History

On November 13, 1985, we received a petition filed in proper form from the

Standard Pipe Subcommittee of the Committee on Pipe and Tube Imports and by each of the member companies which produces standard pipe and tube on behalf of the U.S. industry producing pipes and tubes. In compliance with the filing requirements of § 353.36 of the Commerce Regulations (19 CFR 353.36), the petition alleges that imports of the subject merchandise from the PRC are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act (19 U.S.C. 1673), and that these imports are materially injuring, or threatening material injury to, a U.S. industry.

After reviewing the petition, we determined that it contained sufficient grounds upon which to initiate an antidumping duty investigation. We initiated the investigation on December 3, 1985 (50 FR 51274), and notified the ITC of our action.

On December 30, 1985, the ITC found that there is a reasonable indication that imports of pipes and tubes from the PRC are threatening material injury to a U.S. industry (U.S. ITC Pub. No. 1796, December, 1985).

On January 16, 1986 a questionnaire was sent to the China National Metals and Minerals Import and Export Corporation (Minmetals), which accounted for more than 80 percent of the exports of standard pipe and tube from the PRC during the period of investigation.

On February 21, 1986 and on April 9, 1986, Minmetals filed a response to our questionnaire.

Scope of Investigation

The products covered by this investigation are small diameter welded carbon steel pipes and tubes of circular cross-section, 0.375 inch or more but not over 16 inches in outside diameter, currently classifiable in the *Tariff Schedules of the United States Annotated* (TSUSA), under items 610.3231 and 610.3234, 610.3241, 610.3242, 610.3243, 610.3252, 610.3254, 610.3256, 610.3258 and 610.4925. These products are commonly referred to in the industry as standard pipes or tubes produced to various ASTM specifications, most notably A-120, A-53 or A-135.

Fair Value Comparisons

To determine whether sales of the subject merchandise in the United States were made at less than fair value, we compared the United States price with the foreign market value. For foreign market value, we used best information available as required by section 776(b) of the Act.

United States Price

As provided in section 772 of the Act, we calculated the purchase price of pipes and tubes based on the C&F packed price to unrelated United States purchasers shown in the response submitted by Minmetals. We made a deduction for ocean freight.

Foreign Market Value

In accordance with section 773(c) of the Act, we used prices of pipes and tubes imported into the United States from Argentina as the basis for determining foreign market value.

Petitioners alleged that the PRC is a state-controlled-economy country and that sales of the subject merchandise in that country do not permit a determination of foreign market value under section 773(a). After an analysis of the PRC economy, and consideration of the briefs submitted by the parties, we concluded that the PRC is a state-controlled-economy country for the purpose of this investigation. Central to our decision on this issue is the fact that the central government of the PRC controls the prices and levels of production of pipes and tubes or steel products as well as the internal pricing of the factors of production.

As result, section 773(c) of the Act requires us to use either the prices of or the constructed value of such or similar merchandise in a non-state-controlled-economy country. Our regulations establish a preference for foreign market value based upon sales prices. They further stipulate that, to the extent possible, we should determine sales prices on the basis of prices in a non-state-controlled-economy country at a stage of economic development comparable to the state-controlled-economy country.

After an analysis of the economies of countries producing standard pipe and tube, we determined that Egypt, India, Indonesia, Morocco, Pakistan, the Philippines, Sri Lanka and Thailand were the countries at the most comparable stages of economic development, and it would, therefore, be appropriate to base foreign market value on prices of companies in these countries. The companies we sent questionnaires to in these countries have not responded.

Lacking price information from companies in countries at a level of economic development comparable to that of the PRC, we have based foreign market value on the prices of imports of the same class or kind of merchandise into the United States. Of the countries exporting pipe and tube to the United States, we chose Argentina since it was

at the most comparable level of economic development to the PRC. We have based foreign market value on the weighted-average C&F price of pipe and tube from Argentina for export to unrelated purchasers in the United States. We gathered weighted-average price information from Special Summary Steel Invoice (SSSI) statistics, which was best information available and made a deduction for ocean freight. We made comparisons of merchandise of the same size and grade as that which the PRC exported to the United States.

In arriving at the decision to use the price of Argentine exports to the United States as the basis of foreign market value, we considered using the exports of several other countries. However, these other countries were signatories of voluntary restraint agreements (VRA) with the United States. Since under the terms of a VRA the amount of goods a country may export to the United States is limited, it is possible that these VRAs lead to an increase in the prices manufacturers in these countries charge. Therefore, we decided, for the purpose of this preliminary determination, not to base foreign market value on the value of goods from VRA countries.

We are continuing to review this issue realizing that of countries exporting to the United States, those considered most comparable to the state-controlled-economy countries under investigation may be covered by VRAs or, indeed, all countries exporting the goods under investigation to the United States may be covered by VRAs. In situations such as this, we have tried to use a country, such as Argentina in this case, which is not covered by a VRA but is an exporter of the goods under investigation and has the most comparable level of economic development to the country subject to the investigation. Because this issue is still under review, we invite all interested parties' comments on this matter as they relate to section 773(c) of the Act. Comments should be directed to the Deputy Assistant Secretary for Import Administration within 30 days of the date of publication of this notice.

Verification

As provided in section 776(a) of the Act, we will verify all information used in reaching our final determination.

Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the United States Customs Service to suspend liquidation of all entries of pipes and tubes from the PRC that are entered, or withdrawn from warehouse, for consumption, on or after the date of

publication of this notice in the **Federal Register**. The United States Customs Service shall require a cash deposit or the posting of a bond equal to the estimated weighted-average amounts by which the foreign market value of the merchandise subject to this investigation exceeds the United States price as shown in the table below. This suspension of liquidation will remain in effect until further notice.

Manufacturer/producer/exporter	Weighted-average margin percentage
Minmetals.....	17.97
All Others.....	17.97

ITC Notification

In accordance with section 733(f) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonconfidential information relating to this investigation. We will allow the ITC access to all privileged and confidential information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Deputy Assistant Secretary for Import Administration. The ITC will determine whether these imports materially injure, or threaten material injury to, a U.S. industry before the later of 120 days after we make our preliminary affirmative determination or 45 days after we make our final affirmative determination.

Public Comment

In accordance with § 353.47 of our regulations (19 CFR 353.47), if requested, we will hold a public hearing to afford interested parties an opportunity to comment on this preliminary determination at 10:00 a.m. on May 28, 1986 at the United States Department of Commerce, Room 3708, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230. Individuals who wish to participate in the hearing must submit a request to the Deputy Assistant Secretary for Import Administration, Room B-099, within 10 days of the publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reason for attending; and (4) a list of the issues to be discussed.

In addition, prehearing briefs in at least 10 copies must be submitted to the Deputy Assistant Secretary by May 21,

1986. Oral presentations will be limited to issues raised in the briefs. All written views should be filed in accordance with 19 CFR 353.46, within 30 days of this notice's publication, at the above address and in at least 10 copies.

Gilbert B. Kaplan,
Deputy Assistant Secretary for Import Administration.

April 22, 1986.

[FR Doc. 86-9497 Filed 4-28-86; 8:45 am]

BILLING CODE 3510-DS-M

[A-565-501]

Certain Small Diameter Welded Carbon Steel Pipes and Tubes From the Philippines: Preliminary Determination of Sales at Less Than Fair Value

AGENCY: International Trade Administration, Import Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: We have preliminarily determined that certain small diameter welded carbon steel pipes and tubes (pipes and tubes) from the Philippines, are being, or are likely to be, sold in the United States at less than fair value, and have notified the U.S. International Trade Commission (ITC) of our determination. We have also directed the U.S. Customs Service to suspend the liquidation of all entries of pipes and tubes from the Philippines that are entered, or withdrawn from warehouse, for consumption, on or after the date of publication of this notice, and to require a cash deposit or bond for each entry in an amount equal to the estimated dumping margin as described in the "Suspension of Liquidation" section of this notice.

If this investigation proceeds normally, we will make a final determination by July 7, 1986.

EFFECTIVE DATE: April 29, 1986.

FOR FURTHER INFORMATION CONTACT: Mary J. Jenkins or John Brinkmann, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 377-1756, or (202) 377-3965.

SUPPLEMENTARY INFORMATION:

Preliminary Determination

We have preliminarily determined that pipes and tubes from the Philippines are being, or are likely to be, sold in the United States at less than fair value, as provided in section 733 of the Tariff Act of 1930, as amended (19

U.S.C. 1673b) (the Act). The margin preliminarily found for the company investigated is listed in the "Suspension of Liquidation" section of this notice. If this investigation proceeds normally, we will make our final determination by July 7, 1986.

Case History

On November 13, 1985, we received a petition filed in proper form from the Standard Pipe Subcommittee on the Committee on Pipes and Tubes Imports and by each of the member companies who produce standard pipe and tube on behalf of the U.S. industry producing pipes and tubes. In compliance with the filing requirements of § 353.36 of the Commerce Regulations (19 CFR 353.36), the petition alleges that imports of pipe and tube from the Philippines are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act (19 U.S.C. 1673), and that these imports are materially injuring, or threatening material injury to, a U.S. industry.

After reviewing the petition, we determined that it contained sufficient grounds upon which to initiate an antidumping duty investigation. We initiated the investigation on December 3, 1985 (50 FR 51274), and notified the ITC of our action.

On December 30, 1985, the ITC found that there is a reasonable indication that imports of standard pipes and tubes from the Philippines are threatening material injury to a U.S. industry.

On February 3, 1986, a questionnaire was presented to Goodyear Steel Pipe Corporation (Goodyear) and on February 18, 1986, a questionnaire was sent to Mitsubishi International Corporation.

On March 18, 1986, Mitsubishi submitted a response to our questionnaire. On April 15, 1986, Mitsubishi submitted a supplemental response. We have not yet received a response from Goodyear, the Philippine producer of the majority of imports of pipes and tubes to the United States from the Philippines.

Scope of Investigation

The products covered by this investigation are small diameter welded carbon steel pipes and tubes of circular cross-section, 0.375 inch or more but not over 16 inches in outside diameter, currently classifiable in the *Tariff Schedules of the United States Annotated* (TSUSA), under items 610.3231, 610.3234, 610.3241, 610.3242, 610.3243, 610.3252, 610.3254, 610.3256, 610.3258, and 610.4925. These products are commonly referred to in the industry

as standard pipes and tubes produced to various ASTM specifications, most notably A-120, A-53 or A-135.

Fair Value Comparisons

To determine whether sales of the subject merchandise in the United States were made at less than fair value, we compared the United States price with the foreign market value. For foreign market value we used the best information available as required by section 776(b) of the Act.

We made comparisons of virtually all of the sales of the pipe and tube exported to the United States during the period June 1, 1985 through November 30, 1985.

United States Price

As provided in section 772(b) of the Act, we used the purchase price of the subject merchandise imported by Mitsubishi, the U.S. importer, to represent the United States price because all elements of the merchandise were sold prior to the date of importation to unrelated purchasers in the United States.

Mitsubishi purchased raw material in Taiwan and had it shipped to Goodyear in the Philippines for processing. We took as the purchase price, the processing fee Goodyear charged Mitsubishi.

Foreign Market Value

In accordance with section 776(b) of the Act, we used best information available to determine foreign market value. We used the home market prices, reported by the petitioners, at which Goodyear sold or offered for sale its products in the home market during October 1985. From the home market price, we subtracted the cost of raw material as reported by Mitsubishi to arrive at a home market price for processing for both black plain ended and black coupled and threaded standard pipes and tubes.

Because we made fair value comparisons on the basis of processing charges in the home and U.S. markets, the resulting differences have been multiplied by a coefficient equalling the proportion for which processing accounts in the value of pipes and tubes delivered to Mitsubishi to arrive at the margins for individual sales.

Verification

If we receive a timely and adequate response from Goodyear, as provided in section 776(a) of the Act, we will verify all information used in reaching our final determination.

Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the United States Customs Service to suspend liquidation of all entries of pipes and tubes from the Philippines that are entered, or withdrawn from warehouse, for consumption, on or after the date of publication of this notice in the **Federal Register**. The United States Customs Service shall require a cash deposit or the posting of a bond equal to the estimated weighted-average amounts by which the foreign market value of the merchandise subject to this investigation exceeds the United States price as shown in the table below. This suspension of liquidation will remain in effect until further notice.

Manufacturer/producer/exporter	Weighted-average margin percentage
Goodyear steel pipe corporation.....	10.2
All others.....	10.2

ITC Notification

In accordance with section 733(f) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonconfidential information relating to this investigation. We will allow the ITC access to all privileged and confidential information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Deputy Assistant Secretary for Import Administration. The ITC will determine whether these imports materially injure, or threaten material injury to, a U.S. industry before the later of 120 days after we make our preliminary affirmative determination or 45 days after we make our final affirmative determination.

Public Comment

In accordance with § 353.47 of our regulations (19 CFR 353.47), if requested, we will hold a public hearing to afford interested parties an opportunity to comment on this preliminary determination at 10:00 a.m. on May 26, 1986 at the United States Department of Commerce, Room 3708, 14th Street and Constitution Avenue NW., Washington, DC 20230. Individuals who wish to participate in the hearing must submit a request to the Deputy Assistant Secretary for Import Administration, Room B-099, within 10 days of the publication of this notice. Requests should contain: (1) The party's name,

address, and telephone number; (2) the number of participants; (3) the reason for attending; and (4) a list of the issues to be discussed.

In addition, prehearing briefs in at least 10 copies must be submitted to the Deputy Assistant Secretary by May 19, 1986. Oral presentations will be limited to issues raised in the briefs. All written views should be filed in accordance with C.F.R. 353.46 within 30 days of this notice's publication, at the above address and in at least 10 copies.

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

April 22, 1986.

[FR Doc. 86-9498 Filed 4-28-86; 8:45 am]

BILLING CODE 3510-DS-M

[A-559-502]

Certain Welded Carbon Steel Small Diameter and Light-Walled Rectangular Pipes and Tubes from Singapore: Preliminary Determination of Sales at Less Than Fair Value

AGENCY: International Trade Administration, Import Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: We have preliminarily determined that certain welded carbon steel small diameter and light-walled rectangular pipes and tubes (small diameter and LWR pipes and tubes, respectively) from Singapore, are being, or are likely to be, sold in the United States at less than fair value, and have notified the U.S. International Trade Commission (ITC) of our determinations. We have also directed the U.S. Customs Service to suspend the liquidation of all entries of small diameter and LWR pipes and tubes from Singapore that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice, and to require a cash deposit or bond for each entry in an amount equal to the estimated dumping margins as described in the "Suspension of Liquidation" section of this notice.

If these investigations proceed normally, we will make final determinations by July 7, 1986.

EFFECTIVE DATE: April 29, 1986.

FOR FURTHER INFORMATION CONTACT: Francis R. Crowe or John Brinkmann, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, D.C. 20230;

telephone: (202) 377-1756, or (202) 377-3965.

SUPPLEMENTARY INFORMATION:

Preliminary Determination

We have preliminarily determined that small diameter and LWR pipes and tubes from Singapore are being, or are likely to be, sold in the United States at less than fair value, as provided in section 733 of the Tariff Act of 1930, as amended (19 U.S.C. 1673b) (the Act). The margins preliminarily found for the company investigated are listed in the "Suspension of Liquidation" section of this notice. If these investigations proceed normally, we will make our final determinations by July 7, 1986.

Case History

On November 13, 1985, we received a petition filed in proper form from the Standard Pipe and Tube Subcommittee of the Committee on Pipe and Tube Imports (CPTI) and by each of the individual manufacturers of these products that are members of each respective subcommittee on behalf of the U.S. industry producing small diameter, LWR and heavy-walled rectangular pipes and tubes. In compliance with the filing requirements of § 353.36 of the Commerce Regulations (19 CFR 353.36), the petition alleged that imports of small diameter, LWR and heavy-walled rectangular pipes and tubes from Singapore are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act, and that these imports materially injure, or threaten material injury to, a U.S. industry. The petition also alleged that the subject merchandise is being sold at prices below the cost of production in the home market.

After reviewing the petition, we determined that it contained sufficient grounds upon which to initiate antidumping duty investigations. We initiated the investigations on December 3, 1985 (50 FR 50653), and notified the ITC of our actions.

On December 30, 1985, the ITC found that there is a reasonable indication that imports of small diameter and LWR pipes and tubes from Singapore are materially injuring a U.S. industry. It also found that there is no reasonable indication that an industry in the United States is materially injured or threatened with material injury, or that the establishment of an industry in the United States is materially retarded, by reason of imports from Singapore of heavy-walled rectangular pipes and tubes (U.S. ITC Pub. No. 1796, December 1985).

On January 22, 1986, a questionnaire was presented to Steel Tubes of Singapore (PTE), Ltd. (STS). On April 14, 1986, STS filed a response to our questionnaire.

Scope of Investigations

The products covered by these investigations are small diameter, welded carbon steel pipes and tubes of circular cross-section, 0.375 inch or more but not over 16 inches in outside diameter currently classifiable in the *Tariff Schedules of the United States Annotated* (TSUSA), under items 610.3231 and 610.3234, 610.3241, 610.3242, 610.3243, 610.3252, 610.3254, 610.3256, 610.3258 and 610.4925. These products are commonly referred to in the industry as small diameter pipes or tubes produced to various ASTM specifications, most notably A-120, A-53 or A-135.

The light-walled rectangular pipes and tubes are mechanical pipes and tubes or welded carbon steel pipes and tubes of rectangular (including square) cross-section having a wall thickness of less than 0.156 inch as provided for in item 610.4928 of the TSUSA.

Fair Value Comparison

To determine whether sales of the subject merchandise in the United States were made at less than fair value, we compared the United States price with the foreign market value.

United States Price

As provided in section 772(b) of the Act, we used the purchase price of the subject merchandise to represent the United States price because the merchandise was sold prior to the date of importation to unrelated purchasers in the United States. We calculated the purchase price based on the delivered price to unrelated purchasers in the United States. We made deductions for foreign inland freight and port charges, ocean freight, insurance, U.S. import duty and port charges, as applicable.

Because of irregularities in STS's computer generated sales data, we encountered difficulties in using that data for sales comparisons. We were able to modify the data on sales of small diameter pipes and tubes and to compare all of those sales. However, we were unable to process the data on sales of LWR by computer. Therefore, we sampled the LWR sales and are basing the preliminary determination with respect to those sales on approximately 30 percent, by quantity, of the sales of LWR. Given the deficient conditions of the data files submitted and the statutory time constraints for this determination, we considered this the

best information available for this preliminary determination. We are requesting that STS revise its computer generated sales response in order to enable us to use it for the final determination.

Foreign Market Value

Petitioners alleged that sales in the home market were made at prices which were below the cost of production over an extended period of time and were at prices which did not permit recovery of all costs within a reasonable period of time in the normal course of trade. Therefore, we compared home market prices to the cost of production of the merchandise.

After a review of the response, we concluded that cost data in the response were inadequately explained and insufficiently labeled. Therefore, the Department added all cost items which appeared to be part of the costs of production reported in the response. The costs of production determined by this method exceeded the total costs of production presented in the response. In addition, the appropriateness of the respondent's overhead allocation method was questionable. However, we used the respondent's reported overhead costs because the overhead data, as presented, did not allow re-allocation of overhead costs for the preliminary determination. The Department will carefully examine the allocation methodology, as well as actual overhead costs, during the verification in order to assure that all overhead costs are properly attributed to the product.

In accordance with section 773(e) of the Act, we calculated foreign market value based on constructed value because there were not sufficient home market sales of such or similar merchandise above the cost of production. Because the general expenses reported were above the statutory minimum of 10 percent of the sum of material and production costs, we used the actual general expenses. As we have been unable to determine from the response what the profit is for the same general class or kind of merchandise, for purpose of this preliminary determination we are using the statutory minimum of eight percent.

We made currency conversions in accordance with § 353.56(a)(1) of the Commerce Regulations, using certified exchange rates as furnished by the Federal Reserve Bank of New York.

Verification

As provided in section 776(a) of the Act, we will verify all information used in reaching our final determination.

Suspension of Liquidation

In accordance with section 744(d) of the Act, we are directing the United States Customs Service to suspend liquidation of all entries of small diameter and LWR pipes and tubes from Singapore that are entered, or withdrawn from warehouse, for consumption on or after date of publication of this notice in the **Federal Register**. The United States Customs Service shall require a cash deposit or the posting of a bond equal to the estimated weighted-average amounts by which the foreign market value of the merchandise subject to this investigation exceeds the United States price as shown in the table below. This suspension of liquidation will remain in effect until further notice.

Manufacturer producer/exporter	Weighted-average margin percentage
Steel Tubes of Singapore (PTE), Ltd:	
Small diameter pipe and tubes.....	25.47
Light-walled rectangular pipes and tubes.....	26.08
All others:	
Small diameter pipes and tubes.....	25.47
Light-walled rectangular pipes and tubes.....	26.08

ITC Notification

In accordance with section 733(f) of the Act, we will notify the ITC of our determinations. In addition, we are making available to the ITC all nonprivileged and nonconfidential information relating to these investigations. We will allow the ITC access to all privileged and confidential information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Deputy Assistant Secretary for Import Administration. The ITC will determine whether these imports materially injure, or threaten material injury to, a U.S. industry before the later of 120 days after we make our preliminary affirmative determinations or 45 days after we make our final affirmative determinations.

Public Comment

In accordance with § 353.47 of our regulations (19 CFR 353.47), if requested, we will hold a public hearing to afford interested parties an opportunity to comment on these preliminary determinations at 10:00 a.m. on May 27, 1986 at the United States Department of Commerce, Room 3708, 14th Street and Constitution Avenue NW., Washington, DC 20230. Individuals who wish to participate in the hearing must submit a

request to the Deputy Assistant Secretary for Import Administration, Room B-099, within 10 days of the publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reason for attending; and (4) a list of the issues to be discussed.

In addition, prehearing briefs in at least 10 copies must be submitted to the Deputy Assistant Secretary by May 20, 1986. Oral presentations will be limited to issues raised in the briefs. All written views should be filed in accordance with CFR 353.46, within 30 days of this notice's publication, at the above address and in at least 10 copies.

April 22, 1986.

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 86-9499 Filed 4-28-86; 8:45 am]

BILLING CODE 3510-DS-M

[A-588-503]

64K Dynamic Random Access Memory Components (64K DRAM's) From Japan: Final Determination of Sales at Less Than Fair Value

AGENCY: International Trade Administration/Import Administration/Commerce.

ACTION: Notice.

SUMMARY: We have determined that 64K DRAMs from Japan are being, or are likely to be, sold in the United States at less than fair value, and have notified the U.S. International Trade Commission (ITC) of our determination. We have also directed the U.S. Customs Service to continue to suspend the liquidation of all entries of 64K DRAMs from Japan that are entered, or withdrawn from warehouse, for consumption, on or after December 11, 1985 and to require a cash deposit or bond for each entry in an amount equal to the estimated dumping margin as described in the "Suspension of Liquidation" section of this notice.

EFFECTIVE DATE: April 29, 1986.

FOR FURTHER INFORMATION CONTACT: John Brinkmann, Karen Sackett, or Paul Thran, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, DC 20230; telephone: (202) 377-3965, 377-5050, or 377-3963.

Final Determination

We have determined that 64K DRAMs from Japan are being, or are likely to be, sold in the United States at less than fair value, as provided in section 735(a) of the Tariff Act of 1930, as amended (19 U.S.C. 1673(a)) (the Act). We made fair value comparisons on almost all sales of the class or kind of merchandise to the United States by the respondents during the period of investigation. We excluded from our fair value comparisons U.S. sales of certain 64K DRAMs sold in insignificant quantities. The weighted-average margins are shown in the "Suspension of Liquidation" section of this notice.

Case History

On June 24, 1985, we received a petition from Micron Technology, Inc. on behalf of the domestic merchant manufacturers of 64k DRAMs. In compliance with the filing requirements of § 353.36 of the Commerce Regulations (19 CFR 353.36), the petition alleged that imports of 64k DRAMs from Japan are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act, and that these imports are materially injuring, or are threatening material injury to a United States industry. The petition also alleged that sales of the subject merchandise were being made in the home market at less than the cost of production. After reviewing the petition, we determined that it contained sufficient grounds upon which to initiate an antidumping duty investigation. We notified the ITC of our action and initiated such an investigation on July 15, 1985 (50 FE 29458). On August 8, 1985, the ITC determined that there is a reasonable indication that imports of 64k DRAMs from Japan are materially injuring, or are threatening material injury to, a U.S. industry (50 FR 32778).

On August 19, we presented antidumping duty questionnaires to NEC Corporation (NEC), Hitachi Ltd. (Hitachi), Oki Electric Industry Co. Ltd. (Oki) and Mitsubishi Electric Corporation (Mitsubishi). Respondents were requested to answer the questionnaire in 30 days. However, at the requests of the companies and the Japanese Ministry of International Trade and Industry, we granted two extensions of time for response submissions of two weeks and one week respectively. We received incomplete responses from the companies on October 10-11, 1985. In letters dated November 6, 12, and 13, the Department requested supplemental information

from each of the respondents. Additional information was submitted by the respondents on November 21, 1985.

On December 11, 1985, we published a preliminary determination that 64K DRAMs from Japan were being sold at less than fair value in the United States (50 FR 50649).

After the preliminary determination, all of the respondents in this investigation requested an extension of the final determination date until not later than April 23, 1986. The respondents were qualified to make such a request since they accounted for a significant proportion of exports of the merchandise to the United States. If exporters who account for a significant proportion of exports of the merchandise under investigation properly request an extension after an affirmative preliminary determination, we are required, absent compelling reasons to the contrary, to grant the request. Accordingly, we granted the request and postponed our final determination on January 3, 1986 (51 FR 234).

Between January 10 and March 22, 1986, we verified the information provided by respondents at their facilities in Japan and the United States. On March 10, 1986, we held a hearing to provide all interested parties with an opportunity to comment on the investigation.

Products Under Investigation

The products covered by this investigation are all 64K dynamic random access memory components of the N-channel metal oxide semiconductor type (64K DRAMs) from Japan. This merchandise is currently provided for in item 687.7441 of the *Tariff Schedules of the United States Annotated*. We investigated sales of 64K DRAMs during the period January 1 through June 30, 1985.

Fair Value Comparisons

To determine whether sales of the subject merchandise in the United States were made at less than fair value, we compared the United States price to the foreign market value for all companies. We used data provided in their responses, as explained in the "Foreign Market Value" section of this notice, except where otherwise noted.

We used date of shipment as the date of sale as that was the first date on which a binding commitment to sell the subject merchandise can be said to have occurred, as explained more fully in the comment section of this notice. All companies provided shipment dates for U.S. sales. Hitachi, Mitsubishi, and Oki

provided shipment dates for home market sales as well. NEC provided only order dates for its home market sales. However, examination of individual NEC home market sales showed that the average length of time between order and shipment in the home market was substantially less than 30 days. Therefore, we determined that NEC's home market order date was a reasonable indication of shipment date, and we used that as best information available.

United States Price

For certain Hitachi sales we used the purchase price of the subject merchandise to represent United States price, as provided in section 772(b) of the Act, since the merchandise was sold to unrelated purchasers prior to its importation into the United States. For other Hitachi sales and sales by all other respondents, we used exporter's sales price (ESP) to represent United States price, in accordance with section 772(c) of the Act, as the merchandise was sold after the time of importation.

We calculated purchase price and ESP based on the packed, duty paid, C.I.F. prices to unrelated purchasers in the United States.

For purchase price, we made deductions for foreign inland freight and insurance, air freight, marine insurance, brokerage charges in Japan and the United States, and U.S. duty. For ESP, where appropriate, we made deductions for brokerage charges in Japan and the United States, foreign inland freight and insurance, air freight and insurance, U.S. duty, U.S. freight and insurance, commissions to unrelated parties, U.S. selling expenses incurred in the U.S. and Japan, credit expenses, warranties, advertising, royalties, and post-shipment price adjustments in the U.S. market. As Oki had no U.S. short-term borrowing, we used the U.S. prime rate for the first and second quarter of 1985 as the best information available in calculating Oki's U.S. credit expense.

Foreign Market Value

The petitioner alleged that sales in the home market by all the respondents were at prices below the cost of producing the merchandise.

In accordance with section 773(a) of the Act, for all companies, we calculated foreign market value based on home market prices where there were sufficient home market sales at or above the cost of production to determine foreign market value. We used constructed value as the basis for calculation foreign market value where there were no sales of such or similar merchandise in the home market or

where there were insufficient sales above the cost of production, as defined in section 773(b) of the Act.

Where foreign market value was based on home market prices, we calculated a foreign market value for each product group for each month of the period of investigation, due to sharp declines in monthly prices. Where foreign market value was based on constructed value, we used a quarterly constructed value for each product group.

Since the production of 64K DRAMs was not at the developmental stage but rather at a mature stage of production, the Department used quarterly costs as the basis for the constructed value. The Department considered the significant changes in cost from quarter to quarter, the length of time for production, and the average inventory level of 64K DRAMs in order to appropriately match the sales data to the cost data. We concluded that the average costs of manufacturing incurred in the quarter preceding the sale most accurately reflected the costs of the product sold. Accordingly, the Department based its cost of production on the average manufacturing cost for the prior quarter and general expenses for the quarter in which the sale took place.

Cost of Production

In determining the cost of production for the respondents, the Department relied on the submissions, when verified and appropriately valued, and adjusted such data when certain costs necessary for the production of 64K DRAMs were not verified, not included, or not appropriately quantified or valued.

The Department analyzed industry practices of accounting for the equipment used to produce 64K DRAMs and concluded that the accelerated method of depreciation based on a five-year useful life was appropriate. In reaching this conclusion, the Department considered the characteristics of the industry which show rapid changes in manufacturing technology and a relatively brief market life for the 64K DRAM integrated circuits.

The Department included, as part of the depreciation expense, additional depreciation which was expensed when a company utilized the equipment in excess of normal production hours and when such expense was reflected on its records.

The Department's method of accounting for research and development (R&D) expenses encompassed the historic R&D for 64K DRAMs allocated over the market life of

the product, which was considered part of the cost of manufacturing, and a proportional share of the current product line R&D and general R&D, which were considered to be part of the general expenses.

NEC

The following adjustments were made to the cost of production information presented in NEC's response:

For the cost of manufacturing:

1. An amount, based on "best information available" for product-specific research and development was included because the submitted costs of manufacturing did not include product-specific research and development.
2. Special depreciation which was reported in the respondent's financial statements, but omitted from their response, was added to the cost of manufacture.
3. Certain manufacturing costs which were double-counted for one product were revised.

For the general expenses:

1. General and administrative expenses were revised because the response did not fully allocate general expenses incurred by the respondent's subsidiaries to the 64K DRAMs.
2. Interest expenses were revised because the submitted expenses did not include an appropriate allocation of credit expenses attributable to sales of 64K DRAMs.

Hitachi

The following adjustments were made to the cost of production information presented in Hitachi's response:

For the cost of manufacturing:

1. Retirement expenses which were recorded on the company records, but which were not included in the submitted costs, were included for the final determination.
2. "Best information available" was developed for the depreciation expenses which were adjusted from three to five years for the response on an incorrect basis.
3. Overhead costs incurred by manufacturing subsidiaries were included in the cost of manufacturing, not the general expenses, as presented in the submission.
4. Product-line R&D was reclassified as general expenses.

For the general expenses:

1. "Best information available" was developed for product-line R&D because the allocation methodology did not appropriately allocate such costs on a reasonable basis.
2. Certain headquarters general and administrative expenses excluded from the submission were included.

3. Indirect selling expenses related to the sales subsidiaries were included instead of the amount in the submission.

4. Financial expenses were recalculated to exclude investment income and to include credit expenses attributable to sales of 64K DRAMs.

5. Rebate expenses were excluded.

Mitsubishi

The following adjustments were made to the cost of production information presented in Mitsubishi's response:

For the cost of manufacturing:

1. The costs of certain subcontractors were adjusted to reflect the costs shown on the respondent's records.
2. Royalty payments on patents related to the production of 64K DRAMs were reclassified from general expenses to cost of manufacturing.
3. Depreciation expense was readjusted to reflect the respondent's method used in the ordinary course of business, and which the Department accepted as the method to be used for calculating the cost of production instead of the adjusted method used for the preparation of the response.

For the general expenses:

1. A proportional share of the corporate interest expense and the credit expenses attributable to sales of 64K DRAMs were included.
2. Corporate advertising which was included in the company records but not included in the submission was included.
3. Home market selling expenses were used instead of the amount in the submission.

Oki

The following adjustments were made to the cost of production information presented in Oki's response:

For the cost of manufacturing:

1. Depreciation expense was readjusted to reflect the respondent's method used in the ordinary course of business, which the Department accepted as the method to be used for calculating the cost of production, instead of the adjusted method used for the preparation of the response.
2. The difference resulting from correctly calculating the material variance by using materials consumed, not materials purchased, was included.
3. The miscalculation of the material variance was corrected and the results were included.
4. A six-month favorable labor variance was proportionately reallocated to the relevant quarters.
5. The yield variance was restated because the Department did not accept the credit adjustment made by the company to its March yield variance for

reentering retest devices into production.

6. Royalty expense was added.

7. Historic product-specific R&D was included, because the respondent had not included this cost in its calculations. This R&D amount for the period of investigation was divided between the 64K DRAM sales and royalty income. The amount applicable to 64K DRAMs was included.

For the general expenses:

1. Home market selling expenses were used instead of the allocated selling expenses included in the submission.
2. General and administrative expenses were revised to reflect an allocation based on cost of sales rather than sales revenues.
3. Interest expense was revised to reflect an allocation based on cost of sales rather than sales revenues and to include an appropriate allocation of credit expenses attributable to sales of 64K DRAMs.
4. Royalty income was not used to offset interest expense.
5. "Best information available" was developed for product-line R&D because such amount had not been included in the submission.

Price to Price Comparisons

For each company examined, we found sufficient sales above the cost of production for certain product groups to allow use of home market prices to determine foreign market value in accordance with section 773(a)(1)(A) of the Act. We used home market prices for identical merchandise sold in the United States as the basis for foreign market value. We calculated the home market price on the basis of the F.O.B. price to unrelated purchasers. When we compared purchase price to foreign market value, we made deductions, where appropriate, for foreign inland freight and insurance, discounts and rebates. We also made adjustments, where appropriate, for differences in circumstances of sale for credit terms, in accordance with § 353.15 of our regulations. On purchase price sales by Hitachi, we offset commissions paid on U.S. sales with indirect selling expenses in the home market, in accordance with § 353.15(c) of our regulations.

When we compared ESP with foreign market value, we made deductions, where appropriate, for foreign inland freight and insurance, advertising, credit expenses, direct selling expenses, discounts, rebates, and commissions. We also used indirect selling expenses in the home market to offset United States selling expenses, in accordance with § 353.15(c) of our regulations.

For both purchase price and ESP, in order to adjust for differences in packing between the two markets, we deducted home market packing costs and added U.S. packing costs to the home market prices.

We disallowed deductions for inland freight between Hitachi and its subsidiaries, because we considered this expense an intra-company transfer and included it in the cost of production. We also disallowed technical servicing expenses incurred by Hitachi since these could not be tied to particular sales during the period of investigation.

Constructed Value

In accordance with section 773(e) of the Act, we calculated foreign market value based on constructed value when there were not sufficient home market sales above the cost of production of such or similar merchandise for the purpose of comparison. For constructed value, the Department used the cost of all materials, fabrication, general expenses, and profit based on the respondents' submissions, revised, as detailed under the "Cost of Production" section of this notice. Actual general expenses were used, since in all cases, such expenses exceeded the statutory minimum of 10 percent of materials and fabrication. Only one respondent provided verifiable profit data. This figure exceeded the eight percent statutory minimum for profit. Since the other respondents were unable to provide verifiable profit data, we used the best information available for them, which was the verified profit of the one firm which provided an adequate profit submission. We made adjustments under § 353.15 of the regulations for differences in credit and royalties between the two markets.

Where there were commissions in one market and not in the other, we offset the commissions with indirect selling expenses in the other market. We also used indirect selling expenses in the home market to offset United States selling expenses, in accordance with § 353.15(c) of our regulations.

Currency Conversion

In calculating foreign market value, we made currency conversions from Japanese yen to U.S. dollars in accordance with § 353.56(a) of our regulations, using the certified daily exchange rates for comparisons involving purchase price. For ESP comparisons, we used the official exchange rate for the date of sale, which we determined was the date of shipment, since the use of that exchange rate is consistent with section 615 of the Trade and Tariff Act of 1984 (1984 Act).

We followed section 615 of the 1984 Act rather than § 353.56(a)(2) of our regulations because the later law supersedes that section of the regulations.

Verification

We verified the information used in making our final determination in accordance with section 776(a) of the Act. We used standard verification procedures, including examination of relevant sales and financial records of each company.

Respondents' Comments

Hitachi Comment 1: Hitachi claims that the constructed value used by the Department for its preliminary determination included adjustments which were not appropriate and which should not be used for the final determination. These adjustments included: (1) Changing Hitachi's depreciation expense; (2) erroneously including product-specific R&D; and (3) revising Hitachi's reported general expenses which encompassed the general R&D, interest expense, and selling, general and administrative expenses (SG&A).

DOD Response: The Department reviewed the respondent's submission. For the preliminary determination, in those areas where costs did not appear to be appropriately stated, the Department adjusted these costs by using "best information available." The adjustments were described in the Department's preliminary determination notice. For the final determination, the Department used the respondent's information when such data was verified, appropriately quantified and valued, as noted in the "Cost of Production" section of this notice.

Hitachi Comment 2: Hitachi states that since the allocation method used to calculate product-specific R&D was verified, the Department should accept its submitted amount for R&D.

DOD Response: The Department accepted the methodology used by Hitachi for calculating product-specific R&D costs. However, the company's method of calculating product-line R&D for the product was unacceptable, and "best information available" was used for this amount.

Hitachi Comment 3: Hitachi states that it was justified in not providing five-year yield experience.

DOC Response: The information requested by the verifier should have been provided. The Department requested the five-year yield experience to allow it to review more fully the current yield and historic R&D information.

Hitachi Comment 4: Hitachi claims that its right to a hearing was compromised by the Department's failure to provide a timely constructed value verification report.

DOC Response: The Department afforded adequate time for all parties to comment on the constructed value verification report prior to the final determination.

Hitachi Comment 5: Hitachi argues that Motorola's cost model for 64K DRAMs is based on fundamentally fallacious assumptions and should not be considered by the Department in reviewing Hitachi's actual costs.

DOC Response: The Department considers and analyzes all information presented by the petitioners, respondents, and interested parties. The Department notes that the underlying assumptions of the cost model presented by Motorola were reviewed by the Department specifically when analyzing the relevance of the individual cost elements of the model.

Hitachi Comment 6: Hitachi points out that the petitioner's suggestion to "lag" production costs to sales prices is not valid, because there is no statutory basis for doing so and there is no justification for artificially fixing costs at the initial stage of the production process.

DOC Response: The Department concluded that a quarterly lag between sales and cost of manufacturing was appropriate. By establishing this lag, the Department is not artificially fixing costs at the initial stage of production process but rather matching the cost incurred to the sales. Such an approach is justified by section 773(e)(1) of the Act, which provides that constructed value should be based on costs "at a time preceding the date of exportation of the merchandise under consideration which would ordinarily permit the production of that particular merchandise in the ordinary course of business."

Hitachi Comment 7: Hitachi argues that it used the appropriate sale dates in both markets when it reported a) the date of shipment as date of sale for U.S. sales and b) the date that purchase orders were entered into Hitachi's central computer as the date of sale for home market sales. With respect to the U.S. date of sale, Hitachi argues that, under U.S. law, a mere offer to purchase is not a contract;

a contract requires an acceptance as well. Therefore, it is not until a legally recognized acceptance is given that a price is "confirmed" between parties to a contract. Acceptances can come in several different forms, including actual

performance in accordance with the terms of the offer, e.g., by shipment of goods in the case of a sales contract. Since Hitachi does not normally acknowledge purchase orders, its normal acceptance of an order occurs when the order is actually shipped. Thus, date of shipment appropriately defines Hitachi's date of sale for purposes of sales in the United States.

By contrast, Hitachi argues that, in Japan, in certain situations, an offer is automatically deemed accepted if it is not promptly rejected. Hitachi cited Article 509 of Japanese Commercial law on this point. Thus, Hitachi argues that it is appropriate to report Japanese sales by reference to the date the order was entered into the company's central computer, which is normally soon after the order is received, since this is a rational basis for determining when a particular price has been "confirmed."

DOC Response: In general, the contract type of analysis set forth by Hitachi would be relevant in determining when a "sale" occurs for purposes of the antidumping laws. Here, however, the Department has determined that, in this particular industry, and during the time period investigated, neither party to a purchase order intended it to be a "binding agreement" or treated it as such. This was true for both the U.S. and home-market transactions. The Department reached this conclusion based on the fact that during the time-period investigated, there were significant cancellations of 64K DRAMs orders by both parties, without any sanctions or penalties whatsoever, and frequent price revisions to reflect rapidly declining market prices. Such cancellations and revisions occurred even after shipment of the goods in question. Thus, the Department used date of shipment for home-market sales since that was the earliest point in the transaction at which any sort of binding commitment may be inferred. The Department determined that it would be inappropriate, in these circumstances, to use the last pre-shipment change entered into the computer as the basis for the date of sale since, as counsel for Mitsubishi notes, it is only with the benefit of hindsight that one could say that a particular pre-shipment computer entry bears any relationship to the transaction that the parties ultimately agree to. Similarly, the Department also used the date of shipment for U.S. sales. The basis for this determination is outlined in the DOC Response to Domestic Parties' Comment 13.

Hitachi Comment 8: Hitachi contends that Motorola's challenges to Hitachi's

reported capital costs are misdirected because Hitachi's depreciation expenses were not understated, as Motorola suggested.

DOC Response: The Department agrees. However, since Hitachi's restatement of depreciation from a three- to five-year useful life was not correctly calculated, the Department used the "best information available." Hitachi restated depreciation by using only the remaining undepreciated assets and extending this balance, instead of recalculating the depreciation from the original date of purchase and using the full purchase price as of that date.

Hitachi Comment 9: Hitachi points out that Motorola's allegation that product-specific R&D was understated from "early write-offs" of general expenses is not true because Hitachi included historic product-specific R&D.

DOC Response: The Department agrees. The Department's methodology includes capturing historic R&D for the product under investigation and allocating such R&D to all 64K DRAMs sold.

Hitachi Comment 10: Hitachi claims that its method of allocation of certain general expenses on a sales revenue basis should not be changed because this is a long-standing practice of the Department. The Department should not use a corporate average based on the consolidated financial statements, as suggested by Motorola, to allocate these general expenses.

DOC Response: The Department used the basic methodology used by Hitachi, which included various allocation methods for different expenses and which generally followed its internal budgeting procedures for allocating general expenses. The Department adjusted general expense by including for the final determination certain amounts for general corporate expense which were excluded by Hitachi in its calculations.

Hitachi Comment 11: Hitachi's variable manufacturing costs were not understated.

DOC Response: We adjusted Hitachi's variable manufacturing costs to include certain costs, such as retirement pension expense, which were excluded by Hitachi in its submission.

Hitachi Comment 12: Hitachi claims that the Department's verification report, which states that the company did not provide historic production data for all three micron family products and for 64K DRAMs, or another allocation basis for product-line R&D, is correct. However, the Department's request for this information at the verification was untimely. Additionally, Hitachi argues

that the Department should use as its basis the ratio of 64K DRAMs wafers used in the pilot run stage of development compared to total wafers expended for all products at that stage.

DOC Response: Hitachi's computation of product-line R&D did not present the information requested by the Department in its questionnaire and did not present data necessary for use in the Department's methodology. The data referred to in the verification report was requested during the initial stage of verification.

Hitachi Comment 13: Hitachi claims that the expenses deducted from its SG&A included business tax and an "extraordinary expense."

DOC Response: The Department considered the business tax similar to an income tax and therefore did not include this amount in SG&A. The Department reviewed the nature of the "extraordinary expense" and did not concur with the respondent's characterization and, therefore, included this amount in its SG&A calculations.

Hitachi Comment 14: The Department's verification report noted a difference between the amount of business tax reflected in the MOF report compared to the amount deducted from general expense in the response. Hitachi claims that this difference represents expenses involved in offshore consumer product manufacturing operations.

DOC Response: The Department was not provided with an explanation for this difference during verification. Therefore, the Department did not have a verified basis to account for this difference when making its final determination.

Mitsubishi Comment 1: The Department inappropriately relied on petitioner's data in assessing a "best information available" rate against Mitsubishi in the preliminary determination.

DOC Response: We disagree. In assessing a "best information available" rate against Mitsubishi at the preliminary determination, the Department acted in accordance with its regulations, 19 C.F.R. § 353.51(b).

Mitsubishi Comment 2: The Department erred in requiring Mitsubishi to include sales of model ANP-20 in its home market sales response because they were not made "in the usual wholesale quantities and in the ordinary course of trade for home consumption."

DOC Response: In the case of the Mitsubishi ANP-20, we found the product to be sold in the home market through the same channels of trade as other Mitsubishi 64K DRAM products

subject to the investigation and in the usual wholesale quantities. Since the ANP-20 is "such or similar" merchandise to that sold in the United States, we have included ANP-20 home market sales in our calculation of foreign market value.

Mitsubishi Comment 3: Where, as here, the purchase price of the commodity subject to an investigation is regularly subject to adjustment in light of market conditions, the Department should, as a general principle, determine the date of sale in light of the circumstances in the relevant market. While Mitsubishi argues that date of shipment is the appropriate date of sale in the U.S. market, it asserts that date of shipment may not be the appropriate basis in the Japanese context. Instead, it suggests that date of sale in the homemarket should be based on the order/confirmation date.

DOC Response: The Department has used date of shipment as the date of sale for both U.S. and Japanese sales. See DOC Responses to Hitachi's Comment 7, and Domestic Parties' Comment 13.

Mitsubishi Comment 4: All home market advertising expenses claimed by Mitsubishi qualify as direct selling expenses for which allowance should be made as a difference in circumstances of sale.

DOC Response: We agree. The Department verified the adjustment claimed by Mitsubishi for home market advertising expenses and found that the adjustment qualified as a direct selling expense since the advertising was aimed at end-users of 64K DRAM products sold by Mitsubishi.

Mitsubishi Comment 5: While the declining balance method of depreciation is used by Mitsubishi for its normal financial accounting, for purposes of this investigation, they claim that they should be allowed to use a straight-line method with a five-year estimated useful life. Mitsubishi argues that the declining balance method does not appropriately reflect the cost of the product under investigation.

DOC Response: We disagree. See the "Cost of Production" section of this notice for a description of the Department's methodology for determining depreciation.

Mitsubishi Comment 6: Mitsubishi's allocation of factory overhead on the basis of floor space utilization should be accepted, since it is the method used for its internal cost accounting.

DOC Response: The Department reviewed the charges included in the plant overhead. These charges included such items as the depreciation of the plant, maintenance, heating and lighting. The Department agrees that allocation

by floor space of such charges, in this case, was a reasonable basis on which to attribute these costs to the products manufactured in the plant.

Mitsubishi Comment 7: Mitsubishi contends that while direct material costs and subcontractor costs are not associated with individual departmental cost centers, reconciliation of these costs was accomplished at verification through examination of detailed subledger accounts organized by vendor.

DOC Response: The Department performed alternative verification procedures which indicated that the costs reported in the response were reasonably stated for material costs, but that the subcontractor costs in the response did not reflect the company's records. The Department used the costs as reflected on Mitsubishi's records for the subcontractor cost.

Mitsubishi Comment 8: Mitsubishi argues that any attempt to recapture historic R&D is both impractical and in contravention of generally accepted accounting principles. They also note, however, that the use of current semiconductor related R&D would overstate R&D inasmuch as most of the R&D during the period of investigation was devoted to the development of one and four megabit DRAMs.

DOC Response: The Department's position is in accord with International Generally Accepted Accounting Standard #9 which provides that R&D associated with specific marketable products and production processes shall be capitalized and amortized over a reasonable basis.

The Department cannot attribute cost incurred for another product to the one under investigation and, additionally, must capture all costs necessary for the manufacturing of the product under investigation in its cost of production calculation.

Mitsubishi Comment 9: Mitsubishi argues that a royalty payment for technology acquired for the production of 64K DRAMs should be considered a "selling" expense, not a "cost of production" expense, since such costs are accrued on sales rather than on production quantities.

DOC Position: Since the technology acquired was necessary for production of 64K DRAMs, the Department included such costs in manufacturing. The method used for determining the amount paid under the contract is not the relevant consideration for determining its classification in the cost of production calculation.

NEC Comment 1: In objecting to the Department's use of constructed value, NEC argues that the petition did not

provide reliable data on Japanese pricing and production costs to justify the initiation of an investigation of cost of production and further, that the preliminary determination did not contain an indication that the Department had independently developed pricing and cost data to justify a cost of production investigation.

NEC notes that both the courts and the Department have repeatedly affirmed the principle that the antidumping law embodies a strong preference for use of actual home market sales data rather than constructed value and that the Department's regulations call for the use of actual sales data from third countries prior to the use of constructed value.

NEC argues that absent a finding that the conditions set forth in 19 CFR 353.7(a) were considered and satisfied with respect to NEC, the Department has no legal basis to use information other than actual home market sales data in its analysis.

DOC Response: Not only did the petition allege below-cost sales in the home market and provide substantial support for this allegation, but the Department's review, based on verified submissions of the respondents, has concluded that the petition was correct in its assertions. While the antidumping law does embody a strong preference for the use of actual home market sales data, it also directs that home market sales that are below cost of production may not be used to establish foreign market value where they: (1) Have been made over an extended period which permit recovery of all costs within a reasonable period of time in the normal course of trade. Section 773(b), and 19 CFR 353.7.

Consistent with our standard practice, we disregarded below-cost sales where they constituted more than 10 percent of total home market sales of such or similar merchandise over the six month period of investigation. We used above-cost home market sales for purposes of making our fair value comparisons, where they accounted for more than 10 percent of home market sales. Where less than 10 percent of the home market sales were above cost, we determined that such sales were insufficient to form an adequate basis for determination of foreign market value. In such situations, the Department used constructed value to determine foreign market value, in accordance with the Act, the regulations, and the legislative history (Section 773(b), 19 CFR 353.7 and S. Rep. No. 96-249, 98th Cong. 1st Sess. 95-96 (1979)).

NEC's Comment 2: NEC argues that the constructed value used by the Department for its preliminary determination included adjustments which were not appropriate and which should not be used for the final determination. These adjustments included, among others, the double counting of die costs and the use of general corporate averages for the interest and the general expenses.

DOC Position: For the preliminary determination, as explained in the Notice, the Department adjusted cost elements when it appeared such costs may not have been appropriately stated. For example, the Department notes that the total cost of manufacturing presented in the response did not appear to include the total cost of fabrication. The Department reasoned that if the fabrication were included, the cost of assembly would have been only 30 percent of the total costs. In view of the Department's knowledge of the production process, other facts presented in the response, and lacking an explanation in the response, the manufacturing costs presented did not appear to be reasonable. Accordingly, the Department adjusted the total per unit costs by the amount of the die. For other adjustments made by the Department, similar inconsistencies were present. For the final determination, the adjustments made by the Department are described under the "Cost of Production" section of this notice.

NEC Comment: Respondent argues that the Department erred in adjusting NEC's manufacturing costs by making additions for product-specific R&D because these R&D costs were included in the manufacturing costs submitted in the supplemental response. Further, they argue that the adjustment: (1) Ignored NEC's statement that no product-specific R&D costs were incurred during the period; and (2) is inconsistent with the Department's past approach of considering such expenses a part of the manufacturing costs only where R&D expenses can be "identified directly with the product under investigation or to the area in which the product is manufactured." (*Cell Site Transceivers from Japan* (Final), 49 FR 43080, 43083, Oct. 26, 1984).

DOC Response: The Department's questionnaire requested information on historic product-specific R&D. Neither NEC's original response, nor its supplemental response, provided verifiable information on this point. The Department's treatment of historic R&D in this case is consistent with prior determinations.

NEC Comment 4: NEC claims that interest expenses attributable to sales of 64K DRAMs were correctly reported.

DOC Response: Submitted interest expenses did not include an appropriate allocation of credit expenses attributable to the product under investigation. The Department added credit expenses related to the home market sales. The Department decreased the amount of corporate interest expenses attributed to the product to account for the proportional share related to the accounts receivable, so that the interest related to the home market credit expense was not double-counted.

Oki Comment 1: Oki claims that the depreciation reflected in its financial statements was a result of tax laws and should not be used for the Department's final determination.

DOC Response: The Department reviewed Oki's methods of accounting for depreciation used in the ordinary course of business. Like other companies, Oki's method reflected ordinary industry practices and followed the Department's methodology for determining depreciation. Therefore, the Department used this amount. See the "Cost of Production" section of this notice.

Oki Comment 2: Oki contends that the cost of production resulting from one of its plants which was recently put into operation should be adjusted for the costs related to start-up.

DOC Response: We agree. The Department adjusted the cost of production for only those costs presented by Oki which were directly related to the start-up operations of that plant.

Oki Comment 3: Oki argues that a credit for royalty income from licensing of 64K DRAM technology must be allowed against the cost of production.

DOC Response: The royalty income from the licensing of 64K DRAM technology was a result of the expenditures for the 64K DRAM research and development. The royalty income was not directly related to the production of 64K DRAMs during the period of investigation. Therefore, the Department allocated the product-specific research and development expenses for the period of investigation between the 64 K DRAMs produced by Oki and the royalty income.

Oki Comment 4: Oki states that historic semiconductor R&D cannot reasonably be allocated to specific products and should not be included in Oki's 64K DRAM cost of production.

DOC Response: The allocation of historic R&D that the Department

requires is product-specific R&D for 64K DRAMs. The Department does not require allocation of historic product-line R&D for its calculation. It does, however, require an allocation of those product-line R&D expenses which are current. The Department included historic R&D for 64K DRAMs, based on the "best information available".

Oki Comment 5: Oki claims that the R&D expenses for 64K DRAMs were expensed when the company was selling 64K DRAMs at a profit between 1982-1984 and therefore should not be allocated to the period of investigation.

DOC Position: Historic costs necessary to manufacture the product under investigation cannot be disproportionately shifted and attributed to a period when the company was selling the product at a profit.

Oki Comment 6: Oki states that the percentage the Department included as "best information available" in the constructed value calculation for R&D in the preliminary determination is higher than the actual R&D costs under any reasonable method of computation.

DOC Response: Although the Department, in its questionnaire, requested the respondents to include both historic product-specific R&D and current product-line R&D in their calculations, Oki did not include such amounts. Therefore, the Department used "best information available" for its preliminary determination, and for this final determination. For the product-line R&D, the Department used data based on the experience of the Japanese semiconductor industry, which was obtained from public sources.

Oki Comment 7: The Department should not accept the domestic industry's argument that Oki's SG&A costs should be discarded because they are below the corporate average and claims the Department should not use this "average" as it did in its preliminary determination.

DOC Response: The Department reviewed Oki's general and administrative expenses as reported in their submission and used this amount, adjusted to a cost of sales allocation basis, for its final determination.

Oki Comment 8: Oki alleges that the domestic industry's proposals regarding the calculation of fixed costs (i.e., attributing a pro rata share of capital and R&D to 64K DRAMs on the basis of average industry expenditures during a given period) are: (1) Largely confused and (2) illegal, to the extent that they are clear.

DOC Response: The Department used the respondents' actual costs, when

verified and appropriately quantified and valued. It did not base its calculation for the respondent's cost of production on industry-wide statistics, except when such data may have been used as "best information available."

Oki Comment 9: Oki contends that the Department did not have a valid basis for questioning its claims for adjusting the yield variance which resulted when Oki reentered previously "rejected" devices into the production process during the month of March. Oki notes that the company did not maintain records which traced the retested devices back to "failure" at the initial test.

DOC Response: The Department questioned this claim because the amount of these reentered devices was a disproportionately large percentage of the total production during the relevant quarter. The Department notes that, accepting the fact these devices were reentered, it does not agree with Oki that the positive effects of the yield variance should have been recognized by the company during the month of March, since these devices were still incomplete and were still in the production process.

Oki Comment 10: Oki claims that the quantity of production differences cited by the Department at various points in the verification report are almost entirely the creation of the Department's inconsistent manner of handling the production quantity.

DOC Response: The Department's verification report notes various discrepancies in quantity throughout Oki's verification documents, submissions, and accounting records. For example, while the response listed untested devices and "stacked" devices as two die, a verification exhibit which summarized the response correctly did not include untested devices and counted "stacked" devices as two, but the original company records counted "stacked" devices as one die. The company did not explain its reason for the inconsistent manner in which it treated the production quantity throughout the investigation.

Oki Comment 11: Oki alleges, contrary to the verification report, that the verification exhibits related to the quantity of retest items of finished 64K DRAMs reconcile with one another. The company states that the difference between the retest items on these two exhibits could be reconciled by accounting for quantity of retest items of two unrelated products and the unfinished 64K DRAMs devices.

DOC Response: The Department, when attempting to reconcile the retest exhibits considered only 64K DRAMs

quantities on these exhibits. One exhibit apparently includes unfinished pieces; however, the incomplete units were not specifically identified. Therefore, the Department's position remains unchanged regarding the reconciliation of these retest items.

Oki Comment 12: Oki claims, contrary to the verification report, that the production account, which measures quantity, and the production account which measures costs, include the same period of time.

DOC Response: When this question arose during verification, the verifiers requested and received documentation from the company officials concerning this difference in time period. From this documentation we were able to reconcile the period for the production quantities with the period for the cost. However, the results of this reconciliation had a *de minimis* impact on the per unit cost. Therefore, no adjustment was made to the cost.

Oki Comment 13: Oki points out that the verification report notes that material purchases were used instead of material consumed for a material variance and states that the difference resulting from this methodology is insignificant.

DOC Response: The Department used the results of this variance calculated with the materials consumed, not with the materials purchased.

Oki Comment 14: Oki objects to the Department raising its concern for an unresolved verification issue regarding Oki's determination that a variance was considered a favorable, not an unfavorable variance, when the actual labor hours exceeded standard hours during the period of investigation.

DOC Response: The Department raised its concern so that, prior to final determination, the respondent and petitioner could provide additional comments on this issue. Oki provided an explanation in its comments to the verification.

Oki Comment 15: Oki states that the verification report is "almost" correct regarding depreciation when it states that a "double-declining balance" method was used by the company.

DOC Response: In its verification report, the Department stated that Oki used the double-declining balance method for depreciation. This method would have resulted in an effective rate which is within one percent of the rate of depreciation actually used by the company in determining costs for its financial statement.

Oki Comment 16: Oki claims that there is an error in the Department's verification report concerning two semiconductor equipment studies

provided by the company. Oki states that, contrary to the Department's characterization, one of the studies reflects a four-year average life of the assets in service, not the average useful life.

DOC Response: The company provided the studies during verification. However, one study was not fully translated. Therefore, in the Department's report it notes that apparently the one study represents a four-year useful life, but is not conclusive as to this fact.

Oki Comment 17: Oki points out that the verification report notes that R&D and SG&A was allocated based on sales and this is true. However, Oki claims that the sale basis can easily be converted to the cost of sales basis, if the Department does not accept the sales basis.

DOC Response: The Department converted the G&A expenses to a cost of sales basis.

Oki Comment 18: Oki concludes that the verification report is almost correct in stating all non-operating expenses and income were included in Oki's submission, and that the Department's major concern appears to be combining these amounts, not the individual items included in the amounts.

DOC Response: The Department was concerned with the individual items included in non-operating income, e.g., dividend income and royalty income, to determine if these items were related to the production of 64K DRAMs and whether they should be taken as an offset to the cost of production of 64K DRAMs. We concluded that such income as the dividend income and royalty income were not related to the production of 64K DRAMs and, therefore, these offsets were not reflected in the cost of production used for the final determination.

Oki Comment 19: Oki claims that the difference cited in the verification report concerning the material variances is in error because it did not consider the material specification change variance. Oki describes the material variance as composed of two parts: (1) Standard to actual cost variance; and (2) the original standard cost to the revised standard cost because of material specification change variance.

DOC Response: The Department recomputed the standard cost to actual cost variance which did not reconcile to Oki's standard cost to actual cost variance. The Department was not commenting on the material specific change variance, which has no bearing on the variance under review by the Department.

Oki Comment 20: Oki claims that its basis for allocation of indirect department expenses to 64K DRAMs is reasonable and its amortization of six-month variance to the months within that six months is also reasonable.

DOC Response: The Department, after review of the company's methods, determined that these allocations adequately reflected the cost which should be attributed to the 64K DRAMs.

Oki Comment 21: Oki argues that the Department incorrectly disregarded certain below cost home market sales, as they did not meet the requirement of being in substantial quantities over an extended period of time and not at prices permitting recovery of all costs in a reasonable time in the normal course of business.

DOC Response: See DOC response to NEC Comment 1.

Oki Comment 22: Oki argues that 200NS home market sales below the cost of production should not be excluded from price to price comparisons since they were "seconds" and obsolete and were sold at whatever price the market would bear. The fair value of such devices is the price at which they were sold in the home market. Respondent cites the *Southwest Florida Winter Vegetable Growers Association v. United States* 584 F. Supp. 10, 16 (CIT 1984) on this point.

DOC Response: *Winter Vegetables* is inapposite because it applied to sales of vegetables that had to be sold within a short period of time because they were perishable. 64K DRAMs are not perishable. There were substantial sales of 200NS DRAMs in both markets during the period at a wide range of prices. The Department sees no reason to depart in this instance from its normal methodology in treating sales alleged to be made at less than the cost of production. (See DOC Response to NEC Comment 1.)

Fujitsu Comment 1: Fujitsu, a manufacturer of 64K DRAMs in Japan which was not required to respond to the antidumping duty questionnaire, opposes the method the Department used in its preliminary determination to calculate the estimated dumping margin for "all other manufacturers" in this investigation. In the preliminary determination, the Department included in its weighted-average calculation, the dumping margin for Mitsubishi which was based on the petitioner's data as the "best information available." Fujitsu argues that section 776(b) of the Act restricts the use of "best information available" to a party which "refuses or is unable to produce information requested in a timely manner and in the form required, or otherwise significantly

impedes an investigation" (*Atlantic Sugar, Ltd. v. United States*, 744 F.2d 1556 (Fed. Cir. 1984)). Companies in the "all other manufacturer" category do not fall into this category since they were not asked by the Department to complete questionnaire responses. Second, Fujitsu argues that estimated margins must be based on the best and most accurate information available to the Department. The data contained in Micron Technology's petition is not an accurate estimate as demonstrated by the fact that the preliminary margins for the companies which responded to the questionnaire showed the petition data to be substantially excessive. Third, Fujitsu argues that where there is adequate actual data on which to compute weighted-average margins, the Department should not include "punitive" rates in its calculation.

DOC Response: It has consistently been the practice of the Department that in an affirmative determination, producers/exporters for whom a separate weighted-average dumping margin has not been calculated will fall within the "all other manufacturers" category. The "all other manufacturers" dumping margin is the weighted-average margin of the companies investigated for whom margins were found to exist.

Although at the preliminary determination, a company investigated did not provide an adequate response to our questionnaire, section 776(b) of the Act provides a basis for making a sales at less than fair value determination through the use of the best information available. Therefore, that result, together with the other margins of fair value determined in accordance with the Act's procedures, was appropriately included in the calculation of the overall weighted-average margin for purposes of establishing the "all other" rate.

We note, however, that since we have not used a "best information available" rate for any of the respondents for the purposes of the final determination, the weighted-average margin does not include such a rate.

Fujitsu Comment 2: There is no statutory basis for the Department to use the "fabricated data" proposed by the domestic parties in place of documented and verified data submitted by respondents in response to Department questionnaires.

DOC Response: The Department uses data supplied by a company unless it cannot verify such data or it appears that such information is not appropriately quantified or valued. Only then does the Department resort to "best information available" which may include such things as published sources.

Fujitsu Comment 3: There is no statutory authority in support of petitioners' contention that R&D and capital expenses incurred by respondents prior to the period of investigation must be included as costs of production during the period of investigation.

DOC Response: We disagree. The Department notes that the constructed value provisions of the Act (section 773(e)) specify that the costs shall be those incurred "in producing such or similar merchandise, at a time preceding the date of exportation." This definition does not preclude the inclusion of costs, like those for equipment and R&D, which were incurred prior to exportation, but which are allocated to and are necessary for the manufacture of the product under investigation.

Domestic Parties' Comments

The comments addressed in the following section include not only those of the petitioner, Micron Technology Inc., but also other domestic interested parties to this investigation, namely Motorola, Inc. and Intel Corporation.

Domestic Parties' Comments 1: The Department must avoid distortions in price due to related company transactions.

DOC Response: In accordance with 19 CFR 353.22, the Department disregarded home market sales to related parties.

Domestic Parties' Comment 2: Domestic Parties express concern that respondents have distorted their data by switching to straight-line methods of varying periods for reporting expenses such as depreciation instead of methods they normally used for financial reporting.

DOC Response: We agree and have used the method of depreciation as described under the "Cost of Production" section of this notice.

Domestic Parties' Comment 3: Domestic Parties claim that the R&D methodologies and allocation methods utilized by respondents distort their costs.

DOC Response: The Department reviewed the respondents' R&D methodologies and allocation methods. When these methods and allocation bases did not properly attribute the appropriate amount of R&D to the product, the Department made appropriate adjustments. See the "Cost of Production" section of this notice.

Domestic Parties' Comment 4: Domestic Parties assert that, because production costs were rapidly decreasing and inventories were being built-up, production costs should be lagged to ensure that sale prices for 64K

DRAMs are compared with the appropriate costs for producing the units sold. Domestic Parties also argue that because wafer sort generally occurs at least two months prior to sale, there should be at least a two-month lag when comparing constructed value with the sale price. If inventory levels have increased over the period of investigation, the lag between wafer sort and actual sale will be longer.

DOC Response: The Department agrees that there should be a lag time between sales data and cost data. For a description of the Department's method used to match sales and costs, see the "Cost of Production" section of this notice. See also DOC Response to Hitachi's Comment 6.

Domestic Parties' Comment 5: Domestic Parties' claim that in a number of specific cases, SG&A was understated as a result of respondents' allocation methodology.

DOC Response: The Department used verified home market selling expenses. When it appeared SG&A was not properly stated, the Department made appropriate adjustments. See the "Cost of Production" section of this notice.

Domestic Parties' Comment 6: Domestic Parties' state that the department's verification findings call into doubt the respondents' reported yield data.

DOC Response: The Department disagrees. The Department considers the submitted yield adequately tested.

Domestic Parties' Comment 7: Domestic parties argue that, since Japanese dumping increased in severity toward the end of the period of investigation and thereafter, the dumping margins for the second and third quarters of 1985 would be a more appropriate indicator of the extent to which sales at less than fair value have been and are likely to be taking place. Thus, they argue the Department should exclude the first quarter of 1985 from its investigation period and either restrict its investigation to the second quarter of 1985, or include U.S. sales from July to September 1985 to calculate dumping margins.

DOC Response: The petition in this investigation was filed on June 24, 1985. In accordance with 19 CFR 353.38(a), the Department instituted a period of investigation extending from 150 days prior to, and 30 days after, the first day of the month during which the petition was received—that is, January 1 through June 30, 1985. If the petitioner or other interested parties objected to the period chosen, they should have registered that objection at the commencement of the investigation, not at its conclusion.

Domestic Parties' Comment 8: Motorola claims that its cost model based on published data reflects the cost of 64k DRAMs during the period of investigation and that the low costs reported by the respondents are a result of inappropriate allocation methods, excluded costs, and other accounting practice maneuvers.

DOC Response: The Department based its final determination on the verified actual cost of each respondent as reflected on its records when such information included all necessary costs, appropriately quantified and valued. When such information was not available or not appropriately valued, the Department used "best information available," which could include industry statistics.

Domestic Parties' Comment 9: Domestic Parties point out that R&D expenditures reported by the respondents are far below the levels reported by MITI to be consistent R&D spending levels for intergrated circuits. They also note that the R&D reported is less than the R&D reported for the Japanese semiconductor industry as set forth in Published sources. Thus, they argue that the Department should substitute the levels reported in such published sources for respondents' costs.

DOC Response: The Department reviewed the respondents' R&D calculation. When such data could not be verified, was incomplete, not appropriately allocated, or could not be properly identified with the 64K DRAMs, the Department used as best information available MITI figures on R&D for Japanese semiconductor manufacturers for the first six months of 1984 (13 percent of sales), as reported by Hambrecht & Quest Incorporated.

Domestic Parties' Comment 10: Domestic Parties argue that since the respondents' capital costs in their submissions are lower than the consistent historic costs for IC's of Japanese producers, as established in published sources, the Department should use the historic costs obtained from published sources. Domestic Parties further contend that the reason the reported capital and R&D costs were substantially lower than the amounts published was because such costs were expensed by various accounting principles, to the period of time prior to the investigation.

DOC Response: The Department used the respondents' reported depreciation expenses except as noted in the "Cost of Production" section of this notice. The Department's methodology for attributing R&D costs and capital to the products sold during the period of

investigation did not disproportionately allocate R&D and capital costs to the period prior to the investigation. For R&D costs, the Department has captured a proportional share of historic costs per unit.

Depreciation expense is based on equipment which is continually being modernized and replaced. At any one time the depreciation expense will reflect average depreciation for a pool of equipment purchased at various times.

Domestic Parties' Comment 11: Domestic Parties allege that because of lower production of 64K DRAMs, the variable costs should have remained the same in 1984 even if yields increased.

DOC Response: Production volume would not have a significant effect on variable costs. Such costs are more directly influenced by such factors as yields and price of inputs. See the "Cost of Production" section of this notice for details as to how we treated respondents' costs.

Domestic Parties' Comment 12: Domestic Parties allege that the general and administrative expenses reported by the companies are understated because of the diversion of certain costs to other products and the allocation of the remaining costs over the total sales of the company.

DOC Response: The Department reviewed each respondent's methodology and analyzed the costs included. When general expenses did not include some appropriate costs, adjustments were made. See the "Cost of Production" section of this notice.

Domestic Parties' Comment 13: Domestic Parties argue that the Department should use the sales agreement date as the date of sale for U.S. sales, and should not include in the period residual shipments from sales agreements made earlier. In the case of original equipment manufacturers (OEM) contracts, the date of the sale should be the date that the basic sales agreement was made with the OEM. While a subsequent price adjustment for sales to an OEM or distributor certainly affects the net sales price, it does not move the sales date to that date.

In the case of distributor sales, Motorola notes that the question as to what is the appropriate date of sale is somewhat more complex. Where the price is to be determined only after the units arrive, the date at which the price is initially set would probably be the appropriate date of sale. Thus, where the contract states that the price will be the lowest price while the units are in distributor inventory, the initial price for each of those units is established when

they first enter inventory, i.e., on the date of shipment.

The use of shipment date rather than order date removes from this investigation many low priced "sales" at the end of the period of investigation (POI) and brings into the period higher priced pre-POI "sales."

DOC Response: Department practice is to recognize a sale only when all key elements (i.e., binding commitment, irrevocable price, quantities to be purchased) are firm. As will be shown, in this case, during the time period investigated, there is no alternative but to recognize the shipment date as the date of sale.

As noted, 64K DRAMs are sold to two basic types of customers—distributors and OEMs. Sales to distributors constitute approximately fifteen to thirty percent of the U.S. sales. As Domestic Parties note, the standard U.S. distribution agreement contains some sort of "price protection" provision. Under such a provision, if the "book" price for any product decreases, the distributor will be charged the reduced price on any products shipped thereafter. In addition, the distributor may apply for credit for the reduction in price on such products previously purchased by the distributor, and either in transit or part of the distributor's inventory.

Most distributor agreements also include a "ship and debit" clause, also known as a "ship out of stock and debit" (SOSAD) clause. This provides that a producer may reduce the price of products sold to a distributor where the distributor has negotiated a price with its customer which does not allow the distributor to meet a guaranteed margin on the resale. SOSAD authorizes the distributor to obtain a debit from the producer for the difference.

Under these distributor agreements, the earliest date on which a price can be determined is the date of shipment; thus, this is the date we have chosen as the date of "sale."

We have reached a similar conclusion with respect to the OEM contracts. We agree, in principle, with Domestic Parties' general assertion that where purchase orders are issued pursuant to a binding long-term contract, the date of sale should be the date of the long-term contract, rather than the date of the purchase orders. Here, however, it did not appear that purchase orders were issued in accordance with the terms of any long-term contract. Indeed, even where a producer had a long-term contract on the books with a particular customer, it appeared that those

purchase orders that were issued during the period of investigation were not issued in conformance with the terms of the long-term contract, but rather reflected new pricing arrangements.

Thus, the only question before us was whether it would be appropriate to use the purchase order date as the date of sale. There are at least two bases for concluding that, given the characteristics of this particular industry and the market conditions as they existed during the period of investigation, that it would not.

First, many of the purchase orders expressly provide, in essence, that acceptance of the order could be made either by means of express acknowledgment or by shipment of conforming goods. Since written acknowledgments or other confirmations of purchase orders were generally not received, the date of shipment constituted acceptance of the conforming goods. See UCC 2-206.

Second, it appears that neither party to a purchase order treated that purchase order as a binding agreement. During the time period investigated, there were significant cancellations of 64K DRAM orders by both parties, without any sanctions or penalties whatsoever, and frequent price revisions to reflect rapidly declining prices. Under these conditions, neither price nor quantity were firm until the order was shipped and, in fact, post-shipment price revisions were not uncommon. Thus, the date of shipment is the earliest point in the transaction at which any sort of binding commitment may be inferred.

Contrary to the Domestic Parties' assertions, the potential for post-shipment cancellations or price adjustments does not make this situation analogous to one where rebates are granted after a sale. While rebates may not be "earned" until after a sale has occurred, the conditions and amounts of rebates are established at the time of sale. (See Department's definition of "rebates" provided in its questionnaire in this investigation.) Here, however, these post-shipment adjustments are not based on any specified conditions or formulae; they are simply renegotiations of price and quantity. Thus, the Department's use of date of shipment as date of sale in this case is distinguishable from its usual methodology of using date of contract as date of sale where rebates are involved.

It should also be noted, that the Department has taken the position here that there can be no new dates of sale after shipment and any subsequent price modifications must be reported as one

of the following, as appropriate: (1) Rebates; (2) discounts; (3) price protection adjustments; or (4) ship and debit adjustments. By taking this position the Department has ensured that respondents may not be in a position to move their sales outside of the period of investigation by the simple expedient of granting a further price adjustment.

Finally, the Department notes that Motorola's argument that the Department's decision on the "sale" date will remove certain low priced "sales" from the end of the period of investigation and add certain higher priced "sales" at the beginning of the investigation is misplaced. The Act directs the Department to look at U.S. sales by reference to "agreements" to purchase or sell, regardless of the impact on the investigation. (Section 772 (b) and (c).)

Domestic Parties' Comment 14: In considering price adjustments, the Department should pay particular attention to ensure that all relevant price adjustments were reported, especially price adjustments occurring subsequent to the period of investigation, and that these adjustments were properly allocated to the sales to which they apply.

DOC Response: In order to ensure the completeness and accuracy of post-shipment price adjustments, the Department checked price issued well after the period of investigation for each of the companies. In the event the Department found credits outside the period which were not reported, these credits were quantified and allocated to particular sales by the Department for our final determination. The Department found that the allocation methods used by NEC AND Oki reasonably tied credits to specific sales. Mitsubishi's methodology of allocating the adjustments over all units sold, instead of attributing them to particular sales, was not accepted. In the case of Mitsubishi, the Department developed alternative methods for allocating price protection and ship and debit adjustments to specific sales. Hitachi allocated ship and debit credits attributed to each distributor. Because Hitachi had only a small amount of ship and debit credits, we accepted Hitachi's allocation method as "best information available" in this instance.

Suspension of Liquidation

In accordance with section 733(d)(2) of the Act, we are directing the United States Customs Service to continue to

suspend liquidation of all entries of 64K DRAMs from Japan that are entered, or withdrawn from warehouse, for consumption, on or after December 11, 1985. The United States Customs Service shall require a cash deposit or the posting of a bond equal to the estimated weighted-average amount by which the foreign market value of the merchandise subject to this investigation exceeds the United States price as shown in the table below. This suspension of liquidation will remain in effect until further notice.

Manufacturer/producer/exporter	Margin percentage
NEC Corporation.....	22.76
Hitachi Ltd.....	11.87
Oki Electric Industry Co. Ltd.....	35.34
Mitsubishi Electric Corporation.....	13.43
All other manufacturers/producers/exporters.....	20.75

ITC Notification

In accordance with section 735(d) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all non-privileged and non-confidential information relating to this investigation. We will allow the ITC access to all privileged and confidential information in our files, provided the ITC confirms that it will not disclose such information either publicly or under an administrative protective order without the consent of the Deputy Assistant Secretary for Import Administration. The ITC will determine whether these imports materially injure, or threaten material injury to, a U.S. industry within 45 days after we make our final determination. If the ITC determines that material injury or threat of material injury does not exist, this proceeding will be terminated and all securities posted as a result of the suspension of liquidation will be refunded or cancelled. However, if the ITC determines that such injury does exist, we will issue an antidumping duty order on 64K DRAMs from Japan entered, or withdrawn from warehouse, for consumption after the suspension of liquidation, equal to the amount by which the foreign market value exceeds the United States price.

This determination is published pursuant to section 735(d) of the Act (19 U.S.C. 1673d(d)).

April 23, 1986.

Paul Freedenberg,

Assistant Secretary for Trade Administration.
[FR Doc. 86-9543 Filed 4-28-86; 8:45 am]

BILLING CODE 3510-DS-M

[C-489-601]

Initiation of Countervailing Duty Investigation: Mirrors in Stock Sheet and Lehr End Sizes From Turkey

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the United States Department of Commerce, we are initiating a countervailing duty investigation to determine whether manufacturers, producers, or exporters of mirrors in stock sheet and Lehr end sizes (mirrors) from Turkey as described in the "Scope of Investigation" section of this notice, receive benefits which constitute subsidies within the meaning of the countervailing duty law. We are notifying the United States International Trade Commission (ITC) of this action, so that it may determine whether imports of the subject merchandise from Turkey materially injure, or threaten material injury to, a United States industry. The ITC will make its preliminary determination on or before May 16, 1986. If our investigation proceeds normally, we will make our preliminary determination on or before June 25, 1986.

EFFECTIVE DATE: April 29, 1986

FOR FURTHER INFORMATION CONTACT: Mary Martin, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377-2830.

SUPPLEMENTARY INFORMATION:

The Petition

On April 1, 1986, we received a petition in proper form filed by the National Association of Mirror Manufacturers. The petition was filed on behalf of the United States industry producing mirrors. In compliance with the filing requirements of § 355.26 of the Commerce Regulations (19 CFR 355.26), the petition alleges that manufacturers, producers, or exporters in Turkey of the subject merchandise receive subsidies within the meaning of section 701 of the Tariff Act of 1930, as amended (the Act).

Since Turkey is a "country under the Agreement" within the meaning of section 701(b) of the Act, Title VII of the Act applies to this investigation and the ITC is required to determine whether imports of the subject merchandise from Turkey materially injure, or threaten material injury to, a U.S. industry.

Initiation of Investigation

Under section 702(c) of the Act, we must determine, within 20 days after a petition is filed, whether the petition sets forth the allegations necessary for the initiation of a countervailing duty investigation, and, further, whether it contains information reasonably available to the petitioner supporting the allegations. We have examined the petition on mirrors from Turkey and have found that it meets the requirements of section 702(b) of the Act. Therefore, in accordance with section 702(b) of the Act we are initiating a countervailing duty investigation to determine whether manufacturers, producers, or exporters in Turkey of mirrors receive benefits which constitute subsidies. If our investigation proceeds normally, we will make our preliminary determination on or before June 25, 1986.

Scope of Investigation

The products covered by this investigation are unfinished glass mirrors 15 square feet or more in reflecting area, which have not been subjected to any finishing operation such as beveling, etching, edging, or framing, classifiable in the *Tariff Schedules of the United States Annotated (TSUSA)* under item 544.5400, and made of any of the glass described in TSUS items 544.11 through 544.41.

Allegations of Subsidies

The petition alleges that manufacturers, producers, or exporters in Turkey of mirrors receive benefits under the following programs which constitute subsidies. We are initiating an investigation on the following allegations:

- Export Tax Rebate and Supplemental Tax Rebate
- Resource Utilization Support Fund (RUSF)
- Export Revenue Tax Deduction
- Foreign Exchange Allocation and/or Duty Free Imports
- General Incentives Program (GIP)
 - Interest Rebates
 - Income and Corporation Tax Allowances
 - Customs Duty Exemption on Imports of Capital Equipment

Notification ITC

Section 702(d) of the Act requires us to notify the ITC of this action and to provide it with the information we used to arrive at this determination. We will notify the ITC and make available to it all nonprivileged and nonconfidential information. We will also allow the ITC access to all privileged and confidential

information in our files, provided it confirms that it will not disclose such information either publicly or under an administrative protective order without the consent of the Deputy Assistant Secretary for Import Administration.

Preliminary Determination by ITC

The ITC will determine by May 16, 1986, whether there is a reasonable indication that imports of mirrors from Turkey materially injure, or threaten material injury to, a United States industry. If its determination is negative, this investigation will terminate; otherwise it will proceed according to the statutory procedures.

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

April 21, 1986.

[FR Doc. 86-9506 Filed 4-29-86; 8:45 am]

BILLING CODE 3510-DS-M

[Case No. OEE-1-86]

Order Temporarily Denying Export Privileges

In the matter of: La Physique Applique Industrie, 5 Rue de Pacalair, 38170 Seyssinet-Pariset, France, and Les Accessoires Scientifiques, Varigney, 70800 Conflans-Sur-Lanterne, France, Respondents.

The Office of Export Enforcement, International Trade Administration, United States Department of Commerce (Department), pursuant to the provisions of § 388.19 of the Export Administration Regulations, 15 CFR Parts 368-399 (1985) (the Regulations),¹ issued pursuant to the Export Administration Act of 1979, 50 U.S.C. app. §§ 2401-2420 (1982), as amended by the Export Administration Amendments Act of 1985, Pub. L. 99-64, 99 Stat. 120 (July 12, 1985) (the Act), has asked the Deputy Assistant Secretary for Export Enforcement to issue an order temporarily denying all United States export privileges to La Physique Applique Industrie of Seyssinet-Pariset, France, and Les Accessoires Scientifiques of Conflans-Sur-Lanterne, France (hereinafter collectively referred to as respondents).

The Department states that, as a result of an ongoing investigation, it has reason to believe that respondents have (1) conspired and acted in concert to violate the Act and the Regulations; (2) indirectly caused the filing of false and misleading information with the Department for the purpose of effecting

exports from the United States to France; and (3) attempted to reexport U.S.-origin equipment, including U.S.-origin semiconductor manufacturing equipment, from France to the Union of Soviet Socialist Republics (U.S.S.R.) without authorization from the Department. The Department further states that it has reason to believe that respondents are continuing in their efforts to obtain U.S.-origin goods. If the respondents are successful in their efforts, the Department states that there is reason to believe respondents would attempt to reexport the U.S.-origin goods to the U.S.S.R. The Department states that its investigation gives it reason to believe that the violations under investigation were deliberate, covert and likely to occur again. The Department submits that a temporary denial order naming respondents is necessary in order to give notice to companies in the United States and abroad to cease dealing with respondents in goods and technical data subject to the Act and the Regulations in order to reduce the likelihood that respondents will continue to engage in activities which are in violation of the Act and the Regulations.

Based upon the showing made by the Department, I find that an order temporarily denying all United States export privileges to respondents is necessary in the public interest to prevent an imminent violation of the Act and the Regulations. This order is issued on an *ex parte* basis without a hearing based on the Department's showing that expedited action is required.

Accordingly, it is hereby

Ordered

I. All outstanding validated export licenses in which any respondent appears or participates, in any manner or capacity, are hereby revoked and shall be returned forthwith to the Office of Export Licensing for cancellation.

II. The respondents, their successors or assignees, officers, partners, representatives, agents, and employees hereby are denied all privileges of participating, directly or indirectly, in any manner or capacity, in any transaction involving commodities or technical data exported or to be exported from the United States in whole or in part, or that are otherwise subject to the Regulations. Without limiting the generality of the foregoing, participation, either in the United States or abroad, shall include participation, directly or indirectly, in any manner or capacity: (a) As a party or as a representative of a party to any export license application

submitted to the Department, (b) in preparing or filing with the Department any export license application or reexport authorization, or any document to be submitted therewith, (c) in obtaining or using any validated or general export license or other export control document, (d) in carrying on negotiations with respect to, or in receiving, ordering, buying, selling, delivering, storing, using, or disposing of, in whole or in part, any commodities or technical data exported from the United States, or to be exported, and (e) in financing, forwarding, transporting, or other servicing of such commodities or technical data. Such denial of export privileges shall extend only to those commodities and technical data which are subject to the Act and the Regulations.

III. After notice and opportunity for comment, such denial may be made applicable to any person, firm, corporation, or business organization with which any respondent is now or hereafter may be related by affiliation, ownership, control, position of responsibility, or other connection in the conduct of trade or related services.

IV. No person, firm, corporation, partnership or other business organization, whether in the United States or elsewhere, without prior disclosure to and specific authorization from the Office of Export Licensing shall, with respect to U.S.-origin commodities and technical data, do any of the following acts, directly or indirectly, or carry on negotiations with respect thereto, in any manner or capacity, on behalf of or in any association with any respondent or any related party, or whereby any respondent or any related party may obtain any benefit therefrom or have any interest or participation therein, directly or indirectly: (a) apply for, obtain, transfer, or use any license, Shipper's Export Declaration, bill of lading, or other export control document relating to any export, reexport, transshipment, or diversion of any commodity or technical data exported in whole or in part, or to be exported by, to, or for any respondent or any related party denied export privileges; or (b) order, buy, receive, use, sell, deliver, store, dispose of, forward, transport, finance, or otherwise service or participate in any export, reexport, transshipment, or diversion of any commodity or technical data exported or to be exported from the United States.

V. In accordance with the provisions of Section 388.19(e) of the Regulations,

¹ Parts 387 and 388 of the Regulations were recently amended and republished. See 50 FR 53130 (December 30, 1985).

any respondent may, at any time, appeal this temporary denial order by filing with the Office of Administrative Law Judges, U.S. Department of Commerce, Room H-6716, 14th Street and Constitution Avenue NW., Washington, D.C. 20230, a full written statement in support of the appeal.

VI. This order is effective immediately and shall remain in effect for 60 days.

VII. In accordance with the provisions of 388.19(d) of the Regulations, the Department may seek renewal of this temporary denial order by filing a written request not later than 20 days before the expiration date. Any respondent may oppose any request to renew this temporary denial order by filing a written submission with the Deputy Assistant Secretary for Export Enforcement, which must be received not later than seven days before the expiration date of this order.

A copy of this order and of Parts 387 and 388 of the Regulations shall be served upon the respondents.

Dated: April 23, 1986.

Theodore W. Wu,

Deputy Assistant Secretary for Export Enforcement.

[FR Doc. 86-9525 Filed 4-28-86; 8:45 am]

BILLING CODE 3510-25-M

Computer Systems Technical Advisory Committee; Partially Closed Meeting

A meeting of the Computer Systems Technical Advisory Committee will be held May 21 and 22, 1986, 9:30 a.m. to 5:00 p.m. in the Herbert C. Hoover Building, 14th Street and Constitution Avenue, NW., Washington, D.C. The meeting on May 21 will be held in Room 3407, and in Room 6029 on May 22. The Committee advises the Office of Technology and Policy Analysis with respect to technical questions that affect the level of export controls applicable to computer systems or technology.

Agenda:

Open Session:

1. Opening Remarks by the Chairman.
2. Presentation of papers or comments by the public on proposed equipment decontrol and discussions on problems experienced in obtaining export licenses.
3. Reinstatement of Licensing Procedures and Regulations, Hardware, and Software Subcommittees.

Executive Session:

4. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The General Session of the meeting will be open to the public and a limited number of seats will be available. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on January 10, 1986, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended by section 5(c) of the Government in the Sunshine Act, Pub. L. 94-409, that the matters to be discussed in the Executive Session should be exempt from the provisions of the Federal Advisory Committee Act relating to open meetings and public participation therein, because the Executive Session will be concerned with matters listed in 5 U.S.C. 552b(c)(1) and are properly classified under Executive Order 12356.

A copy of the Notice of Determination to close meetings or portions thereof is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, Telephone: 202/377-4217. For further information or copies of the minutes, contact Margaret A. Cornejo, 202/377-5535.

Dated: April 24, 1986.

Margaret Cornejo,

Acting Director, Technical Support Staff,
Office of Technology & Policy Analysis.
[FR Doc. 86-9526 Filed 4-28-86; 8:45 am]

BILLING CODE 3510-DT-M

Semiconductor Technical Advisory Committee Meeting

AGENCY: International Trade Administration, Commerce.

Federal Register citation of previous announcement: 51 FR 12634 April 14, 1986.

Previously announced time and date of the meeting: 9:30 a.m., April 29, 1986.

Changes in the meeting: 9:30 a.m., May 15, 1986, in room 6029, Herbert C. Hoover Building, 14th Street and Constitution Avenue NW., Washington, DC.

Dated: April 24, 1986.

Margaret A. Cornejo,

Acting Director, Technical Support Staff,
Office of Technology and Policy Analysis.
[FR Doc. 86-9537 Filed 4-28-86; 8:45 am]

BILLING CODE 3510-DT-M

COMMISSION ON THE BICENTENNIAL OF THE UNITED STATES CONSTITUTION

Conflict of Interests

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

ACTION: Notice of rule adoption.

SUMMARY: This Notice announces the applicability of regulations under Part 735, 5 CFR, Employee Responsibilities and Conduct, to the employees and special Government employees of the Commission on the Bicentennial of the United States Constitution. Because of its small size and temporary nature, the Commission obtained approval for this adoption of existing regulations from the OPM and from its Office of Government Ethics, in accordance with Sec. 735.104 (d) and (f), 5 CFR.

Subject

Adoption of Part 735, 5 CFR.

The Commission on the Bicentennial of the United States Constitution does hereby adopt for its employees and special Government employees Part 735 of the regulations of the Office of Personnel Management, published at Title 5, CFR, Administrative Personnel, Revised as of January 1, 1984. Part 735, 5 CFR, covers Employee Responsibilities and Conduct. Adoption of these regulations is done in accordance with authority granted to the Commission under Pub. L. 98-101, 97 Stat. 719, and Sec. 735.104 (d) and (f), 5 CFR, effective upon publication of this Notice.

Dated: April 24, 1986.

Mark W. Cannon,

Staff Director.

[FR Doc. 86-9495 Filed 4-28-86; 8:45 am]

BILLING CODE 6340-01-M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Federal Acquisition Regulation (FAR); Information Collection Activities Under OMB Review

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve a new collection.

ADDRESS: Send comments to Franklin S. Reeder, FAR Desk Officer, Room 3235, NEOB, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Mr. Owen Greene, Defense, Acquisition Regulatory Council (202-697-7268) or Mr. Frank Van Lierde, Civilian Agency Acquisition Council (202-523-3781).

SUPPLEMENTARY INFORMATION:

a. Purpose:

1. This request covers the collection of information to be used in the certification of commercial pricing. The proposal requires potential contractors under certain Federal contracts to certify that the prices offered for items of supply sold to the public are no higher than the lowest agreed to sales price with any other customer, or justify charging the Government more than the lowest price charged other customers for the same items of supply. This information is required by Sec. 204 of Pu L. 98-577 "Small Business and Federal Procurement Competition Enhancement Act of 1984", and Sec. 1216 of Pu L. 98-525 "Defense Procurement Reform Act of 1984."

Annual reporting burden: This is estimated as follows: Respondents, 8,000; responses 60,000; and reporting and recordkeeping hours, 1,200,000.

c. Additional data: An approval request for this information collection was submitted to OMB on June 25, 1985, and on November 8, 1985. Neither submission was approved. A third request for approval was submitted on April 16, 1986.

Obtaining Copy of Proposal

Requesters may obtain a copy of the latest proposal from the FAR Secretariat (VRS), Room 4041, GS Building, Washington, DC 20405.

Dated: April 24, 1986.

Margaret A. Willis,

FAR Secretariat.

[FR Doc. 86-9512 Filed 4-28-86; 8:45 am]

BILLING CODE 6820-61-M

DEPARTMENT OF DEFENSE

Army Department

Army Science Board; Closed Meeting

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act

(Pub. L. 92-463), announcement is made of the following Committee Meeting:

Name of the committee: Army Science Board (ASB).

Dates of meeting: Thursday & Friday, 15-16 May 1986.

Times of meeting: 0830-1600 hours.

Places: US Army Air Defense Artillery Center, Ft. Bliss, TX.

Agenda: The Army Science Board AHSG on MICOM Lab Effectiveness Review will visit the US Army Air Defense Artillery Center for the purpose of interacting with representatives of the TRADOC schools to informally discuss their working relationship with the MICOM Research, Development and Engineering Center. The panel will also devote a significant amount of time in executive session drafting portions of the report of the effectiveness review. This meeting will be closed to the public in accordance with Section 552b(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C., Appendix 1, subsection 10(d). The classified and nonclassified matters to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (202) 695-3039 or 695-7046.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 86-9541 Filed 4-28-86; 8:45 am]

BILLING CODE 3710-08-M

DEPARTMENT OF ENERGY

Proposed Subsequent Arrangement; EURATOM

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement" under the Additional Agreement for Cooperation between the Government of the United States of America and the European Atomic Energy Community (EURATOM) concerning Peaceful Uses of Atomic Energy, as amended.

The subsequent arrangement to be carried out under the above-mentioned agreement involves approval for the return of four kilograms of irradiated research reactor fuel of United States origin from the FRG reactor in Geesthacht, the Federal Republic of Germany for reprocessing and storage in Department of Energy facilities. The return of highly enriched uranium to the United States is consistent with United States nonproliferation policy in that it serves to reduce the amount of highly enriched uranium abroad.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

For the Department of Energy.

Dated: April 24, 1986.

George J. Bradley, Jr.,

Acting Assistant Secretary for International Affairs and Energy Emergencies

[FR Doc. 86-9575 Filed 4-28-86; 8:45 am]

BILLING CODE 6450-01-M

National Petroleum Council, Economic and Environmental Impacts Task Group; Meeting

Notice is hereby given that the Economic and Environmental Impacts Task Group will meet in May 1986. The National Petroleum Council was established to provide advice, information, and recommendations to the Secretary of Energy on matters relating to oil and natural gas or the oil and natural gas industries. The Economic and Environmental Impacts Task Group will evaluate the impact of the 1970's energy crises on the U.S. economics—economic growth, employment, inflation, oil and gas industry cash flow, capital investment, international trade, the financial markets (U.S. and international), real interest rates, etc. This Task Group will also analyze the potential future economic impact of the factors on issues identified by the other Task Groups.

The Economic and Environmental Impacts Task Group will hold its first meeting on Tuesday, May 13, 1986, starting at 9:00 a.m., in the Main Conference Room of the Conoco Headquarters, 600 North Dairy Ashford Road, Houston, Texas.

The tentative agenda for the Economic and Environmental Impacts Task Group meeting follows:

1. Opening remarks by the Chairman and Government Cochairman.
2. Discuss the scope of the overall study.
3. Discuss the study assignment of the Task Group.
4. Discuss any other matters pertinent to the overall assignment from the Secretary of Energy.

The meeting is open to the public. The Chairman of the Economic and Environmental Impacts Task Group is empowered to conduct the meeting in a fashion that will, in his judgment,

facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Economic and Environmental Impacts Task Group will be permitted to do so, either before or after the meeting. Members of the public who wish to make oral statements should inform Ms. Pat Dickinson, Office of Oil, Gas, Shale and Coal Liquids, Fossil Energy, 301/353-2430, prior to the meeting and reasonable provision will be made for their appearance on the agenda.

Summary minutes of the meeting will be available for public review at the Freedom of Information Public Reading Room, Room 1E-190, DOE Forrestal Building, 1000 Independence Avenue SW., Washington, DC, between the hours of 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC, on April 23, 1986.

Donald L. Bauer,

Acting Assistant Secretary for Fossil Energy.

[FR Doc. 86-9513 Filed 4-28-86; 8:45 am]

BILLING CODE 6450-01-M

National Petroleum Council, Worldwide Refining Trends Task Group; Meeting

Notice is hereby given that the Worldwide Refining Trends Task Group will meet in May 1986. The National Petroleum Council was established to provide advice, information, and recommendations to the Secretary of Energy on matters relating to oil and natural gas or the oil and natural gas industries. The Worldwide Refining Trends Task Group will be evaluating trends of the refining industry worldwide. Its analysis and findings will be based on information and data to be gathered by the various task groups.

The Worldwide Refining Trends Task Group will hold its eighth meeting on Thursday, May 8, 1986, starting at 9:00 a.m., in the Conference Room of the National Petroleum Council, 1625 K Street NW., Washington, DC.

The tentative agenda for the Worldwide Refining Trends Task Group meeting follows:

1. Opening remarks by the Chairman and Government Cochairman.
2. Review and discuss the draft report of the Worldwide Refining Trends Task Group.
3. Review and discuss the preliminary conclusions of the Data Integration Working Group.
4. Discussion any other matters pertinent to the overall assignment from the Secretary of Energy.

The meeting is open to the public. The Chairman of the Worldwide Refining Trends Task Group is empowered to conduct the meeting in a fashion that will, in his judgment, facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Worldwide Refining Trends Task Group will be permitted to do so, either before or after the meeting. Members of the public who wish to make oral statements should inform Ms. Pat Dickinson, Office of Oil, Gas, Shale and Coal Liquids, Fossil Energy, 301/353-2430, prior to the meeting and reasonable provision will be made for their appearance on the agenda.

Summary minutes of the meeting will be available for public review at the Freedom of Information Public Reading Room, Room 1E-190, DOE Forrestal Building, 1000 Independence Avenue SW., Washington, DC, between the hours of 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC, on April 23, 1986.

Donald L. Bauer,

Acting Assistant Secretary for Fossil Energy.

[FR Doc. 86-9514 Filed 4-28-86; 8:45 am]

BILLING CODE 6450-01-M

Office of Assistant Secretary for International Affairs and Energy Emergencies

Atomic Energy Agreements; Proposed Susequent Arrangements Between Japan and the European Atomic Energy Community

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of proposed "subsequent arrangements" under the Agreement for Cooperation between the Government of the United States of America and the Government of Japan concerning Civil Uses of Atomic Energy, as amended, and the Additional Agreement for Cooperation between the Government of the United States of America and the European Atomic Energy Community (EURATOM) concerning Peaceful Uses of Atomic Energy, as amended.

These subsequent arrangements would give approval, which must be obtained under the above-mentioned agreements, for the transfer of special nuclear material of United States origin from Japan to France or to the United Kingdom for the purpose of reprocessing.

The proposed transfers are as follows:

(1) 672 irradiated fuel bundles containing 122,430 kilograms of uranium,

enriched to 1.05 percent in U-235, and 886 kilograms of plutonium from the Fukushima Units 1 and 2 of the Tokyo Electric Power Co., Inc., to France;

(2) 72 irradiated fuel assemblies containing 28,087 kilograms of uranium, enriched to 1.30 percent in U-235, and 284 kilograms of plutonium from Genkai Units 1 and 2 of the Kyushu Electric Power Co., Inc., to France;

(3) 170 irradiated fuel bundles containing 34,000 kilograms of uranium, enriched to 1.18 percent in U-235, and 300 kilograms of plutonium from Tokai No. 2 Power Station of the Japan Atomic Power Co., to France;

(4) 68 irradiated fuel assemblies containing 12,145 kilograms of uranium, enriched to 0.96 percent in U-235, and 106 kilograms of plutonium from the Shimane Power Station of the Chugoku Electric Power Co., Inc., to France;

(5) 210 irradiated fuel bundles containing 38,577 kilograms of uranium, enriched to 1.47 percent in U-235, and 357 kilograms of plutonium from the Hamaoka Power Station of the Chubu Electric Power Co., Inc., to the United Kingdom;

(6) 84 irradiated fuel assemblies containing 15,628 kilograms of uranium, enriched to 0.99 percent in U-235, and 126 kilograms of plutonium from the Shimane Unit 1 of the Chugoku Electric Power Co., Inc., to the United Kingdom; and

(7) 210 irradiated fuel assemblies containing 93,100 kilograms of uranium, enriched to 1.16 percent in U-235, and 780 kilograms of plutonium from the Mihama Units 1, 2, and 3, Takahama Units 1 and 2, and Ohi Units 1 and 2 of the Kansai Electric Power Co., Inc., to the United Kingdom.

The foregoing proposed transfers are designated as RTD/EU(JA)-84, 85, 86, 87, 88, 89, and 90 respectively.

The Department of Energy has received a letter of assurance from the Government of Japan that the recovered uranium and plutonium will not be transferred from the reprocessing sites, nor put to any use, without the prior approval of the United States Government.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that the approval of these subsequent arrangements will not be inimical to the common defense and security.

These subsequent arrangements will take effect no sooner than fifteen (15) days after the date of publication of this notice, and after fifteen (15) days of continuous session of the Congress, beginning the day after the date on which the reports required by section

131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) are submitted to the Committee on Foreign Relations of the House of Representatives and the Committee on Foreign Relations of the Senate. The two time periods referred to above shall run concurrently.

For the Department of Energy.

Dated: April 23, 1986.

George J. Bradley, Jr.,

Acting Assistant Secretary for International Affairs and Energy Emergencies.

[FR Doc. 86-9515 Filed 4-28-86; 8:45 am]

BILLING CODE 6450-01-M

Economic Regulatory Administration

Final Consent Order With Crown Central Petroleum Corp.

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Final Action on Proposed Consent Order.

SUMMARY: The Administrator of the Economic Regulatory Administration (ERA) has determined that a proposed consent order between the Department of Energy (DOE) and Crown Central Petroleum Corporation (Crown) shall be made final as proposed. The consent order resolves, with certain exceptions, matters relating to Crown's compliance with the federal price and allocation regulations for the period January 1, 1973 to January 28, 1981. Crown will pay to the DOE \$8.3 million, plus interest from the date the proposed consent order was executed by DOE. Persons claiming to have been harmed by Crown's alleged overcharges will be able to present their claims for refunds in an administrative claims proceeding before the Office of Hearings and Appeals (OHA). The decision to make the Crown consent order final was made after a full review of written comments from the public.

FOR FURTHER INFORMATION CONTACT: Emily E. Sommers, Economic Regulatory Administration, 1000 Independence Avenue, SW., Washington, DC 20585. (202) 252-6727.

SUPPLEMENTARY INFORMATION:

- I. Introduction
- II. Comments Received
- III. Analysis of Comments
- IV. Decision

I. Introduction

On March 12, 1986, ERA issued a notice announcing a proposed consent order between DOE and Crown which, with certain exceptions, would resolve matters relating to Crown's compliance

with federal petroleum price and allocation regulations for the period January 1, 1973 to January 28, 1981. (51 FR 8532, March 12, 1986). The proposed order, which requires Crown to pay \$8.3 million,¹ is for the settlement of Crown's potential liability for \$10.6 million in alleged overcharges plus attributable interest. The March 12 notice provided in detail the basis for ERA's preliminary view that the settlement was favorable to the government and in the public interest. The notice solicited written comments from the public relating to the adequacy of the terms and conditions of the settlement and whether the settlement should be made final. The notice also announced a public hearing for the purpose of receiving oral presentations on the settlement. That hearing was held on April 18, 1986.

II. Comments Received

ERA received four written comments. One request to make an oral presentation was received but was withdrawn on April 17. The April 18, 1986 hearing was convened but no oral presentations were made. All written comments were considered in making the decision as to whether or not the proposed consent order should be made final.

The written comments can be divided into two subject categories. One category consists of two comments that solely addressed the Office of Hearings and Appeals' disposition of the Crown settlement funds. The second category includes two comments which addressed the use of OHA Subpart V procedures to distribute the settlement monies, along with comments suggesting specific dispositions of the consent order monies.

Comments were received from the following two groups which expressed their views on OHA's disposition of the funds that Crown is to pay pursuant to the settlement:

State of Florida, Governor's Energy Office,
Commonwealth of Pennsylvania

Comments addressing the use of OHA Subpart V procedures for distribution of the settlement fund and the disposition of those monies were submitted by the following two groups:

Controller of California
Attorneys General of the States of Arkansas,
Delaware, Iowa, Louisiana, North Dakota,
Rhode Island, Utah and West Virginia

The comments submitted by these parties did not question the basis of the

settlement or adequacy of the settlement amount, but only offered OHA proposals for the distribution of the settlement funds or offered suggestions that were different from the consent order provisions requiring disbursement through OHA administrative claims proceedings.

III. Analysis of Comments

The March 12 notice solicited written comments and provided for a public hearing to enable the ERA to receive information from the public relevant to the decision whether the proposed consent order should be finalized as proposed, modified or rejected. To ensure greater public understanding of the basis for the proposed settlement, the March 12 notice provided detailed information regarding Crown's overcharge liability and the considerations that went into the government's preliminary agreement with the proposed terms. This expanded settlement information enabled the public to address more specifically the areas in which questions or concerns may have existed.

The State of Florida and the Commonwealth of Pennsylvania's comments relating to OHA's distribution of the funds if the Crown consent order is finalized were not germane to the basis or adequacy of the settlement. The distribution of the settlement funds will be the subject of a separate administrative proceeding conducted by the Office of Hearings and Appeals, to be initiated shortly after publication of this notice. Comments on the actual disbursement of the monies by OHA will not be addressed here, but will be referred to OHA for consideration in the Crown consent order claims proceeding.

The two other groups, along with expressing their views on the distribution of the funds (which DOE will refer to OHA), objected to the provision in the consent order that requires the DOE's Office of Special Counsel (OSC) to petition the OHA to implement special refund procedures under Subpart V (10 CFR Part 205) to distribute the settlement fund. One of these commentators expressed the view that use of the Subpart V procedures was unnecessary and that the consent order itself should direct refunds to the states when it is impossible to identify the victims of overcharges. The ERA believes as a general policy that the Subpart V procedures are best suited for cases such as Crown, where ERA could not readily identify the injured parties or their relative amount of economic harm. This commenter may most appropriately

¹ The \$8.3 million, plus interest accrued from the date the proposed consent order was executed by DOE, will be disbursed to DOE within 30 days of publication of this Notice.

present its claim for monies from the consent order fund in that forum.

The other commenter in this group, the Controller of California, while not objecting to the disbursement of settlement funds attributable to refined products through OHA's Subpart V procedures, objected to referral of the crude oil portion of the consent order fund to OHA, rather than directing it to the states, if OHA considers itself bound by the DOE Statement of Restitutionary Policy issued on June 21, 1985 [50 FR 27400, July 2, 1985] (Policy Statement). The Policy Statement was based upon the findings of fact contained in the June 19, 1985, report of the Office of Hearings and Appeals to the Kansas district court in *In re: the Department of Energy Stripper Well Exemption Litigation*, MDL No. 378, in which OHA found that it was impossible to trace specific crude oil overcharges through an individual refiner's marketing system to the ultimate consumer. In the Policy Statement, DOE announced that crude oil overcharge funds that had been spread through the entitlements program would be placed in an escrow account to allow Congress to decide upon an appropriate form of indirect restitution. The Policy Statement also provides that if, by the close of the current session Congress does not act, the DOE intends to deposit the money into the general fund of the U.S. Treasury for the benefit of the American public. At the same time that DOE issued the Policy Statement, OHA announced that it planned to apply that policy to Subpart V proceedings involving such crude oil overcharge funds (50 FR 27402, July 2, 1985).

The DOE believes that referral of the entire Crown settlement fund to OHA is entirely appropriate. While it would be possible for ERA to apply the Policy Statement directly, holding in escrow the funds attributable to the crude oil portion of the Crown consent order, ERA believes that filing a Subpart V petition with respect to the entire Crown settlement will avoid needless duplication and allow the OHA, the part of the Department with the broadest experience in administering overcharge and settlement funds, to do so in this case.

In the March 12 *Federal Register* notice, ERA sought to provide the maximum amount of information possible and to address Crown's actual financial liability resolved by the proposed consent order. No commenter in any way addressed or objected to the adequacy of the settlement amount, and

ERA's review and analysis of all the written comments did not provide any information or basis to support the modification or rejection of the proposed consent order with Crown. Accordingly, ERA concludes that the consent order is in the public interest and should be made final.

IV. Decision

By this notice, and pursuant to 10 CFR 205.199, the proposed consent order between Crown and DOE executed on March 4, 1986 is made a final order of the Department of Energy, effective the date of publication of this notice in the *Federal Register*.

Issued in Washington, DC, on April 23, 1986.

Milton C. Lorenz,

Special Counsel, Economic Regulatory Administration.

[FR Doc. 86-9576 Filed 4-28-86; 8:45 am]

BILLING CODE 6450-01-M

[ERA Docket No. 86-26-NG]

Northwest Marketing Co.; Application to Import Natural Gas From Canada

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice of Application for Blanket Authorization to Import Natural Gas from Canada.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice of receipt on April 15, 1986, of an application from Northwest Marketing Company (Northwest Marketing), a wholly-owned subsidiary of Northwest Energy Company, one of The Williams Companies, for blanket authorization to import Canadian natural gas for short-term sales in the domestic spot market. Authorization is requested to import up to 150 MMcf of Canadian natural gas per day during a two-year term beginning on the date of first delivery of the import. Northwest Marketing intends to import individual volumes of natural gas purchased from various Canadian suppliers and, also, to import natural gas as an agent for other parties which desire either to sell or purchase Canadian natural gas under short-term or spot-market sales arrangements. Since Northwest Marketing intends to utilize existing pipeline facilities for the transportation of the volumes imported, the proposal does not contemplate the construction of any new domestic facilities.

The applicant proposes to submit quarterly reports giving details of individual transactions in the month following each calendar quarter.

The application was filed with the ERA pursuant to Section 3 of the Natural Gas Act and DOE Delegation Order No. 0204-111. Protests, motions to intervene, notices of intervention, and written comments are invited.

DATES: Protests, motions to intervene or notices of intervention, as applicable, and written comments are to be filed no later than May 29, 1986.

FOR FURTHER INFORMATION CONTACT:

Edward J. Peters, Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration, Forrestal Building, Room GA-076, 1000 Independence Avenue SW., Washington, DC 20585, (202) 252-8162

Diane Stubbs, Natural Gas and Mineral Leasing, Office of General Counsel, U.S. Department of Energy Forrestal Building, Room 6E-042, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 252-6667

SUPPLEMENTARY INFORMATION: The decision on this application will be made consistent with the DOE's gas import policy guidelines, under which competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). Parties that may oppose this application should comment in their responses on the issue of competitiveness as set forth in the policy guidelines. The applicant asserts that this import arrangement is competitive. Parties opposing the arrangement bear the burden of overcoming this assertion.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene, or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate procedural action to be taken on the application. All Protests, motions to intervene,

notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR Part 590. They should be filed with the Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration, Room GA-076-A, RG-23, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585. They must be filed no later than 4:30 p.m. e.d.t., May 29, 1986.

The Administrator intends to develop a decisional record on the application through responses to the notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or a trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, the ERA will provide notice to all parties. If no party requests additional procedures, a final opinion and order may be issued based upon the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of Northwest marketing's application is available for inspection and copying in the Natural Gas Division Docket Room, GA-076-A, at the above address. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC., April 23, 1986.

Barton R. House,

*Deputy Director, Office of Fuels Programs,
Economic Regulatory Administration.*

[FR Doc. 86-9516 Filed 4-28-86; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. ERA-FC-85-04; OFF Case No. 66017-9266-01-23]

Extension of Decision Period on Petition for Exemption by Power Developers, Inc.

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice of extension of decision period on Petition for exemption by Power Developers, Inc., for a proposed facility near Scottsdale, Arizona.

The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) hereby extends by thirty (30) days to the Decision Period within which to either grant or deny the request for a permanent exemption from the prohibitions of Title II of the Powerplant and Industrial Fuel Use Act of 1978 (42 U.S.C. 8301 *et seq.*) (FUA or the Act) filed by Power Developers, Inc. for its proposed electric power production facility to be located near and east of Scottsdale, Arizona.

Section 501.68(a)(2) of 10 CFR Part 501—Administrative Procedures and Sanctions, Subpart F—allows for the extension of the decision period on an exemption petition to a specified date by publishing such notice in the **Federal Register** and stating the reasons for such extension.

This extension by ERA of the decision period to grant or deny the petition is necessary to properly consider issues associated with this case.

Issued in Washington, D.C., on April 22, 1986.

Barton R. House,

*Deputy Director, Office of Fuels Programs,
Economic Regulatory Administration.*

[FR Doc. 86-9517 Filed 4-28-86; 8:45 am]

BILLING CODE 6450-01

ENVIRONMENTAL PROTECTION AGENCY

California State Motor Vehicle Pollution Control Standards: Amendments Within the Scope of Previous Waivers of Federal Preemption; Summary of Determination

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of scope of waiver of Federal preemption.

SUMMARY: The California Air Resources Board (CARB) has notified EPA that it adopted amendments to its Emissions Warranty Regulations. The amendments (1) add specific diesel particulate control components to CARB's Emission Warranty Parts List, (2) clarify the

applicable useful life definition for diesel particulate controls on vehicles certified to California's optional standards, and (3) clarify the applicability of California's two year/24,000 mile warranty to miscellaneous parts used in conjunction with fuel metering and ignition system components.

I find these amendments to be within the scope of previous waivers of Federal preemption granted to California for its warranty regulations. Since these amendments are within the scope of these waivers, a public hearing to consider them is not necessary. However, if any party asserts an objection to these findings within 30 days of the date of publication of this notice, EPA will consider holding a public hearing to provide an opportunity to present testimony and evidence to show that there are issues to be addressed through a section 209(b) waiver determination and that I should reconsider my findings. Otherwise, these findings will become final at the expiration of this 30-day period.

DATES: Any objections to the findings in this notice must be filed within 30 days of the date of this notice; otherwise, at the expiration of this 30-day period these findings will become final. Upon receipt of any timely objection, EPA will consider scheduling a public hearing in a subsequent **Federal Register** notice.

ADDRESSES: Any objection to the findings in this notice should be filed with Mr. Charles N. Freed, Director, Manufacturers Operations Division (EN-340-F), U.S. Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460.

Copies of the California amendments at issue in this notice and a decision document containing an explanation of my determination, are available for public inspection during normal working hours (8:00 a.m. to 4:00 p.m.) at the Environmental Protection Agency, Central Docket Section, Gallery I, 401 M Street SW., Washington, D.C. 20460 (Docket EN-85-06). Copies of the decision document can be obtained from EPA's Manufacturers Operations Division by contacting Mr. Spiegel as noted below.

FOR FURTHER INFORMATION CONTACT: Steven M. Spiegel, Attorney/Advisor, Manufacturers Operations Division (EN-340-F), U.S. Environmental Protection Agency, Washington, D.C. 20460, (202) 382-2526.

SUPPLEMENTARY INFORMATION: I have determined that CARB's amendments are within the scope of waivers of Federal preemption previously granted

pursuant to section 209(b) of the Clean Air Act, as amended (Act).¹ Specifically, the changes add specific diesel particulate control components such as trap oxidizers, to California's Emissions Warranty Parts List; establish the useful life period as 5 years, 50,000 miles for diesel particulate controls on light-duty and medium-duty vehicles certified to California's optional 100,000 mile standards; and clarify the applicability of California's 2 year, 24,000 mile warranty to miscellaneous parts used on ignition system and fuel metering components.

These amendments do not undermine California's determination that its standards are, in the aggregation, at least as protective as Federal standards, raise no new issues regarding previous waivers of Federal preemption and are not inconsistent with Section 202(a) of the Act. A full explanation of my determination is contained in a decision document, which may be obtained from EPA as noted above.

Since these amendments are included within the scope of previously granted waivers of Federal preemption, a public hearing to consider them is not necessary. The public has not had an opportunity to comment in advance of this determination. Therefore, my determination on these amendments will become final at the expiration of 30 days following publication of this notice, unless an objection is filed and a public hearing is scheduled.

My decision will affect not only persons in California but also the manufacturers located outside the State who must comply with California's requirements in order to produce motor vehicles for sale in California. For this reason, I hereby determine and find that this decision is of nationwide scope and effect. Accordingly, judicial review of this action is available only by filing a petition for review in the United States Court of Appeals for the District of Columbia Circuit within 60 days of publication. Under section 307(b)(2) of the Act, the requirements which are the subject of today's notice may not be challenged later in judicial proceedings brought by EPA to enforce these requirements.

This action is not a rule as defined by section 1(a) of Executive Order 12291, 46 FR 13193 (February 19, 1981), because it does not "implement, interpret, or prescribe law or policy." Therefore, it is exempt from review by the Office of Management and Budget as required for

rules and regulations by Executive Order 12291. Additionally, a Regulatory Impact Analysis is not being prepared under Executive Order 12291, for this "within the scope" determination since it is not a rule.

This action also is not a rule as defined in the Regulatory Flexibility Act, 5 U.S.C. 601(2), because the action is not required to undergo prior "notice and comment" under section 553(b) of the Administrative Procedure Act, or any other law. Therefore, EPA has not prepared a supporting regulatory flexibility analysis addressing the impact of this action on small entities.

Dated: April 22, 1986.

J. Craig Potter,

Assistant Administrator for Air and Radiation.

[FR Doc. 86-9524 Filed 4-28-86; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 86E-0098]

Determination of Regulatory Review Period for Purposes of Patent Extension; Cefotan

Correction

In FR Doc. 86-7723 appearing on page 11981 in the issue of Tuesday, April 8, 1986, make the following correction:

In the third column, first paragraph, second line, "in" should read "is".

BILLING CODE 1505-01-M

Health Resources and Services Administration

Indian Health Service; Designation of Contract Proposal Declination Appeals Board

The Indian Self-Determination Act (Pub. L. 93-638) requires the Secretary of Health and Human Services to provide the opportunity to an Indian tribe for a hearing if he/she declines a request for a self-determination contract (Sec. 103(b)(3)). The regulations at 42 CFR 36.214(e) provides that the director of the Indian Health Service (IHS) shall appoint a five-member "Contract Proposal Declination Appeals Board". The purpose of this notice is to notify the public of the current membership of the Contract Proposal Declination Appeals Board.

On March 28, 1986, the Director, IHS, appointed the following individuals to the Contract Proposal Declination Appeals Board:

Mr. James C. Meredith, Director, Nashville Program Office, IHS, Chairman;

Ms. Luana Reyes, Acting Associate Director, Office of Planning, Evaluation and Legislation, IHS, Member;

Mr. Charles J. Erickson, Acting Director, Division of Health Systems Development, IHS, Member;

Dr. Stephen Permison, Director, Patient Care Policy Analysis Program, Member;

Ms. Ramona C. Orneals, Program Analyst, Member;

Mr. Doug Black, Program Analyst, First Alternate Member;

Mr. Jim Mitchell, Acting Director, Division of Health Support Activities, Chief, Contract Health Service Branch, IHS, Second Alternate Member;

Mr. Alan Allery, Director, Bemidji Program Office, IHS, Third Alternate Member; and

Mr. Mike Lincoln, Director, Navajo Area, IHS, Fourth Alternate Member.

Dated: April 22, 1986.

John Kelso,

Acting Administrator.

[FR Doc. 86-9489 Filed 4-28-86; 8:45 am]

BILLING CODE 4160-15-M

Food and Drug Administration

[Docket No. 83D-0120]

Revised Sequential Analysis Plan for Domestic and Imported Dates and Date Material; Availability of Guide

Correction

In FR Doc. 86-7378 beginning on page 11482, in the issue of Thursday, April 3, 1986, make the following correction:

On page 11483, in the first column, in the sixth line from the top the page, "225-2001" should read "225-72-2001."

BILLING CODE 1505-01-M

[FDA 225-72-2201]

Memorandum of Understanding with the Agricultural Marketing Service

Correction

In FR Doc. 86-7379 beginning on page 11480, in the issue of Thursday, April 3, 1986, make the following correction:

1. The agency document control number is corrected to read as set out above.

¹ 44 FR 61086 (October 23, 1979) and 37 FR 14831 (July 15, 1972).

2. On page 11480, in the second column, in **FOR FURTHER INFORMATION CONTACT:** the contact person's name should read "Walter J. Kustka".

BILLING CODE 1505-01-M

Public Health Service

National Center for Health Services Research and Health Care Technology Assessment; Reassessment of Medical Technology; Transurethral Ureteroscopic Lithotripsy (TUUL) Procedures for Treatment of Kidney Stones

The Public Health Service (PHS), through the Office of Health Technology Assessment (OHTA), announces that it is coordinating a reassessment of what is known of the safety, clinical effectiveness, and use (indications) of transurethral ureteroscopic lithotripsy (TUUL) procedures for the treatment of kidney stones.

Transurethral ureteroscopic lithotripsy (TUUL) represents a group of procedures whereby a cystoscope is inserted through the urethra into the bladder and descending ureters under direct visualization and either an ultrasonic or shockwave probe or a mechanical stone crushing device is inserted through the cystoscope for the purpose of ultrasonically, electrohydraulically or mechanically disrupting the stone, respectively.

When the procedure is limited to disrupting stones within the urinary bladder, it constitutes a lower urinary tract procedure. This procedure, known as transurethral lithotripsy (TUL) is an established medical procedure. The cystoscope can then be advanced through the uretero-vesicular valve into the descending ureter. This procedure is considered a transurethral ureteroscopic lithotripsy (TUUL) and involves the upper urinary tract. In the first instance, where the procedure is limited to the bladder, it is covered under Medicare and is designated transurethral cystoscopic lithotripsy. Where it involves the ureter, renal pelvis, or kidney, it is designated transurethral ureteroscopic lithotripsy. The latter is not a presently covered procedure.

This technology was previously assessed by the Public Health Service (Federal Register 1984; 49(25):4438). At that time data were lacking by which to determine the status of TUUL for purposes of advising Medicare regarding coverage. In distinguishing TUUL from the other forms of lithotripsy, this reassessment seeks to determine whether ultrasonic, electrohydraulic or mechanical ureteroscopic lithotripsy has

been demonstrated to be safe or clinically effective or has achieved widespread acceptance within the practicing community. Specifically, we are interested in knowing whether TUUL procedures for treatment of kidney stones in use in the United States today have significant clinical advantages when compared to other surgical methods of treatment. If they prove to be safe and clinically effective, what are the specific indications and when is their use considered reasonable and necessary? Not included in this assessment are the medical treatments of kidney stones, such as diet and/or medication which may be used alone, in combination or in conjunction with surgical procedures.

PHS assessments consist of a synthesis of information obtained from appropriate organizations in the private sector and from PHS and other agencies in the Federal Government. PHS assessments are based on the most current knowledge concerning the safety and clinical effectiveness of a technology. Based on this assessment, a PHS recommendation will be formulated to assist the Health Care Financing Administration (HCFA) in establishing Medicare coverage policy. The information being sought is a review and assessment of past, current, and planned research related to this technology, a bibliography of published, controlled clinical trials and other well-designed clinical studies. Information related to the characterization of the patient population most likely to benefit from it, as well as on clinical acceptability and the effectiveness of this technology and extent of use is also being sought. Proprietary information is not being sought. Any person or group wishing to provide OHTA with information relevant to this assessment should do so in writing no later than July 22, 1986 or within 90 days from the date of publication of this notice.

Written material should be submitted to: Morgan N. Jackson, M.D., M.P.H., Office of Health Technology Assessment, NCHSR&HCTA, Park Building, Room 3-10, 5600 Fishers Lane, Rockville, MD 20857, (301) 443-4990.

Dated: April 22, 1986.

Morgan N. Jackson,

Acting Director, Office of Health Technology Assessment, National Center for Health Services Research and Health Care Technology Assessment.

[FR Doc. 86-9546 Filed 4-28-86; 8:45 am]

BILLING CODE 4160-17-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AA-6662-A]

Alaska Native Claims Selection; Choggiung Ltd.

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of sec. 14(a) of the Alaska Native Claims Settlement Act of December 18, 1971 (ANCSA), 43 U.S.C. 1601, 1611, and 1613, will be issued to Choggiung Limited for approximately six acres. The lands involved are in the vicinity of Ekuk, Alaska.

Seward Meridian, Alaska

T. 16 S., R. 56 W. (Surveyed)

Sec. 12, those lands within Sec. 3(c) application AA-12836 excluded from Interim Conveyance No. 239, dated September 17, 1979.

A notice of the decision will be published once a week for four (4) consecutive weeks in the ANCHORAGE TIMES. Copies of the decision may be contained by contacting the Bureau of Land Management, Alaska State Office, 701 C Street, Box 13, Anchorage, Alaska 99513 (907) 271-5960.

Any party claiming a property interest which is adversely affected by the decision shall have until May 29, 1986 to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management, Division of Conveyance Management (960), address identified above, where the requirements for filing an appeal can be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart E shall be deemed to have waived their rights.

Joe J. Labay,

Section Chief, Branch of ANCSA Adjudication.

[FR Doc. 86-9551 Filed 4-28-86; 8:45 am]

BILLING CODE 4310-JA-M

Closure of Public Lands; Idaho

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Closure of Public Lands.

SUMMARY: Notice is hereby given that effective immediately all public lands located in the North Grazing Allotment,

Shoshone District are closed to horse grazing.

ADDRESS: Bureau of Land Management, Shoshone District Office, 400 West F Street, Shoshone, Idaho 83352.

FOR FURTHER INFORMATION CONTACT: Jon Idso, District Manager, Shoshone District Office, P.O. Box 2B, Shoshone, Idaho 83352. Telephone (208) 886-2206 or FTS 554-6576.

SUPPLEMENTARY INFORMATION: The lands affected by this closure are described as:

Boise Meridian

T. 8 S., R. 18 E.,

Sec. 1, That portion southeast of the livestock pasture division fence constructed on a line running diagonally through the section from the corner common to Sections 1, 2, 11, and 12 to the corner common to sections 31, 36, 1, and 6 at the intersection of Tps. 7 and 8 S., R. 18 E., and Tps. 7 and 8 S., R. 19 E.;

Sec. 10 to 15, inclusive;

Sec. 21 and 22, parts in each section lying north and east of the Twin Falls North Main Canal;

Sec. 23 and 24;

Sec. 25 to 27, inclusive, parts in each section lying north and east of the Twin Falls North Main Canal.

T. 8 S., R. 19 E.,

Sec. 2 to 5, inclusive, parts in each section lying south of the Gooding-Milner Canal;

Sec. 6 to 8, inclusive;

Sec. 9, part lying south of the Gooding-Milner Canal;

Sec. 10;

Sec. 11, W $\frac{1}{2}$;

Sec. 14, Lot 3, NW $\frac{1}{4}$ NE $\frac{1}{4}$, N $\frac{1}{2}$ NW $\frac{1}{4}$, SW $\frac{1}{4}$ NW $\frac{1}{4}$;

Sec. 15, N $\frac{1}{2}$ NE $\frac{1}{4}$, N $\frac{1}{2}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$, W $\frac{1}{2}$;

Sec. 16 to 21, inclusive;

Sec. 22, W $\frac{1}{2}$, SE $\frac{1}{4}$;

Sec. 28, W $\frac{1}{2}$ W $\frac{1}{2}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$, NW $\frac{1}{4}$ NE $\frac{1}{4}$, N $\frac{1}{2}$ N $\frac{1}{2}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$, NW $\frac{1}{4}$ NW $\frac{1}{4}$, SE $\frac{1}{4}$ NE $\frac{1}{4}$, N $\frac{1}{2}$ NW $\frac{1}{4}$, N $\frac{1}{2}$ S $\frac{1}{2}$ NW $\frac{1}{4}$, N $\frac{1}{2}$ S $\frac{1}{2}$ S $\frac{1}{2}$ NW $\frac{1}{4}$;

Sec. 29 and 30;

Sec. 31, Lot 1, NE $\frac{1}{4}$, NE $\frac{1}{4}$ NW $\frac{1}{4}$.

All described lands are located in Jerome County, Idaho, in the designated North Milner Grazing Allotment.

The purpose of this closure is to protect the livestock and/or wildlife forage resources in the allotment. The need for the closure is based on the record of recurring unauthorized horse grazing.

Authorized grazing uses within the North Milner Allotment shall be exempt from this closure instruction.

Any person who fails to comply with this closure may be subject to punishment by a fine not to exceed \$1,000 and/or imprisonment not to exceed 12 months pursuant to 43 CFR 8360.0-7 dated October 1, 1985.

The authority for this closure is 43 CFR 8364.1. The closure will remain in

effect until cancelled by the Authorized Officer of the Bureau of Land Management.

Jon H. Idso,
District Manager.

[FR Doc. 86-9486 Filed 4-28-86; 8:45 am]

BILLING CODE 4310-GG-M

[M 70658(ND)]

Coal Exploration License Application; North Dakota

Members of the public are hereby invited to participate with Basin Cooperative Services in a program for the exploration of coal deposits owned by the United States of America in the following described lands located in Oliver County, North Dakota:

T. 143 N., R. 83 W., 5th P.M.,
Sec. 30, lots 1,2,3, NE $\frac{1}{4}$ SW $\frac{1}{4}$.

T. 143 N., R. 84 W., 5th P.M.,

Sec. 24, S $\frac{1}{2}$;

Sec. 26, All.

1,120.94 acres.

Any party electing to participate in this exploration program shall notify, *in writing*, both the State Director, Bureau of Land Management, P.O. Box 36800, Billings, Montana 59107; and Basin Cooperative Services, 1717 East Interstate Avenue, Bismarck, North Dakota 58501-9990. Such written notice must refer to serial number M 70658(ND) and be received no later than 30 calendar days after publication of this Notice in the *Federal Register* or 10 calendar days after the last publication of the Notice in the *The Center Republican*, whichever is later. This Notice will be published for two consecutive weeks.

This proposed exploration program is fully described and will be conducted pursuant to an exploration plan to be approved by the Bureau of Land Management, Montana State Office, Granite Tower Building, 222 North 32nd Street, Billings, Montana. The exploration plan is available for public inspection at this address.

Dated: April 22, 1986.

Dean E. Stepanek,
State Director, Montana State Office.

[FR Doc. 86-9550 Filed 4-28-86; 8:45 am]

BILLING CODE 4310-DN-M

Medford District Advisory Council; Meeting

Notice is hereby given in accordance with Pub. L. 92-463 that a meeting of the Bureau of Land Management, Medford District Advisory Council will be held May 29, 1986.

On May 29, the meeting will begin at 9:00 a.m., in the Cafeteria of the Bureau of Land Management Office at 3040 Biddle Road, Medford, Oregon. The agenda for the meeting will include:

A review of the Public Involvement Policy and Guidebook presented to the Medford District by its Public Involvement Team on February 18, 1986; a presentation updating the Medford District's Draft Public Involvement Guidebook; a discussion by staff members of the District's timber sale program discussion of the District's plans to implement a River Ranger program; and reorganization of the district under provisions of the Gramm-Rudman-Hollings Act.

The meeting of the advisory council is open to the public. Interested persons may make oral statements to the board following conclusion of its other agenda items on May 29, or file written statements for the board's consideration. Anyone wishing to make an oral statement must notify the District Manager, Bureau of Land Management, 3040 Biddle Road, Medford, Oregon 97504, by May 28, 1986. Depending on the number of persons wishing to make oral statements, a per-person time limit may be established by the District Manager.

Summary minutes of the board meeting will be maintained in the District Office and be available for public inspection and reproduction (during regular business hours) within 30 days following the meeting.

Date signed: April 21, 1986.

James P. Clason,

District Manager.

[FR Doc. 86-9549 Filed 4-28-86; 8:45 am]

BILLING CODE 4310-33-M

Montrose District Advisory Council; Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given in accordance with 43 CFR Subpart 1784, that a meeting of the Montrose District Advisory Council will be held June 4, 1986 in Montrose, Colorado.

DATE: Requests to present oral comments must be received by May 28, 1986. A meeting is scheduled June 4, 1986.

ADDRESS: District Manager, Bureau of Land Management, Montrose District Office, 2465 South Townsend, Montrose, Colorado 81401.

SUPPLEMENTARY INFORMATION: The District Advisory Council meeting will convene at 9:00 a.m. in the Montrose District conference room. The meeting is open to the public. Anyone wishing to make an oral statement must notify the District Manager by May 28, 1986.

The agenda will include:

1. Election of officers.
2. Update on Resource Area programs and issues.
3. Exchange pooling update.
4. Discussion of riparian issues.
5. Discussion of the preferred alternative for the Uncompahgre Basin Resource Management Plan.

Dated: April 18, 1986.

Paul W. Arrasmith,

District Manager.

[FR Doc. 86-9548 Filed 4-28-86; 8:45 am]

BILLING CODE 4310-JB-M

Suspension of Production Requirements for Stripper Oil Wells on Federal and Indian Lands

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of suspension of production requirements.

SUMMARY: On April 17, 1986, the Secretary of the Interior announced the adoption of a policy which would suspend production requirements for "stripper" oil wells on Federal and Indian Lands. The effect of the suspension of production, granted under the authority of section 17(f) of the Mineral Leasing Act of 1920 (30 U.S.C. 226(f)), is to continue the lease for the period of the suspension, subject to the payment of minimum royalty of \$1 per acre or fraction thereof per year. This policy provides an alternative to premature abandonment of low production capacity wells. Abandonment of such wells has become more prevalent as a result of the recent sharp decline in oil prices. The policy is applicable to those wells that produce 10 or less barrels of oil per day. Under the policy, a leaseholder may apply to the Bureau of Land Management for a suspension of the production requirements for a particular lease. This policy is designed to prevent the premature abandonment of these stripper wells. Anyone with royalty payment responsibilities for leases on which a suspension of production has been granted shall continue to submit form MMS-2014 each month coded to indicate "No Sales" for the reporting period.

A lessee should contact the District

Manager of the Bureau of Land Management District which has jurisdiction of the lands covered by the lease for additional information concerning this policy.

EFFECTIVE DATE: April 17, 1986.

ADDRESS: Any questions or inquiries should be sent to:

Director (630), Bureau of Land Management, Room 5640, Main Interior Bldg., 1800 C Street, NW., Washington, DC 20240
or

Minerals Management Service, Royalty Management Program, Bldg 85, Denver Federal Center, Denver, Colorado 80225, (800) 525-0306.

FOR FURTHER INFORMATION CONTACT:

George F. Brown, (202) 343-4437.

Robert F. Burford,

Director.

[FR Doc. 86-9544 Filed 4-28-86; 8:45 am]

BILLING CODE 9310-84-M

[W-82637]

Wyoming; Exchange of Public Lands in Sweetwater County for Private Lands in Teton County and Private Interests in Sweetwater County; Transfer of Administrative Jurisdiction

1. Notice is hereby given that, pursuant to section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716 (1982), the following public lands, including all minerals excepting oil and gas, have been conveyed to Teton Valley Ranch, Kelly, Wyoming, by Patent Number 49-86-0007 dated April 1, 1986:

Sixth Principal Meridian, Wyoming

T. 20 N., R. 101 W.,
Sec. 6, lots 1-6, E $\frac{1}{2}$ SW $\frac{1}{4}$, SE $\frac{1}{4}$;
Sec. 8, E $\frac{1}{2}$, N $\frac{1}{2}$ NW $\frac{1}{4}$, SE $\frac{1}{4}$ NW $\frac{1}{4}$;
Sec. 22, NW $\frac{1}{4}$ NW $\frac{1}{4}$, S $\frac{1}{2}$ N $\frac{1}{2}$, S $\frac{1}{2}$;
Sec. 26, N $\frac{1}{2}$ NW $\frac{1}{4}$, SW $\frac{1}{4}$, NW $\frac{1}{4}$.

T. 21 N., R. 101 W.,
Sec. 32, NE $\frac{1}{4}$;
Sec. 34, SW $\frac{1}{4}$.

The areas described aggregate 1837.96 acres.

The United States reserved a 3.18 percent royalty interest in all coal in the above lands which may be mined or produced.

2. In exchange, the United States, Department of the Interior, acquired the following lands from Teton Valley Ranch:

Sixth Principal Meridian, Teton County, Wyoming

T. 42 N., R. 115 W.,

Those parts of Sections Ten (10), Eleven (11), Fourteen (14), and Fifteen

(15) described as follows: Lots One (1) through Seventeen (17), both inclusive, of Teton Valley Ranch Subdivision, Unit I, according to that plat recorded November 9, 1976, as Plat No. 293, Teton County, Wyoming; Lot Eighteen (18) and lots Twenty-one (21) through Thirty-seven (37), both inclusive of Teton Valley Ranch Subdivision, Unit II, according to that plat recorded May 20, 1977, as Plat No. 309, Teton County, Wyoming; Lots Thirty-eight (38) through Forty-nine (49), both inclusive, of Teton Valley Ranch Subdivision, Unit III, according to that plat recorded May 20, 1977, as Plat No. 310, Teton County, Wyoming; and Lots One (1) through Twenty-six (26), both inclusive, of Sheep Mountain Commercial Area, according to that plat recorded May 20, 1980, as Plat No. 408, Teton County, Wyoming.

The above described tract of land contains 354.27 acres, more or less.

3. Additionally, the United States acquired 3.18 percent royalty interest in coal mined from the following described lands from Rock Springs Royalty Company:

Sixth Principal Meridian, Sweetwater County, Wyoming

T. 20 N., R. 101 W.,
Sec. 5, lots 1-4, S $\frac{1}{2}$;
Sec. 7, N $\frac{1}{2}$ NE $\frac{1}{4}$;
Sec. 9, S $\frac{1}{2}$;
Sec. 15, S $\frac{1}{2}$ SW $\frac{1}{4}$;
Sec. 17, E $\frac{1}{2}$ NE $\frac{1}{4}$;
Sec. 21, NE $\frac{1}{4}$, N $\frac{1}{2}$ SE $\frac{1}{4}$;
Sec. 23, NW $\frac{1}{4}$ SW $\frac{1}{4}$, W $\frac{1}{2}$ SW $\frac{1}{4}$;
Sec. 27, E $\frac{1}{2}$ NE $\frac{1}{4}$, NW $\frac{1}{4}$ NE $\frac{1}{4}$.

T. 20 N., R. 102 W.,
Sec. 1, lots 1-3, N $\frac{1}{2}$ SE $\frac{1}{4}$.
T. 21 N., R. 101 W.,
Sec. 33, All.

The above-described land contains approximately 2318.35 acres.

4. The lands described in Paragraph 2 are located within the National Elk Refuge established by Executive Order No. 2177 of April 21, 1915, and were acquired by the Department of the Interior, Bureau of Land Management, on behalf of the U.S. Fish and Wildlife Service. Pursuant to section 206(c) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716, and in accordance with Executive Order No. 7680 of July 30, 1937, the lands described in Paragraph 2 were transferred to the U.S. Fish and Wildlife Service on April 1, 1986, upon acceptance of title thereto by the United States, for administration as part of the National Elk Refuge in accordance with the laws, rules, and regulations applicable to National

Wildlife Refuge System lands and the National Elk Refuge.

James L. Edlefsen,
Chief, Branch and Land Resources.

[FR Doc. 86-9553 Filed 4-28-86; 8:45 am]
BILLING CODE 9310-22-M

[CA 16984]

Realty Action; Exchange of Public and Private Lands in Nevada County, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of issuance of land exchange conveyance document.

SUMMARY: The purpose of this exchange was to bring back into Federal ownership that portion of the South Yuba campground and its improvements which were inadvertently constructed on private property. The non-Federal land acquired in this exchange enlarges the South Yuba Recreation Area, a long-term management area of significant public value. The public interest was well served through completion of this exchange.

FOR FURTHER INFORMATION CONTACT: Viola Andrade, California State Office, (916) 978-4815.

The United States issued an exchange conveyance document of Gerald E. and Shirley A. Hodnefield on February 10, 1986, under the provisions of the Federal Land Policy and Management Act of October 21, 1976, 90 Stat. 2756, 43 U.S.C. 1716, for the following described land:

Mount Diablo Meridian, California

T. 6 N., R. 14 E.,
Sec. 29, Lots 2 and 6.
Containing 79.95 acres of public land.

In exchange for these lands, the United States acquired the following described land from Mr. and Mrs. Hodnefield:

Mount Diablo Meridian, California

T. 17 N., R. 9 E.,
Portions of Sec. 16 (described by metes and bounds).
Containing 58.17 acres of non-Federal land.

The values of the public land and the non-Federal land in the exchange were appraised at \$95,250 and \$75,000, respectively. An equalization payment in the amount of \$20,250 was paid to the United States by Mr. and Mrs. Hodnefield.

A complete description of the above described non-Federal land is available for inspection at the State Office, Bureau of Land Management, 2800 Cottage Way, Sacramento, California 95825.

Dated: April 21, 1986.

Sharon N. Janis,
Chief, Branch of Lands & Minerals
Operations.

[FR Doc. 86-9484 Filed 4-28-86; 8:45 am]
BILLING CODE 4310-40-M

Bureau of Reclamation

Quarterly Status Tabulation of Water Service and Repayment Contract Negotiations; Proposed Contractual Actions Pending Through June 1986

Pursuant to section 226 of the Reclamation Reform Act of 1982 (96 Stat. 1273), and to § 426.20 of the rules and regulations published in the *Federal Register* December 6, 1983, Vol. 48, page 54785, the Bureau of Reclamation will publish notice of proposed or amendatory repayment contract actions or any contract for the delivery of irrigation water in newspapers of general circulation in the affected area at least 60 days prior to contract execution. The Bureau of Reclamation announcements of irrigation contract actions will be published in newspapers of general circulation in the areas determined by the Bureau of Reclamation to be affected by the proposed action. Announcements may be in the form of news releases, legal notices, official letters memorandums, or other forms of written material. Meetings, workshops, and/or hearings may also be used, as appropriate, to provide local publicity. The public participation requirements do not apply to proposed contracts for the sale of surplus or interim irrigation water for a term of 1 year or less. The Secretary or the district may invite the public to observe any contract proceedings. All public participation procedures will be coordinated with those involved in complying with the National Environmental Policy Act if the Bureau determines that the contract action may or will have "significant" environmental effects.

Pursuant to the "Final Revised Public Participation Procedures" for water service and repayment contract negotiations, published in the *Federal Register* February 22, 1982, Vol. 47, page 7763, a tabulation is provided below of all proposed contractual actions in each of the six Reclamation regions. Each proposed action listed is, or is expected to be, in some stage of the contract negotiation process during April, May, or June of 1986. When contract negotiations are completed, and prior to execution, each proposed contract form must be approved by the Secretary, or pursuant to delegated or redelegated

authority, the Commissioner of Reclamation or one of the Regional Directors. In some instances, congressional review and approval of a report, water rate, or other terms and conditions of the contract may be involved. The identity of the approving officer and other information pertaining to a specific contract proposal may be obtained by calling or writing the appropriate regional office at the addresses and telephone numbers given for each region.

This notice is one of a variety of means being used to inform the public about proposed contractual actions. Individual notice of intent to negotiate, and other appropriate announcements, are made in the *Federal Register* for those actions found to have widespread public interest. When this is the case, the date of publication is given.

Acronym Definitions Used Herein

(FR) Federal Register
(ID) Irrigation District
(IDD) Irrigation and Drainage District
(M&I) Municipal and Industrial
(D&MC) Drainage and Minor Construction
(R&B) Rehabilitation and Betterment
(O&M) Operation and Maintenance
(CAP) Central Arizona Project
(CVP) Central Valley Project
(P-SMBP) Pick-Sloan Missouri Basin Program
(CRSP) Colorado River Storage Project
(SRPA) Small Reclamation Projects Act

Pacific Northwest Region: Bureau of Reclamation, 550 West Fort Street, Box 043, Boise, ID 83724, telephone (208) 334-1961

1. Boise Cascade Corporation, Columbia Basin Project, Washington: Industrial water service contract; 250 acre-feet; FR notice published April 7, 1980, Vol. 45, page 23531.

2. Five ID's, Boise Project, Idaho-Oregon: Irrigation repayment contract; 22,800 acre-feet of stored water in Arrowrock Reservoir.

3. Brewster Flat ID, Chief Joseph Dam Project, Washington: Amendatory repayment contract; land reclassification of approximately 360 acres to irrigable; Repayment obligation to increase by \$189,000.

4. Individual irrigators, M&I, and miscellaneous water users, Pacific Northwest Region, Idaho, Oregon and Washington: Temporary (interim) water service contracts for surplus project water for irrigation or M&I use to provide up to 10,000 acre-feet of water annually for terms up to 5 years; long-

term contracts for similar service for up to 1,000 acre-feet of water annually.

5. Rogue River Basin water users, Rogue River Basin Project, Oregon: Water service contracts; \$5 per acre-foot or \$20 minimum per annum, not to exceed 320 acres or 1,000 acre-feet of water per contractor for terms up to 40 years.

6. Willamette Basin water users, Willamette Basin Project, Oregon: Water service contracts; \$1.50 per acre-foot or \$20 minimum per annum, not to exceed 320 acres or 1,000 acre-feet of water annually per contractor for terms up to 40 years.

7. Fifty-three Palisades Reservoir Spaceholders, Minidoka Project, Idaho-Wyoming: Contract amendments to extend term for which contract water may be subleased to other parties.

8. Cascade Reservoir water users, Boise Project, Idaho: Repayment contracts for irrigation and M&I water; 59,721 acre-feet of stored water in Cascade Reservoir.

9. Boise Water Corporation, Boise Project, Idaho: M&I water service contract; up to 1,000 acre-feet annually from stored water in Anderson Ranch Reservoir for a term of up to 40 years.

10. ID's and similar water user entities: Amendatory repayment and water service contracts; purpose is to conform to the Reclamation Reform Act of 1982 (Pub. L. 97-293).

11. Columbia Basin Project Water Users, Columbia Basin Project, Washington: Water service contracts for approximately 6,000 acre-feet of irrigation water provided from Banks Lake with terms up to 40 years; prior to contract execution, water users will have to come under provisions of the Reclamation Reform Act of 1982 (P.L. 97-293).

12. South Columbia Basin ID, Columbia Basin Project, Washington: Supplemental repayment contract for Irrigation Block 24; 1,892 irrigable acres. Proposed contract is subject to RRA.

13. City of Boise, Boise Project, Idaho: M&I water service contract, 340 acre-feet annually from stored water in Anderson Ranch Reservoir for a term of up to 40 years.

4. Douglas County, Galesville Project, Oregon: SRPA cost escalation loan repayment contract; \$1,000,000 proposed obligation.

15. Sidney Irrigation Cooperative, Willamette Basin Project, Oregon: Irrigation water service contract for approximately 1,300 acre-feet for a term of 40 years.

Mid-Pacific Region: Bureau of Reclamation (Federal Office Building), 2800 Cottage Way, Sacramento, CA 95825, telephone (916) 978-5030

1. 2047 Drain Water Users Association, CVP, California: Water right settlement contract; FR notice published July 25, 1979, Vol. 44, Page 43535.

2. Tuolumne Regional Water District, CVP, California: Water service contract; 3,200 acre-feet from New Melones Reservoir.

3. Calaveras County Water District, CVP, California: Water service contract; 400 acre-feet from New Melones Reservoir; FR notice published February 5, 1982, Vol. 47, page 5473.

4. Individual irrigators, M&I, and miscellaneous water users, Mid-Pacific Region, California, Oregon, and Nevada: Temporary (interim) water service contracts for surplus project water for irrigation or M&I use to provide up to 10,000 acre-feet of water annually for terms up to 5 years; temporary Warren Act contracts to wheel nonproject water through project facilities for terms up to 1 year; long-term contracts for similar service for up to 1,000 acre-feet of water annually.

5. El Dorado ID, Sly Park Unit, CVP, California: D&MC contract to allow the District to accomplish the construction work with the remaining funds from the distribution system contract, and amend the Unit 4 portion of its existing repayment contract to pay interest on actual M&I use.

6. South San Joaquin ID and Oakdale ID, CVP, California: Operation agreement for conjunctive operation of New Melones Dam and Reservoir on the Stanislaus River; FR notice published June 6, 1979, Vol. 44, page 32483.

7. San Luis Water District, CVP, California: Amendatory water service contract providing for a change in point of delivery from Delta-Mendota Canal to the San Luis Canal.

8. Mid-Valley Water Authority, CVP, California: Temporary water supplies up to 100,000 acre-feet.

9. City of Avenal, CVP, California: Amendment of existing water service contract to provide for furnishing project power to city canalside relift facilities and change the point of diversion.

10. ID's and similar water user entities: Amendatory repayment and water service contracts; purpose is to conform to the Reclamation Reform Act of 1982 (P.L. 97-293).

11. United Water Conservation District, SRPA, California: Loan repayment contract, \$18,730,000 proposed obligation.

12. State of Hawaii, Molokai Project, SRPA: Contract amendment to provide for use of facilities for M&I purposes.

13. State of California, CVP, California: Contract(s) for, (1) sale of interim water to the Department of Water Resources for use by the State Water Project Contractors, and (2) acquisition of conveyance capacity in the California Aqueduct for use by the CVP, as contemplated in the current draft of the Coordinated Operations Agreement.

14. Pixley, ID, SRPA, California: Loan repayment contract, \$12,300,000 proposed obligation.

15. Kaiser Development Company, CVP, California: Sacramento River water right contract; suspension of agricultural contract and execution of M&I contract.

16. Madera ID, Madera Canal, CVP, California: Warren Act contract to convey and/or store nonproject Soquel water through project facilities.

17. Hills Valley ID, CVP, California: Amendatory water service contract, to provide an additional 400 acre-feet and reallocate 800 acre-feet of water from the Ducor ID for a total increase of 1,200 acre-feet.

18. Tri-Valley Water District, CVP, California: Amendatory water service contract, to provide an additional 160 acre-feet.

19. County of Tulare, CVP, California: Amendatory water service contract, to provide an additional 1,908 acre-feet and reallocate 400 acre-feet of water from the Ducor ID for a total increase of 2,308 acre-feet.

20. U.S. Fish and Wildlife, CVP, California: Temporary water service contract; 15,000 acre-feet for Kern National Wildlife Refuge.

21. Truckee-Carson ID, Newlands Project, Nevada: Warren Act contract to wheel 9,500 acre-feet of nonproject water through project facilities.

22. Panoche Water District, CVP, California: Amendatory water service contract providing for change in point of delivery from Delta-Mendota Canal to the San Luis Canal.

23. Solano ID, Solano Project, California: Amendatory loan repayment contract providing for reconveyance and M&I water supply delivery.

24. Orland Unit Water Association, Orland Project, California: Emergency loan contract; contract will assure repayment of funds to be provided by the United States for the emergency repair due to flood-related damage to North Diversion Dam. Proposed contract is subject to RRA.

Upper Colorado Region: Bureau of Reclamation, P.O. Box 11568 (125 South State Street), Salt Lake City, UT 84147, telephone (801) 524-5435

1. Individual irrigators, M&I, and miscellaneous water users, Utah, Wyoming, Colorado, and New Mexico: Temporary (interim) water service contracts for surplus project water for irrigation or M&I use to provide up to 10,000 acre-feet of water annually for terms up to 5 years; long-term contracts for similar service for up to 1,000 acre-feet of water annually.

2. Weber Basin Water Conservancy District, Weber Basin Project, Utah: Operation agreement to restore Arthur V. Watkins Dam to original elevation.

3. Animas-La Plata Conservancy District, Animas-La Plata Project, Colorado: Repayment contract; 9,200 acre-feet per year for M&I use; 72,200 acre-feet per year for irrigation. Contract terms dependent upon final non-Federal up-front cost sharing agreement.

4. La Plata Conservancy District, Animas-La Plata Project, New Mexico: Repayment contract; 16,000 acre-feet per year for irrigation. Contract terms dependent upon final non-Federal up-front cost sharing agreement.

5. City of Farmington, Animas-La Plata Project, New Mexico: M&I repayment contract; 19,700 acre-feet per year. Contract terms dependent upon final non-Federal up-front cost sharing agreement.

6. City of Aztec, Animas-La Plata Project, New Mexico: M&I repayment contract; 5,800 acre-feet per year. Contract terms dependent upon final non-Federal up-front cost sharing agreement.

7. City of Bloomfield, Animas-La Plata Project, New Mexico: M&I repayment contract; 5,300 acre-feet per year. Contract terms dependent upon final non-Federal up-front cost sharing agreement.

8. Central Utah Project, Bonneville Unit, Utah: Supplemental M&I repayment contract for 94,100 acre-feet per year; FR notice published August 22, 1980, Vol. 45, No. 165, page 58199. Special election on contract passed November 19, 1985, and contract executed on November 26, 1985. Congressional review of 100 days completed on March 21, 1986.

9. Southern Ute Indian Tribe, Animas-La Plata Project, Colorado: Repayment contract for 26,500 acre-feet per year for M&I use and 3,300 acre-feet per year for irrigation use. Contract terms dependent upon final non-Federal up-front cost sharing agreement.

10. Grand Valley Project, Colorado: Contract to continue operation and

maintenance of Grand Valley powerplant.

11. State of Wyoming, Seedskaede Project, Wyoming: One contract for repayment of reimbursable cost associated with the modification of Fontenelle Dam pursuant to the Reclamation Safety of Dams Amendments of 1984 (P.L. 98-404); one amendatory repayment contract to increase existing repayment contract ceiling.

12. Miscellaneous water users, Upper Colorado Region, Blue Mesa Reservoir, Colorado River Storage Project Colorado: M&I uses, 20 acre-feet and less for 20-40 years.

13. ID's and similar water user entities: Amendatory repayment and water service contracts; purpose is to conform to the Reclamation Reform Act of 1982 (P.L. 97-293).

14. Bonneville Unit, Central Utah Project, Utah: Two repayment contracts for repayment of Jordan Aqueduct with Salt Lake County Water Conservancy District and the Metropolitan Water District. Contracts expected to be executed during May 1986.

15. Upper Yampa Water Conservancy District Colorado: Repayment contract to repay a loan of \$4,478,000 for the construction of Stagecoach Dam and Reservoir pursuant to the SRPA of 1956, P.L. 84-984, as amended.

16. Ute Mountain Ute Tribe, Animas-La Plata Project, Colorado and New Mexico: Repayment contract; 6,000 acre-feet per year for M&I use in Colorado; 25,800 acre-feet per year for irrigation use in Colorado; 800 acre-feet per year for irrigation use in New Mexico.

17. Navajo Indian Tribe, New Mexico: Repayment contract for 7,600 acre-feet per year for M&I use.

18. Ute Mountain Ute Indian Tribe, Dolores Project, Colorado: Repayment contract for 1,000 acre-feet per year for M&I use and 22,900 acre-feet per year for irrigation.

19. Weber River Water Users, Weber River Project, Utah: Emergency contract to replace needle valves.

Lower Colorado Region: Bureau of Reclamation, P.O. Box 427 (Nevada Highway and Park Street), Boulder City, NV 89005, telephone (702) 293-8536

1. Salt River Project, and cities of Chandler, Glendale, Mesa, Phoenix, Scottsdale, and Tempe—Plan 6, CAP, Arizona; contract for purchase by the above cities of the entire yield from additional conservation storage capacity of Cliff Dam and modified Roosevelt Dam and establishment of operating criteria for those facilities.

2. Agricultural and M&I water users, CAP, Arizona: Water service

subcontracts; a certain percent of available supply for irrigation entities and up to 640,000 acre-feet per year for M&I use.

3. Southern Arizona Water Rights Settlement Act: Sale of up to 28,200 acre-feet per year of municipal effluent to the city of Tucson, Arizona.

4. Contracts with five agricultural entities located near the Colorado River in Arizona, Boulder Canyon Project: Water service contracts for up to 1,920 acre-feet per year total.

5. Gila River Indian Community, CAP, Arizona: Water service contract; contract for delivery of up to 173,100 acre-feet per year.

6. Sunset Mobile Home Park, Boulder Canyon Project, Arizona: M&I water service contract for delivery of 30 acre-feet of water per year pursuant to recommendation of Arizona Department of Water Resources.

7. ID's and similar water user entities: Amendatory repayment and water service contracts; purpose is to conform to the Reclamation Reform Act of 1982 (P.L. 97-293).

8. Eastern Municipal Water District, Hemet, California: Repayment contract for \$8.3 million SRPA escalation loan.

9. Indian and non-Indian agricultural and M&I water users, CAP, Arizona: Contracts for repayment of Federal expenditures for construction of distribution systems.

10. Gila River Indian Community, Arizona: Contract for the repayment of a \$6,574,000 SRPA loan.

11. Water delivery contracts with the State of Arizona, the Bureau of Land Management, and several private entities which are in the process of being organized for a yet undetermined amount of Colorado River water for M&I use. The purpose of these contracts is to afford legal status to various noncontractual water users within the State of Arizona.

12. Contract with the State of Arizona for a yet undetermined amount of Colorado River water for agricultural use and related purposes on State-owned land.

13. Contract with 16 individual holders of miscellaneous present perfected rights to Colorado River water totaling 66 acre-feet, pursuant to the January 9, 1979, Supplemental Decree of the United States Supreme Court (439 U.S. 419) in *Arizona v. California*.

14. County of San Bernardino, San Bernardino, California: Repayment contract for \$13.4 million SRPA loan.

Southwest Region: Bureau of Reclamation, Commerce Building, Suite 201, 714 South Tyler Amarillo, TX 79101, telephone (806) 378-5430

1. Fort Cobb Reservoir Master Conservancy District, Washita Basin Project, Oklahoma: Amendatory repayment contract to convert 4,700 acre-feet of irrigation water to M&I use.
2. Foss Reservoir Master Conservancy District, Washita Basin Project, Oklahoma: Amendatory repayment contract for remedial work.
3. Vermejo Conservancy District, Vermejo Project, New Mexico: Amendatory contract to relieve the district of further repayment obligation, presently exceeding \$2 million, pursuant to Public Law 96-550.

4. Hidalgo County Irrigation District No. 1, Lower Rio Grande Valley, Texas: Supplemental SRPA loan contract for approximately \$13,205,000. The contracting process is dependent upon final approval of the supplemental loan report.

5. ID's and similar water user entities: Amendatory repayment and water service contracts; Purpose is to conform with the Reclamation Reform Act of 1982 (P.L. 97-293).

6. Tom Green Water Improvement District, San Angelo Project, Texas: Amendatory contract to defer payment of construction charges associated with the 1985 crop year due to the nonavailability of irrigation water for use by the District's water users.

7. Rio Grande Water Conservation District, Alamosa, Colorado: Contract for the district to be the vender of the Closed Basin Division, San Luis Valley Project, surplus water if available.

Missouri Basin Region: Bureau of Reclamation, P.O. Box 2553, Federal Building, 316 North 26th Street, Billings, Montana 59103, Telephone (406) 657-6413

1. Individual irrigators, M&I, and miscellaneous water users, Missouri Basin Region, Montana, Wyoming, North Dakota, South Dakota, Colorado, Kansas, and Nebraska: Temporary (interim) water service contracts for surplus project water for irrigation or M&I use to provide up to 10,000 acre-feet of water annually for terms up to 5 years; long-term contracts for similar service for up to 1,000 acre-feet of water annually.

2. Nokota Company, Lake Sakakawea, P-SMBP, North Dakota: Industrial water service contract; up to 16,800 acre-feet of water annually; FR notice published May 5, 1982, Vol. 47, Page 19472.

3. Fort Shaw ID, Sun River Project, Montana: R&B loan repayment contract; up to \$1.5 million.

4. ID's and similar water user entities: Amendatory repayment and water service contracts; purpose is to conform to the Reclamation Reform Act of 1982 (P.L. 97-293).

5. Oahe Unit, P-SMBP, South Dakota: Cancellation of master contract and participating and security contracts in accordance with P.L. 97-273 with South Dakota Board of Water and Natural Resources and Spink County and West Brown Irrigation Districts.

6. Owl Creek ID, Owl Creek Unit, P-SMBP, Wyoming: Amendatory water service contract to reflect water supply benefits being received from Anchor Reservoir.

7. Almena ID No. 5, Almena Unit, P-SMBP, Kansas: Deferment of repayment obligation for 1985.

8. Purgatoire River Water Conservancy District, Trinidad Project, Colorado: Amendatory repayment contract for extension of the development period and revision of the repayment determination methodology.

9. Corn Creek ID and Earl Michael, Glendo Unit, P-SMBP, Wyoming, and Nebraska: Irrigation contracts.

10. Webster ID No. 4, Webster Unit, P-SMBP, Kansas: Irrigation water service and repayment contract amendment to adjust payment due to reduced water supply, \$970,816 outstanding.

11. Green Mountain Reservoir, Colorado-Big Thompson Project: Proposed contract negotiations for sale of water from the marketable yield to water users within the Colorado River drainage of western Colorado.

12. Ruedi Reservoir, Fryingpan-Arkansas Project, Colorado: Second round of proposed contract negotiations for sale of water from the regulatory capacity of Ruedi Reservoir.

13. Lower South Platte Water Conservancy District, Central Colorado Water Conservancy District, and the Colorado Water Resources and Power Development Authority, P-SMBP, Narrows Unit, Colorado: Water service contracts for repayment of costs and cost sharing agreement.

14. Kirwin ID No. 1, Kirwin Unit, P-SMBP, Kansas: Deferment of repayment obligation for 1986.

15. Kirwin ID No. 1, Kirwin Unit, P-SMBP, Kansas: Irrigation water service and repayment contract and Emergency Drought Act loan contract amendment to adjustment payments due to reduced water supply, \$866,231 outstanding.

16. Cedar Bluff ID No. 6, Cedar Bluff Unit, P-SMBP, Kansas: Deferment of repayment obligation for 1985 and 1986.

17. Webster ID No. 4, Webster Unit, P-SMBP, Kansas: Deferment of repayment obligation for 1986.

18. Fryingpan-Arkansas Project, Colorado: East Slope Storage system consisting of Pueblo, Twin Lakes, and Turquoise Reservoir; Contract negotiations for long-term storage contracts.

19. Twin Loups Reclamation District, P-SMBP: D&MC contract for correction of initial construction deficiencies and monitoring during initial filling, priming and puddling activities of the project. Proposed contract is to be \$500,000.

20. Farwell Irrigation District, Nebraska: D&MC contract for the correction of drainage and seep area on the project.

21. Colorado-Big Thompson Project, Colorado: Contract amendment and supplement to transfer certain joint use facilities to the Northern Colorado Water Conservancy District for operation and maintenance.

22. Almena Irrigation District No. 5, Almena Unit, Pick-Sloan Missouri Basin Program, Kansas: Irrigation water service and repayment contract amendment to adjust payment due to reduced water supply, \$576,090 outstanding.

23. Cedar Bluff Irrigation District No. 6, Cedar Bluff Unit, Pick-Sloan Missouri Basin Program, Kansas: Irrigation water service and repayment contract amendment to adjust payments due to reduced water supply, \$621,078 outstanding.

24. Twin Loups Irrigation District, Pick-Sloan Missouri Basin Program: Amend repayment contract to include increased project construction cost and adjust payments to full current payment capacity.

Opportunity for public participation and receipt of comments on contract proposals will be facilitated by adherence to the following procedures:

(1) Only persons authorized to act on behalf of the contracting entities may negotiate the terms and conditions of a specific contract proposal.

(2) Advance notice of meetings or hearings will be furnished to those parties that have made a timely written request for such notice to the appropriate regional or project office of the Bureau of Reclamation.

(3) All written correspondence regarding proposed contracts will be made available to the general public pursuant to the terms and procedures of the Freedom of Information Act (80 Stat. 383), as amended.

(4) Written comments on a proposed contract or contract action must be submitted to the appropriate Bureau of

Reclamation officials at locations and within time limits set forth in the advance public notices.

(5) All written comments received and testimony presented at any public hearings will be reviewed and summarized by the appropriate regional office for use by the contract approving authority.

(6) Copies of specific proposed contracts may be obtained from the appropriate Regional Director or his designated public contact as they become available for review and comment.

(7) In the event modifications are made in the form of proposed contract, the appropriate Regional Director shall determine whether republication of the notice and/or extension of the 60-day comment period is necessary.

Factors which shall be considered in making such a determination shall include, but are not limited to: (i) The significance of the impact(s) of the modification and (ii) the public interest which has been expressed over the course of the negotiations. At a minimum, the Regional Director shall furnish revised contracts to all parties who requested the contract in response to the initial public notice.

Dated: April 23, 1986.

C. Dale Duvall,

Commissioner of Reclamation.

[FR Doc. 86-9534 Filed 4-28-86; 8:45 am]

BILLING CODE 4310-09-M

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before April 19, 1986. Pursuant to § 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, U.S. Department of the Interior, Washington, DC 20243. Written comments should be submitted by May 14, 1986.

Carol D. Shull,

Chief of Registration, National Register.

ALABAMA

Limestone County

Athens, *Houston, Governor George Smith, House*, 101 N. Houston St.

Mobile County

Mobile, *Paterson House*, 1673 Government St.

Tuscaloosa County

Tuscaloosa, *Downtown Tuscaloosa Historic District*, Roughly bounded by Fourth St., Twenty-second Ave., Seventh St., and Twenty-fifth Ave.

HAWAII

Hawaii County

Bobcat Trail Habitation Cave (50-10-30-5004)

LOUISIANA

Orleans Parish

New Orleans, *National American Bank Building*, 200 Carondelet
New Orleans, *Walker House*, 1912 Saint Charles

Ouachita Parish

Monroe, *Bright—Lamkin—Easterling House*, 918 Jackson St.
Monroe, *Cooley, G. B., House*, 1011 S. Grand St.

Rapides Parish

Pineville, *Alexandria Hall—Louisiana College*, Louisiana College
Pineville, *Central Louisiana State Hospital Dairy Barn*, US 165

Richland Parish

Alto, *Vickers House*, LA 15

St. James Parish

Vacherie vicinity, *Desire Plantation House*, LA 644

MASSACHUSETTS

Bristol County

Bristol, *Millicent Library*, 45 Center St.

Middlesex County

Lowell, *Flagg—Coburn House*, 722 E. Merrimack St.

Somerville, *United States Post Office—Somerville Main*, 237 Washington St.
Waltham, *United States Post Office—Waltham Main*, 774 Main St.

Norfolk County

Weymouth, *United States Post Office—Weymouth Landing*, 103 Washington St.

MISSOURI

Cooper County

Pilot Grove, *Mount Nebo Baptist Church*, SR E

St. Louis (Independent City)

Clemens House—Columbia Brewery District (Boundary Increase), Roughly bounded by N. Twenty-first, N. Twentieth, St. Louis Ave., N. Florissant, Monroe, N. Eighteenth, and Maiden Ln.

NEBRASKA

Lancaster County

Lincoln, *Phi Delta Theta Fraternity House*, 1545 R St.

OHIO

Allen County

Lima, *Barr Hotel (Lima MRA)*, 201-209 E. High St. and 200-218 N. Union St.

Columbiana County

Wellsville, *Episcopal Church of the Ascension and Manse*, 1101 and 1109 Eleventh St.

Cyahoga County

Cleveland Heights, *Heights Rockefeller Building*, 3091 Mayfield Rd.
Lakewood, *Detroit—Warren Building*, 14801-14813 Detroit Ave.

Perry County

Somerset vicinity, *Saint Joseph's Catholic Church*, 5757 OH 383

Pickaway County

Circleville, *Saint Philip's Episcopal Church*, 129 W. Mound St.

Sandusky County

Woodville, *Layman, Christopher C., Law Office*, 212 W. First St.

WASHINGTON

Clark County

Battle Ground vicinity, *Lewisville Park*, 26411 NE Lewisville Hwy.

Vancouver, *Anderson—Beletski Prune Farm*, 4119 NW McCann Rd.

Cowlitz County

Castle Rock vicinity, *Laughlin Round Barn*, 8249 Barnes Dr.

Lewis County

Chehalis, *Palmer, O.K., House*, 673 NW Pennsylvania

Whitman County

Oakesdale vicinity, *Hanford, Edwin H., House*, N of WA 271

[FR Doc. 86-9574 Filed 4-28-86; 8:45 am]

BILLING CODE 4310-70-M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB-105 (Sub.-No. 8)]

Western Pacific Railroad Co., Findings on Abandonment and Discontinuance of Service in San Francisco County, CA

The Commission has found that the public convenience and necessity permit the Western Pacific Railroad Company: (1) To abandon its 4.60-mile line of railroad from milepost 0.23 to the end of the line at milepost 0.92 and from milepost 1.26 to the end of the line at milepost 2.24; from E.S. 0+00 at approximately Illinois and 25th Streets along Army Street to Loomis Street to the end of the line past Helena Street at E.S. 108+83.1 and from E.S. 0+00 at Loomis Street near Marin Street to the end of the line at E.S. 35+58.8 at Missouri Street and from E.S. 0+00 at Barneveld Avenue to the end of the line at E.S. 10+35.8 between Upland and

Toland Streets on McKinnon Avenue; and (2) to discontinue service over trackage (a) of the Atchison, Topeka, and Santa Fe Railway Company (ATSF) between E.S. 11+65± at approximately 25th and Minnesota Streets and E.S. 61+90.2 at approximately Pennsylvania and Mariposa Streets (approximately 0.95 miles); and (b) jointly owned ATSF/ and the Southern Pacific Transportation Company track between E.S. 61+90.2 at approximately Pennsylvania and Mariposa Streets and E.S. 93+20± at approximately 16th and Rhode Island Streets (approximately 0.59 miles).

A certificate will be issued authorizing this abandonment and discontinuance of service unless within 15 days after this publication the Commission also finds that: (1) A financially responsible person has offered financial assistance (through subsidy or purchase) to enable the rail service to be continued; and (2) it is likely that the assistance would fully compensate the railroad.

Any financial assistance offer must be filed with the Commission and the applicant no later than 10 days from publication of this Notice. The following notation must be typed in bold face on the lower left-hand corner of the envelope containing the offer: "Rail Section, AB-OFA." Any offer previously

made must be remade within this 10-day period.

Information and procedures regarding financial assistance for continued rail service are contained in 49 U.S.C. 10905 and 49 CFR 1152.27.

James H. Bayne,
Secretary.

[FR Doc. 86-9611 Filed 4-28-86; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker, Adjustment Assistance; Atlas Chain Co., et al.

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether

the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than May 9, 1986.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than May 9, 1986.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 601 D Street, NW., Washington, DC 20213.

Signed at Washington, DC, this 21st day of April 1986.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance

APPENDIX

Petitioner Union and workers of former workers of—	Location	Date received	Date of petition	Petition No.	Articles produced
Atlas Chain Co. (UAW)	West Pittston, PA	4-10-86	4-2-86	TA-W-17,353	Roller chains.
Bakken Industries, Inc. (ILGWU)	Godfrey, Ill.	4-14-86	4-9-86	TA-W-17,354	Ladies sportswear.
Burlington Northern Railroad, Inc. (IBEW)	Superior, WI	4-14-86	4-4-85	TA-W-17,355	Haul taconite pellets.
Courtland Novelty Co., Inc. (ILGWU)	E. Stroudsburg, PA	4-14-86	4-11-86	TA-W-17,356	Pleating, tucking stitching.
Cyclops Corp. Cytemp Division (Workers)	Titusville, PA	4-14-86	4-1-86	TA-W-17,357	High performance specialty steel products.
Diamond Tool and Horseshoe Co. (DALU)	Duluth, MN	4-11-86	3-28-86	TA-W-17,358	Adjustable wrenches.
Herman Iskin & Co., Inc. (ACTWU)	Telford, PA	4-14-86	4-8-86	TA-W-17,359	Childrens play clothes.
Molycorp, Inc./Questa Div. (OCAW)	Questa, NM	4-19-86	4-4-86	TA-W-17,360	Molybdenum.
Nortech Inc. (Workers)	Bemidji, MN	4-11-86	3-13-86	TA-W-17,361	Wire products.
Pascoe Building Systems (Workers)	Wathens, KS	4-14-86	3-31-86	TA-W-17,362	Pre-engineered metal buildings.
Patterson Drilling Co. (Workers)	Snyder, TX	4-11-86	3-30-86	TA-W-17,363	Drilling operations for crude oil.
Period Drilling (Workers)	Dallas, TX	4-14-86	4-9-86	TA-W-17,364	Drilling Contractors.
Richer International, Inc./Ultrasound & Nuclear Div. (Company)	Northford, CT	4-10-87	4-7-86	TA-W-17,365	Nuclear medicine systems/ultrasound system.
Polytex (Workers)	Bayonne, NJ	4-14-86	3-25-86	TA-W-17,366	Laminating vinyl.
Ralph Edwards Sportswear Co. (ACTWU)	Girardeau, MO	4-14-86	4-8-86	TA-W-17,367	Leather wearing apparels.
Sanford Manufacturing (ACTWU)	Wilkes-Barre, PA	4-10-86	4-3-86	TA-W-17,368	Ladies sportswear (tailored slacks).
Transit America, Inc. (UAW)	Philadelphia, PA	4-14-86	4-10-86	TA-W-17,369	Passenger railcars.
Waiser Lock (Workers)	Huntington Beach, CA	4-14-86	4-9-86	TA-W-17,370	Door knobs and deadbolts.
Westland Manufacturing Corp. (ILGWU)	Greensburg, PA	4-14-86	3-24-86	TA-W-17,371	Ladies sportswear.
Weyenberg Shoe Mfg. Co. (UFCW)	Beaver Dam, WI	4-14-86	4-10-86	TA-W-17,372	Men shoes.

[FR Doc. 86-9572 Filed 4-28-86; 8:45 am]

BILLING CODE 4510-30

[TA-W-16,494]

Publix Shirt Corp., Myerstown, PA; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, the Department of

Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on March 14, 1986, applicable to all workers of Publix Shirt Corporation, Myerstown, Pennsylvania. The Notice of Certification was published in the *Federal Register* on March 25, 1986 (51 FR 10285).

On the basis of additional

information, the Office of Trade Adjustment Assistance, reviewed the certification. The additional information from the company revealed that several layoffs occurred after the termination date set in the Department's certification and are still continuing. These workers were involved in winding down the operations and closing the Myerstown plant.

The intent of the certification is to cover all workers at the Myerstown, Pennsylvania plant of the Publix Shirt Corporation who were affected by the decline in the sales or production of men's woven and knit sport shirts related to import competition. The notice, therefore, is amended by providing a new termination date of July 1, 1986.

The amended notice applicable to TA-W-16,494 is hereby issued as follows:

All workers of Publix Shirt Corporation, Myerstown, Pennsylvania who became totally or partially separated from employment on or after September 18, 1984 and before July 1, 1986 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 17th day of April 1986.

James D. Van Erden,

Acting Deputy Director, Office of Program Management, UIS.

[FR Doc. 86-9573 Filed 4-28-86; 8:45 am]

BILLING CODE 4510-30-M

Notice of Determinations Regarding Eligibility to Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for adjustment assistance issued during the period April 14, 1986-April 18, 1986.

In order for an affirmative determination to be made and a certification of eligibility to apply for adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the Act must be met.

(1) that a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) that sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) that increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations

In each of the following cases the investigation revealed that criterion (3)

has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA-W-16,534; ITW Paktron, Lynchburg, VA

TA-W-16,625; Pettibone Tiffin Corp., Tiffin, OH

TA-W-16,581; Homestead Woolen Mills, Inc., West Swanzey, NH

TA-W-16,552; Connor Forest Industries, Inc., Laona, WI

TA-W-16,553; Driver-Harris Co., Harrison, NJ

In the following cases the investigation revealed that criterion (3) has not been met for the reasons specified.

TA-W-16,608; Valley Mould Division of Microdot, Cleveland, OH

Aggregate U.S. imports of ingot moulds are negligible.

TA-W-16,603; Keebler Co., Philadelphia, PA

Separations from the subject firm resulted from a transfer of production to other domestic facilities.

TA-W-16,635; General Electric Co., Mentor, OH

Produces components and parts used by other GE plants producing lamps. None of these other production facilities are under current certification, therefore, they do not independently meet the statutory criteria for certification.

Affirmative Determinations

TA-W-16,556; Dresser Industries, Inc., Marion Power Shovel Division, Marion, OH, Foundry

A certification was issued covering all workers of the Marion Power Shovel Division, Marion, OH, Foundry separated on or after September 20, 1984.

TA-W-16,556A; Dresser Industries, Marion Power Shovel Division, Marion, OH, Manufacturing Segment

A certification was issued covering all workers of the Marion Power Shovel Division, Marion, OH, Manufacturing Segment separated on or after September 20, 1984.

TA-W-16,488; The Crosby Group, Inc., Laughlin Plant, Portland, ME

A certification was issued covering all workers of the firm separated on or after September 12, 1984.

TA-W-16,545; Reynolds Metals Co., San Patricio Plant, Corpus Christi, TX

A certification was issued covering all workers of the firm separated on or after

October 4, 1984.

TA-W-16,651; American Mfg. Co., Inc., Honesdale, PA

A certification was issued covering all workers of the firm separated on or after November 12, 1984.

TA-W-16,653; E.W. Ferry Screw Products, Inc., Brook Park, OH

A certification was issued covering all workers of the firm separated on or after November 14, 1984.

TA-W-16,643; Armstrong Rubber Co., Natchez, MS

A certification was issued covering all workers of the firm separated on or after November 4, 1984.

TA-W-16,598; Weyerhaeuser Co., Shakenill Div., Longview, WA

A certification was issued covering all workers of the firm separated on or after September 24, 1984.

TA-W-16,582; Insley Manufacturing Corp., Indianapolis, IN

A certification was issued covering all workers of the firm separated on or after July 1, 1985 and before March 31, 1986.

TA-W-16,590; LTV Steel Co., South Chicago Works, Chicago, IL

A certification was issued covering all workers of the firm separated on or after October 1, 1984.

TA-W-16,565; Terry Footwear, Paterson, NJ

A certification was issued covering all workers of the firm separated on or after October 10, 1984.

TA-W-16,661; A.C. Lawrence Leather Co., Inc., South Paris, ME

A certification was issued covering all workers of the firm separated on or after November 6, 1984.

TA-W-16,602; Globe Metallurgical, Inc., Beverly, OH

A certification was issued covering all workers of the firm separated on or after January 1, 1985.

TA-W-16,570; H. Margolin Co., Inc., Fitchburg, MA

A certification was issued covering all workers of the firm separated on or after January 1, 1985.

TA-W-16,691; Misty Mfg. Co., Baltimore, MD

A certification was issued covering all workers of the firm separated on or after October 15, 1984 and before December 27, 1985.

TA-W-16,520; Centralab, Inc., Fort Dodge, IA

A certification was issued covering all workers related to the production of potentiometers separated on or after September 27, 1984.

TA-W-16,544; Powell Enterprises, Inc.,
McCleary, WA

A certification was issued covering all workers of the firm separated on or after September 24, 1984 and before September 30, 1985.

I hereby certify that the aforementioned determinations were issued during the period April 14, 1986—April 18, 1986. Copies of these determinations are available for inspection in Room 6434, U.S. Department of Labor, 601 D Street, NW, Washington, DC during normal business hours or will be mailed to persons who write to the above address.

Dated: April 22, 1986.

Marvin M. Fooks,
Director, Office of Trade Adjustment
Assistance.

[FR Doc. 86-9570 Filed 4-28-86; 8:45 am]

BILLING CODE 4510-30-M

Occupational Safety and Health Administration

State Plans; Wyoming State Standards; Approval

1. Background

Part 1953 of Title 29, Code of Federal Regulations, prescribes procedures under section 18 of the Occupational Safety and Health Act of 1970 (hereinafter called the Act) by which the Regional Administrator for Occupational Safety and Health (hereinafter called the Regional Administrator) under delegation of authority from the Assistant Secretary of Labor for Occupational Safety and Health (hereinafter called the Assistant Secretary), (29 CFR 1953.4) will review and approve standards promulgated pursuant to a State Plan which has been approved in accordance with section 18(c) of the Act and 29 CFR Part 1902. On May 3, 1974, notice was published in the Federal Register (39 FR 15394) of the approval of the Wyoming Plan and adoption of Subpart BB to Part 1952 containing the decision.

The Plan provides for the adoption of Federal Standards as State Standards by:

1. Advisory Committee coordination.
2. Publication in newspapers of general/major circulation throughout the state, with a 45-day waiting period for public comment and hearings. This is pursuant to the Wyoming Administrative Procedures Act 1977, Section 16-3-103(a)(1).
3. Adoption by the Wyoming Health and Safety Commission.
4. Review and approval by the Governor.

5. Filing with Secretary of State and designation of an effective date.

OSHA regulations (29 CFR 1953.22 and .23) require that States respond to the adoption of new or revised permanent Federal standards by State promulgation of comparable standards within six months of OSHA publication in the Federal Register, and within 30 days for emergency temporary standards. Although adopted State standards or revisions to standards must be submitted for OSHA review and approval under procedures set forth in Part 1953, they are enforceable by the state prior to federal review and approval. By letter dated November 13, 1985, from Donald D. Owsley, Administrator, Wyoming Occupational Health and Safety Division, to Byron R. Chadwick, OSHA Regional Administrator, the State submitted rules and regulations in response to Federal OSHA's General Industry Standards (29 CFR 1910.20: Access to Employee Exposure and Medical Records, 45 FR 35212, Friday, May 23, 1980).

The above adoptions of Federal standards have been incorporated in the State Plan, and are contained in the Wyoming Occupational Health and Safety Rules and Regulations for General Industry, as required by Wyoming Statute 1977, Section 27-11-105(a)(viii).

State standards for 29 CFR Part 1910: Access to Employee Exposure and Medical Records were adopted by the Health and Safety Commission of Wyoming on November 9, 1984 (effective January 3, 1985) pursuant to Wyoming statute 1977, Section 27-11-105. The State standards on Access to Employee Exposure and Medical Records are substantially identical to the Federal 29 CFR 1910.20 except for the following minor differences: (a) Paragraph numbering; (b) use of specific dates rather than "latest printed edition" when referring to publication dates; (c) information necessary in letter for authorizing release of information is placed in the "Definitions" Section of their standard rather than in an appendix; (d) access to employee medical records are provided in Wyoming without restrictions placed due to physical or mental condition of the employee.

2. Decision

The above State Standards have been reviewed and compared with the relevant Federal Standards. OSHA has determined that the State Standards are at least as effective as the comparable Federal Standards, as required by Section 18(c)(2) of the Act. OSHA has also determined that the differences

between the State and Federal Standards are minimal and that the Standards are thus substantially identical. OSHA therefore approves these standards; however, the right to reconsider this approval is reserved should substantial objections be submitted to the Assistant Secretary.

3. Location of Supplement for Inspection and Copying

A copy of the standards supplements, along with the approved plan, may be inspected and copied during normal business hours at the following locations: Office of the Regional Administrator, Room 1576, Federal Office Building, 1961 Stout Street, Denver, Colorado 80294; the Occupational Health and Safety Department, 604 East 25th Street, Cheyenne, Wyoming 82002; and the Office of State Programs, Room N-3700, 200 Constitution Avenue, NW., Washington, DC 20210.

4. Public Participation

Under 29 CFR 1953.2(c), the Assistant Secretary may prescribe alternative procedures to expedite the review process or for any other good cause which may be consistent with applicable laws. The Assistant Secretary finds that good cause exists for not publishing the supplements to the Wyoming State Plan as a proposed change and making the Regional Administrator's approval effective upon publication for the following reason(s):

The standards were adopted in accordance with the procedural requirements of State law which included public comment and further public participation would be repetitious. This decision is effective April 29, 1986.

(Sec. 18, Pub. L. 596, 84 Stat. 1608 (29 U.S.C. 667).)

Signed at Denver, Colorado, this 10th day of March, 1986.

Byron R. Chadwick,
Regional Administrator.

[FR Doc. 86-9571 Filed 4-28-86; 8:45 am]

BILLING CODE 4510-26-M

Pension and Welfare Benefits Administration

[Prohibited Transaction Exemption 86-52; Exemption Application No. D-6351 et al.]

Grant of Individual Exemptions; Johnson & Swanson Cash or Deferred Profit Sharing Plan et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of individual exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1954 (the Code).

Notices were published in the **Federal Register** of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, D.C. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of pendency were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975), and based upon the entire record, the Department makes the following findings:

- (a) The exemptions are administratively feasible;
- (b) They are in the interests of the plans and their participants and beneficiaries; and
- (c) They are protective of the rights of the participants and beneficiaries of the plans.

Johnson & Swanson Cash or Deferred Profit Sharing Plan (the Plan) Located in Dallas, Texas

[Prohibited Transaction Exemption 86-52; Exemption Application No. D-6351]

Exemption

The restrictions of section 406(a) and 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to (1) the purchases, from time to time during a five-year period, for participant-directed accounts (the Directed Accounts) under the Plan from such participants (the Requesting Individuals) of notes or undivided interests in notes (collectively, the Notes) evidencing loans made by the Requesting Individuals to Johnson & Swanson, in which the Requesting Individuals are either general partners or officers and employees, provided the purchase price is not more than the fair market value of the Notes on the date of each purchase; and (2) the continued holding for the Directed Accounts of such Notes until they are fully paid, provided the terms of such transactions are at least as favorable to the Directed Accounts as the terms the Directed Accounts could obtain in similar transactions with an unrelated party.

Temporary Nature of Exemption

This exemption is temporary and will expire five years after the date of grant with respect to the purchase of any Note. Notes purchased during said five-year period may be held for the Directed Accounts until such Notes are fully paid. Should the applicants wish to continue the purchase transactions after the five-year period has expired, they may submit another application for exemption.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on March 14, 1986 at 50 FR 8912.

For Further Information Contact: Mrs. Miriam Freund of the Department, telephone (202) 523-8194. (This is not a toll-free number.)

John R. Johnson, P.C. Cash or Deferred Profit Sharing Plan (the Plan) Located in Dallas, Texas

[Prohibited Transaction Exemption 86-53; Exemption Application No. D-6361]

Exemption

The sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A)

through (E) of the Code, shall not apply to (1) the purchases, from time to time during a five-year period, by the Plan from John R. Johnson, P.C. (the Employer) of notes or undivided interests in notes (collectively, the Notes) evidencing loans made by the Employer to Johnson & Swanson, in which the Employer is general partner, provided the purchase price is not more than the fair market value of Notes on the date of each purchase; and (2) the continued holding by the Plan of such Notes until they are fully paid, provided the terms of such transaction are at least as favorable to the Plan as the terms it could obtain in similar transactions with an unrelated party.

Because Mr. John R. Johnson is the sole owner of the Employer and the sole participant in the Plan, the Plan is subject to Title II of the Act only, and is not subject to Title I (see 29 CFR § 2510.3-3 (b) and (c)).

Temporary Nature of Exemption

This exemption is temporary and will expire five years after the date of grant with respect to the purchase of any Note. Notes purchased during said five-year period may be held by the Plan until such Notes are fully paid. Should the applicant wish to continue the purchase transactions after the five-year period has expired, he may submit another application for exemption.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on March 14, 1986 at 50 FR 8914.

For Further Information Contact: Mrs. Miriam Freund, of the Department, telephone (202) 523-8194. (This is not a toll-free number.)

Ernest E. Figari, Jr., P.C. Cash or Deferred Profit Sharing Plan (the Plan) Located in Dallas, Texas

[Prohibited Transaction Exemption 86-54; Exemption Application No. D-6362]

Exemption

The sanctions resulting from the application of section 4975 of the Code, by reason of section 4975 (c)(1) (A) through (E) of the Code, shall not apply to: (1) the purchases, from time to time during a five-year period, by the Plan from Ernest E. Figari, Jr., P.C. (the Employer) of notes or undivided interests in notes (collectively, the Notes) evidencing loans made by the Employer to Johnson & Swanson, in which the Employer is a general partner, provided the purchase price is not more than the fair market value of the Notes

on the date of each purchase; and (2) the continued holding by the Plan of such Notes until they are fully paid, provided the terms of such transactions are at least as favorable to the Plan as the terms it could obtain in similar transactions with an unrelated party.

Because Mr. Ernest E. Figari, Jr. is the sole owner of the Employer and the sole participant in the Plan, the Plan is subject to Title II of the Act only, and is not subject to Title I (see 29 CFR § 2510.3-3 (b) and (c)).

Temporary Nature of Exemption

This exemption is temporary and will expire five years after the date of grant with respect to the purchase of any Note. Notes purchased during said five-year period may be held by the Plan until such Notes are fully paid. Should the applicant wish to continue the purchase transactions after the five-year period has expired, he may submit another application for exemption.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on March 14, 1986 at 50 FR 8916.

For Further Information Contact: Mrs. Miriam Freund of the Department, telephone (202) 523-8194. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an

administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, D.C., this 22nd day of April, 1986.

Elliot I. Daniel,

Assistant Administrator for Regulations and Interpretations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 86-9480 Filed 4-28-86; 8:45 am]

BILLING CODE 4510-29-M

[Application No. D-6251 et al.]

Proposed Exemptions; Martin, Ryan & Andrada Employee Profit Sharing Plan and Trust et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of Proposed Exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1954 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemptions, unless otherwise stated in the Notice of Pendency, within 45 days from the date of publication of this **Federal Register** Notice. Comments and requests for a hearing should state the reasons for the writer's interest in the pending exemption.

ADDRESS: All written comments and requests for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Regulations and Interpretations, Room N-5669, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Attention: Application No. stated in each Notice of Pendency. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N-4677, 200

Constitution Avenue, NW, Washington, DC 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of pendency of the exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of pendency are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

Martin, Ryan & Andrada Employee Profit Sharing Plan and Trust (the Plan) Located in Oakland, California

[Application No. D-6251]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of sections 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to: (1) The proposed loan by the Plan of \$54,000 to Martin, Ryan & Andrada, P.C., the Plan sponsor, under the terms and conditions described in this notice of proposed exemption, provided that such terms and conditions are not less favorable to the Plan than those obtainable by the Plan in an arm's-length transaction with an unrelated

party; and (2) the continuing personal guarantee of the Loan by Joseph D. Ryan, Jr., Gerald P. Martin, Jr., and J. Randal Andrada, parties in interest with respect to the Plan.

Summary of Facts and Representations

1. Martin, Ryan & Andrada, P.C., the Plan sponsor (the Plan Sponsor), is a law firm located in Oakland, California, consisting of eight attorneys.

2. The Plan had approximately \$230,000 in assets as of February, 1985, and had 10 participants as of July 10, 1985. The trustees of the Plan are Gerald P. Martin, Jr. and Joseph D. Ryan, Jr.

3. The Plan proposes to lend \$54,000 (the Loan) to the Plan Sponsor to finance office renovation. The Loan amount is approximately 23.5% of the Plan's assets.

4. The proposed Loan will be repaid in equal monthly installments of interest and principal over a period of sixty (60) months and will accrue interest at a rate of two percent (2%) over the prime rate set by the Bank of America on the date of the Loan. The Loan will be collateralized by a promissory note and security agreement duly effected in accordance with California law. Financing statements will be filed in appropriate state and county offices as required by the Uniform Commercial Code as adopted in California. The Loan will be secured by a first security interest in the accounts receivable of the Plan Sponsor. The applicant represents that the accounts receivable will be maintained at no less than 200% of the outstanding balance of the Loan at all times and will not be otherwise encumbered. The accounts receivable are not conditioned upon future performance by the Plan Sponsor, but are due and payable upon receipt by the Plan Sponsor's clients. The applicant further represents that the financial statements of the Plan Sponsor for the past two years illustrate the ability of the Plan Sponsor to generate the income with which to repay the Loan to the Plan. Finally, the applicant represents that the Loan will be further secured by the personal continuing guarantees of Joseph D. Ryan, Jr., Gerald P. Martin, Jr., and J. Randall Andrada, whose combined net worth exceeds \$700,000.

5. George A. Malloch, Esq. (Mr. Malloch), of the San Francisco Law firm of Kaplan, Russin, Vecchi, Eytan & Collins, has agreed to serve as the independent fiduciary for the Plan with respect to the Loan. Mr. Malloch represents that he is qualified to serve in this capacity by virtue of his experience as an attorney with practice in business and tax law, and is aware of the duties, responsibilities and liabilities entailed in acting as independent fiduciary with

respect to the Loan. Mr. Malloch further represents that he is not in any way related to the Plan Sponsor, the Plan or any of the principals thereof.

Mr. Malloch states that the proposed transaction is in the best interest of the Plan and its participants and beneficiaries since, in his opinion, the rate of return to the Plan would be in excess of that available to the Plan under other investments and would be one of the better performing assets in the Plan's portfolio. Mr. Malloch further states that the proposed Loan would be adequately secured by the accounts receivable of the Plan Sponsor and by the continuing personal guarantees of Messrs. Ryan, Martin, and Andrada.

Mr. Malloch represents that he reached this opinion after reviewing the Plan's most recent financial statements and the Plan's overall investment portfolio in terms of the Plan's liquidity requirements and the general diversification requirements of Plan assets.

In his capacity as independent fiduciary, Mr. Malloch will receive all Loan payments for the Plan, and will have the authority and responsibility of enforcing the terms of the Loan and accompanying security agreements, including making demand for timely payment, bringing suit or other timely process against the Plan Sponsor in the event of default, and monitoring the performance of the Loan, specifically including, but not limited to, ensuring that the value of the collateral securing the proposed Loan remains at no less than 200% of the outstanding balance of the Loan.

6. In summary, the applicant represents that the proposed transaction meets the statutory criteria under section 408(a) of the Act because: (a) The Loan will be approved, monitored, and enforced by an independent fiduciary; (b) the Loan will be secured by the value of the accounts receivable of the Plan Sponsor, which will at all times be no less than 200% of the outstanding balance of the Loan, and by the continuing personal guarantees of Messrs. Martin, Ryan, and Andrada; (c) the Loan will be for no more than 25% of the Plan's assets; and (d) the Plan's independent fiduciary has determined that the Loan is prudent and in the best interest of the participants and beneficiaries of the Plan.

For Further Information Contact: Joseph L. Roberts III of the Department, telephone (202) 523-8194. (This is not a toll-free number.)

Profit Sharing Plan and Trust Agreement of Oregon Orthopedic Clinic, P.C. (the Plan) Located in Portland, Oregon

[Application No. D-6388]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a), 406(b)(1) and (b)(2) and 407(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply, effective August 1, 1985, to the past and proposed lease of certain real property by the Plan to the Oregon Orthopedic Clinic, P.C. (the Employer), the sponsor of the Plan, provided that such lease has been and will be on terms at least as favorable to the Plan as the Plan could obtain in an arm's-length transaction with an unrelated party.

Effective Date: This exemption, if granted, shall be effective as of August 1, 1985.

Summary of Facts and Representations

1. The Plan is a profit sharing plan with thirteen participants and total assets of \$1,415,975.11 as of December 31, 1985. The Employer is an Oregon professional corporation engaged in the practice of orthopedic medicine. The trustees of the Plan are Raymond A. Case, M.D. and Michael S. Baskin, M.D. (the Trustees), each of whom is an employee and shareholder of the Employer. Among the assets of the Plan is a parcel of real property (the Property) located at 2565 Lovejoy Street in Portland, Oregon. The Plan acquired the Property of December 21, 1973 from a partnership (the Partnership) consisting of the Trustees and Calvin Kiest, M.D., who is also an employee and shareholder of the Employer. The Partnership transferred to the Plan only the land constituting the Property, specifically reserving ownership of the improvements which were on the Property (the Improvements). The Improvements, which are still owned by the Partnership, are leased to the Employer and constitute the Employer's principal place of business. The Partnership commenced leasing the Property back from the Plan on June 1, 1973 under a ten-year lease (the Initial Lease). The Initial Lease pre-dates the Plan's recorded acquisition of title in the Property because the Partnership and the Plan had contracted in early 1973 for

the Plan to acquire the Property from the Partnership, although the deed transferring title was not recorded until December 21, 1973. The Initial Lease was a lease of the land only and specified that the lessee would retain title to all improvements on the land. Commensurate with the Initial Lease, the Partnership commenced to sublease the Property to the Employer. On July 1, 1981, the Employer began making rental payments directly to the Plan and continued for the duration of the Initial Lease to discharge the Partnership's obligations and act in the place of the Partnership as lessee under the Initial Lease. The Initial Lease expired on June 30, 1983 and was renewed between the Plan and the Employer to remain effective through June 30, 1984. The Employer represents that the lease of the Property by the Plan to the Partnership and the Employer continuously since June 1, 1973 satisfied the requirements of section 414(c)(2) of the Act and, therefore, was exempt until June 30, 1984 from the prohibitions of sections 406 and 407 of the Act by virtue of section 414(c)(2) of the Act.¹ In recognition of the expiration on June 30, 1984 of the statutory exemption of section 414(c)(2) of the Act, the Employer and the Plan entered into a new lease (the New Lease) effective July 1, 1984 which amended the terms of the Initial Lease in certain respects intended to facilitate an administrative exemption for the continued lease arrangement past June 30, 1984. The Employer is requesting and exemption for the Plan's lease of the Property to the Employer past June 30, 1984 under the New Lease. For reasons discussed below, the exemption, if granted, will be effective as of August 1, 1985.

2. The New Lease is a triple net lease with an initial term of three years. The interests of the Plan for all purposes under the New Lease are represented by an independent fiduciary, Pacific Western Bank (the Fiduciary) in Portland, Oregon, which represents that it is independent of and unrelated to the Employer and that it has substantial fiduciary experience under the Act. Rental under the New Lease is to be paid monthly. The New Lease is renewable upon approval of the Fiduciary for successive three-year terms. Rental for any renewal periods under the New Lease will be determined at the outset of such renewal period in an amount no less than the Property's fair market rental value according to an

independent, professional real estate appraiser selected by the Fiduciary, but in no event will the rental be decreased from the rental rate for the immediately preceding term. Under the New Lease the Employer pays all costs of maintenance and repairs, utilities and taxes related to the Property and agrees to indemnify and hold the Plan harmless against all claims which might arise from the Employer's use of the Property. The New Lease requires the Employer to maintain personal and property liability insurance acceptable to the Fiduciary.

3. The Fiduciary obtained an appraisal of the Property from Kirk W. Shaeffer, MAI, SRPA (Shaeffer), an independent professional real estate appraiser with the firm of Real Estate Analysis Northwest in Portland, Oregon. Shaeffer determined that as of August 20, 1985, the Property, exclusive of the Improvements, had a fair market value of \$208,000 to \$232,000, depending on whether the land would be sold for cash or on a contract. Shaeffer, also determined that as of that date the Property had a fair market value of ten percent per annum, on a triple net basis, of its fair market value. Accordingly, the initial rental under the New Lease is set at \$1,934 per month, which represents ten percent per annum of Shaeffer's higher valuation of the Property at \$232,000. As of June 30, 1984, the Plan was receiving rental of \$1,300 per month. The plan began receiving rental under the New Lease in the amount of \$1,934 per month on August 1, 1985. The Employer and the Fiduciary agree that the rental rate according to Shaeffer's appraisal must be applicable retroactively from July 1, 1984 and the Employer has paid the Plan in an amount sufficient to compensate the Plan at the rate of Shaeffer's appraisal retroactively from July 1, 1984 through August 1, 1985. Additionally, with respect to these additional rental amounts, the Employer has paid the Plan interest at a rate determined by the Fiduciary to be appropriate to compensate the Plan for lost interest on such amounts. The Department is not proposing exemptive relief for any period prior to August 1, 1985 because that is the first date subsequent to June 30, 1984 that the Plan began to receive rental under the Lease in an amount no less than the appraised fair market rental value of the Property and was represented by the Fiduciary. The Employer recognizes that the lease of the Property from the Plan for the period commencing June 30, 1984 through August 1, 1985 constituted a prohibited transaction under the Act and the Code for which no exemptive relief is

proposed herein. Accordingly, the Employer represents that it will pay any excise taxes which are applicable under section 4975(a) of the Code by reason of such lease of the Property within 60 days of the publication in the Federal Register of a notice granting the exemption proposed herein.

4. On behalf of the Plan the Fiduciary will monitor the performance of the Employer under the New Lease and represent the Plan in enforcement of its terms and conditions. The New Lease is expressly made subject to the condition that, on behalf of the Plan, an independent fiduciary should determine that the terms of the New Lease are fair to the Plan and that ownership of the Property is a good investment for the Plan. The Fiduciary represents that it has reviewed and evaluated the Plan's lease of the Property to the Employer under the New Lease. Based on such review, the Fiduciary represents that the subject arrangement constitutes a good investment with adequate independent safeguards for the Plan's participants and beneficiaries. The Fiduciary has determined that the terms of the New Lease are equal to, if not better than, terms which the Plan could obtain in an arm's-length transaction with an unrelated party, noting that most triple net leases require the lessor to be responsible for certain elemental maintenance, such as roof and exterior walls, which the New Lease places upon the lessee. The Fiduciary finds that the Property, constituting less than 20 percent of the assets of the Plan, does not represent a diversification problem in view of the Plan's overall investment portfolio. The Fiduciary cites the short duration of the New Lease's initial term and any renewal terms as an additional safeguard for the Plan, assuring the Fiduciary of ongoing opportunities to reassess the New Lease in the context of changing market conditions. The Fiduciary concludes that the Employer's lease of the Property from the Plan under the New Lease is in the best interests of the participants and beneficiaries of the Plan.

5. The Fiduciary has obtained an opinion of counsel on the issue of whether the Plan acquired title to the Improvements on the Property by virtue of the expirations on June 30, 1984 of the Initial Lease and the statutory exemption at section 414(c)(2) of the Act. The Fiduciary represents that according to such opinion of counsel, under prevailing state law applicable to the facts and circumstances of this exemption application, ownership of the Improvements is not deemed to have passed from the Partnership or the

¹ The Department expresses no opinion as to whether the lease of the Property by the Plan to the Partnership and the Employer satisfied the requirements of section 414(c)(2) of the Act.

Employer to the Plan upon the June 30, 1984 expirations of the Initial Lease and the statutory exemption at section 414(c)(2) of the Act.

6. In summary, the applicant represents that the criteria of section 408(a) of the Act have been and will be satisfied in the subject transaction for the following reasons: (1) The interests of the Plan under the New Lease have been and will remain represented by an independent fiduciary which has determined that the subject arrangement is in the best interests and protective of the Plan and on terms which are equal to, if not better than, those which the Plan could obtain in an arm's-length transaction with an unrelated party; (2) The New Lease is a triple net lease of short duration requiring the Fiduciary's approval for renewal; (3) The Plan has been paid the appraised fair market rental value of the Property in back rentals retroactively from July 1, 1984, with interest, and the New Lease ensures the continued payment of the Property's fair market rental value in future rentals; and (4) The Fiduciary will monitor the Employer's performance under the New Lease and will represent the Plan in enforcement of its terms and conditions.

For Further Information Contact: Ronald Willett of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

Gene Fryar, D.D.S., Inc. Employees Assumed Target Benefit Pension Plan (the Plan) Located in Michigan City, Indiana

[Application No. D-6402]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted, the restrictions of sections 406(a) and 406(b) (1) and (2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the purchase on behalf of the individual account in the Plan of Gene Fryar, D.D.S. (Fryar) from Fryar of up to 5,270 shares of common stock of the LaPorte Bancorp., provided (1) the Plan will pay no more than fair market value for the stock at the time of purchase and (2) at the time of purchase the stock will not represent more than 25 percent of the assets of Fryar's individual account in the Plan.

Summary of Facts and Representations

1. The Plan is a target benefit defined contribution plan with six participants and total assets of \$360,984 as of September 30, 1985. The Valley American Bank and Trust Co. of South Bend, Indiana, is the trustee (the Trustee) for the Plan. The Trustee maintains individual accounts for each Plan participant and provides that a participant may direct the investments of his or her account. The Trustee is unrelated to the LaPorte Bancorp. (LaPorte Bancorp.), a bank holding company, and its wholly-owned subsidiary, LaPorte Bank and Trust Company.

2. Fryar is a participant in the Plan as well as the sole shareholder of Gene Fryar, D.D.S., Inc., the sponsor of the Plan. The total assets in Fryar's account on September 30, 1985, equaled \$305,928. Fryar owns 5,270 shares of common stock of LaPorte Bancorp., which represent approximately two percent of the issued and outstanding common stock of LaPorte Bancorp. As of December 31, 1984, LaPorte Bancorp. had total assets of \$7,735,440 and total liabilities of \$3,210,786.

3. Upon request of the applicant, the First of Michigan Corporation (First of Michigan), a broker-dealer located in Valparaiso, Indiana, issued a statement concerning the common stock of the LaPorte Bancorp. on December 9, 1985. The applicant represents that First of Michigan is independent of Fryar and the other parties to the proposed transaction. According to First of Michigan, no market exists for the LaPorte Bancorp. common stock and the most recent quarterly book value per share would represent the fair market value of the stock. The book value of the stock as of June 30, 1985, was \$13.87 per share.

4. At the direction of Fryar, the Trustee proposes to purchase for Fryar's account in the Plan the 5,270 shares of the common stock of LaPorte Bancorp. owned by Fryar. The transaction should account for approximately 23.9 percent of the assets in Fryar's account, based on the most recent available data. The Plan will pay no more than fair market value for the stock at the time of purchase, based on the then most recent quarterly book value of the stock. However, if at the time of purchase the fair market value of the 5,270 shares of the stock exceeds 25 percent of the assets of the individual account of Fryar in the Plan, Fryar's account will purchase proportionately fewer shares. The purchase will be entirely for cash and no fees or commissions will be paid by the Plan in connection with the

transaction. Fryar believes the purchase will be a prudent investment for the account because he anticipates that the stock will appreciate in value, due, in part, to the current diminishing of restrictions on multi-county and multi-state bank holding companies.

5. In summary, the applicant represents that the proposed transaction will satisfy the statutory criteria of section 408(a) of the Act because: (1) The purchase of the stock will be completely for cash and will involve no fees or commissions; (2) the Plan will pay no more than fair market value for the stock at the time of purchase, based on the most recent quarterly book value of the stock; (3) the transaction will involve only Fryar's individual account in the Plan and will represent no more than 25 percent of the assets in that account; and (4) the applicant believes that the stock should appreciate in value, resulting in further growth of the account.

For Further Information Contact: Paul Kelly of the Department, telephone (202) 523-8882. (This is not a toll-free number.)

Watson Clinic Employees Profit Sharing Plan and Watson Clinic Partners Profit Sharing Plan (the Plans) Located in Lakeland, Florida

[Application Nos. D-6422 and D-6423]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted, the restrictions of sections 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to loans of money (the 1986 Loans) from the Plans to Watson Clinic (the Employer), the sponsor of the Plans.

Summary of Facts and Representations

1. The Employer is a general partnership which is engaged in the practice of medicine. The Watson Clinic Employees Profit Sharing Plan (the Employees Plan) is a defined contribution plan with approximately 339 participants and net assets of \$14,811,740 as of January 31, 1985. The Watson Clinic Partners Profit Sharing Plan (the Partners Plan) is a defined contribution plan with approximately 44 participants and net assets of \$2,863,235 on January 31, 1985.

The United Missouri Bank of Kansas City, N.A. serves as the trustee (the Trustee) for the Plans. The Trustee provides no other banking services to the Employer. The Plans are administered by an advisory committee of five persons (three partners in the Employer and two employees of the Employer) appointed by the Employer. The advisory committee has the duty to direct the Trustee, or may appoint an investment counselor to do so, in regard to the investment of Plan assets. The Trustee, however, may decline to follow investment directions of the advisory committee when it believes such directions are not in the best interests of the Plans.

2. The Department granted a previous exemption (Prohibited Transaction Exemption (PTE) 81-65, 46 FR 39246) on July 31, 1981, to permit a loan of money (the 1981 Loan) by the Employees Plan to the Employer. The loan of \$3,000,000 was used for an expansion of a clinic owned by the Employer. The extension of credit was made for a period of 15 years, with equal payments of principal and interest to be made monthly. The 1981 Loan has an interest rate of $\frac{3}{4}$ percent above the prime rate set by the Peoples Bank of Lakeland, Florida, but is not to fall below 10 percent per annum. The 1981 Loan is secured by the accounts receivable of the Employer, with those receivables having at all times during the term of the loan a value in excess of 175 percent of the understanding balance of the loan. As of November 15, 1985, the balance of the 1981 Loan was \$2,807,474.

3. The Employer now proposes to borrow from both Plans an additional amount of money (the 1986 Loans) not to exceed 25 percent of the assets of each Plan. The exact amount of each 1986 Loan will be based on a current valuation of Plan assets prepared by the Trustee at the time the requested exemption is granted. With respect to a 1986 Loan from the Employees Plan, the 25 percent amount will be reduced by the then outstanding balance due on the 1981 Loan obtained under PTE 81-65. The 1986 Loans from each Plan will be used for further expansion of facilities and acquisition of equipment for the Employer's clinic. The loans will be repaid in equal monthly payments of principal and interest over a term of 15 years and will bear an interest rate of $\frac{3}{4}$ percent above the prime rate as determined by the Chase Manhattan Bank. However, in no instance will the interest rate be allowed to go below 10 percent per annum.

4. The Employer will issue promissory

notes to the Plans in return for the 1986 Loans. The loans will be secured by a first security interest in the accounts receivable of the Employer in an amount equal to at least 200 percent of the outstanding loan balances throughout the term of the loans. The receivables represent amounts due to the Employer from its customers for medical services. Security agreements will be signed by the Employer and the Trustee under which the Employer grants to the Trustee on behalf of the Plans a security interest in the accounts receivable of the Employer. The Employer has currently and expects to continue to have sufficient accounts receivable to serve as collateral for the 1981 and 1986 Loans to the extent required under the relevant exemptions. As of August 1, 1985, accounts receivable of the Employer totaled \$9,439,828. Recent data indicate that over 50 percent of the receivables generally are collected within 60 days. If the proposed exemption is approved, and because the applicant agreed in its security agreement for the 1981 Loan not to grant a security interest which may conflict with the security interest granted for that loan, the security agreement entered into under PTE 81-65 will be amended to permit the granting of the security interest in the 1986 Loans as described above. To the extent accounts receivable are required to be used as security for the 1986 Loans, no other security interests will be granted in the accounts receivable of the Employer.

5. The partners of the Employer will personally guarantee the payment of the promissory notes as to both principal and interest. The individual liability of each partner under the guarantee will be limited to his or her pro rata interest in the Employer.

6. The Employer represents that, with respect to these transactions, the Trustee will serve as independent fiduciary and will operate with complete discretion. The Employer represents that the Trustee is independent of the Employer and of any partner of the Employer. The trust department of the Trustee has custodial responsibility for over \$19 billion in assets and is one of the 100 largest departments in the United States in terms of both assets and revenues. The Trustee certifies that the 1986 Loans are an appropriate investment for the Plans and are in the best interests of the Plan participants and that the terms of the loans are commercially reasonable. The Trustee states also that it would be willing, in its separate commercial lending capacity,

to lend to the Employer the same amount of money and on the same terms as those set forth in the application. The Trustee will monitor the level of the collateral used in securing the 1986 Loans and will ensure that the collateral is maintained at no less than 200 percent of the outstanding balance of the loans plus interest due throughout the term of the loans, based on quarterly reports of the Employer. The Trustee certifies that the accounts receivable of the Employer are of high quality and are adequate to provide sufficient security for the 1986 Loans. In the event of any default, the Trustee will have the right to enforce full collection of the loans. The Trustee states that all payments of principal and interest on the 1981 Loan entered into under PTE 81-65 have been received timely and in full and all other terms of the exemption have been complied with.

7. In summary, the applicant represents that the proposed transactions will satisfy the statutory criteria of section 408(a) of the Act because: (1) The Trustee, an independent bank fiduciary, certifies that the transactions are in the best interests of the participants of the Plans and that the terms of the loans are commercially reasonable; (2) the 1986 Loans will be secured by a first security interest in accounts receivable of the Employer; (3) the accounts receivable of the Employer will at all times be maintained at no less than 200 percent of the balance of the 1986 Loans; (4) the partners of the Employer will personally guarantee the payment of the promissory notes as to both principal and interest; (5) all payments under the 1981 Loan from the Employees Plan to the Employer made pursuant to PTE 81-65 have been received timely and in full; (6) in the event of any default, the Trustee will have the right to enforce full collection of the 1986 Loans; (7) the independent bank fiduciary certifies that the accounts receivable of the Employer are adequate to provide sufficient security for the 1986 Loans, and will monitor the level of the collateral on a quarterly basis throughout the term of the loans as well as all terms of the 1986 Loans on behalf of the Plans; and (8) the Trustee represents that it would make the same loans as the 1986 Loans to the Employer on the same terms and conditions.

For Further Information Contact: Paul Kelly of the Department, telephone (202) 523-8882. (This is not a toll-free number.)

McInerney & Dillion, Professional Corporation, Profit Sharing Plan and Trust (the Plan) Located in Oakland, California

[Application No. D-6497]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the proposed loan by the Plan of \$175,000 to McInerney & Dillion, P.C., the Plan sponsor, under the terms and conditions described in this notice of proposed exemption, provided that such terms and conditions are not less favorable to the Plan than those obtainable by the Plan in an arm's-length transaction with an unrelated party.

Summary of Facts and Representations

1. McInerney & Dillion, P.C. the Plan sponsor (the Plan Sponsor), is a law firm located in Oakland, California, consisting of fourteen attorneys.

2. The Plan had approximately \$739,000 in assets as of June, 1985, and had 18 participants as of August 9, 1985. The trustees of the Plan are William H. McInerney and Haradon M. Dillion.

3. The Plan proposes to lend \$175,000 (the Loan) to the Plan Sponsor to finance office renovation. The Loan amount is under 25% of the Plan's assets.

4. The proposed Loan will be repaid in equal monthly installments of interest and principal over a period of sixty (60) months, will accrue interest at a rate of one and one-half percent (1½%) over the prime rate set by the Bank of America on the date of the Loan and will be adjusted quarterly thereafter. The Loan will be collateralized by a promissory note and security agreement duly effected in accordance with California law. Financing statements will be filed in appropriate state and county offices as required by the Uniform Commercial Code as adopted in California. The Loan will be secured by a first security interest in the accounts receivable of the Plan Sponsor. The applicant represents that the accounts receivable will be maintained at no less than 200% of the outstanding balance of the Loan at all times and will not be otherwise encumbered. The accounts receivable are not conditioned upon future

performance by the Plan Sponsor, but are due and payable upon receipt by the Plan Sponsor's clients. Finally, the applicant represents that the financial statements of the Plan Sponsor for the past two years illustrate the ability of the Plan Sponsor to generate the income with which to repay the Loan to the Plan.

5. George A Malloch, Esq. (Mr. Malloch), of the San Francisco Law firm of Kaplan, Russin, Vecchi, Eytan & Collins, has agreed to serve as the independent fiduciary for the Plan with respect to the Loan. Mr. Malloch represents that he is qualified to serve in this capacity by virtue of his experience as an attorney with practice in business and tax law, and is aware of the duties, responsibilities and liabilities entailed in acting as independent fiduciary with respect to the Loan. Mr. Malloch further represents that he is not in any way related to the Plan Sponsor, the Plan or any of the principals thereof.

Mr. Malloch states that the proposed transaction is in the best interest of the Plan and its participants and beneficiaries since, in his opinion, the rate of return to the Plan would be in excess of that available to the Plan under other investments and would be one of the better performing assets in the Plan's portfolio. Mr. Malloch further states that the proposed Loan would be adequately secured by the accounts receivable of the Plan Sponsor.

Mr. Malloch represents that he reached this opinion after reviewing the Plan's most recent financial statements and the Plan's overall investment portfolio in terms of the Plan's liquidity requirements and the general diversification requirements of Plan assets.

In his capacity as independent fiduciary, Mr. Malloch will receive all Loan payments for the Plan, and will have the authority and responsibility of enforcing the terms of the Loan and accompanying security agreements, including making demand for timely payment, bringing suit or other timely process against the Plan Sponsor in the event of default, and monitoring the performance of the Loan, specifically including, but not limited to, insuring that the value of the collateral securing the proposed Loan remains at no less than 200% of the outstanding balance of the Loan.

6. In summary, the applicant represents that the proposed transaction meets the statutory criteria under section 408(a) of the Act because: a) the Loan will be approved, monitored, and enforced by an independent fiduciary; b) the Loan will be secured by the value of the accounts receivable of the Plan

Sponsor, which will at all times be no less than 200% of the outstanding balance of the Loan; c) the Loan will be for no more than 25% of the Plan's assets; and d) the Plan's independent fiduciary has determined that the Loan is prudent and in the best interest of the participants and beneficiaries of the Plan.

For Further Information Contact: Joseph L. Roberts III of the Department, telephone (202) 523-8194. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the

transaction which is the subject of the exemption.

Signed at Washington, DC, this 23 day of April, 1986.

Robert J. Doyle,

Deputy Assistant Administrator for Regulations and Interpretations, Pension and Welfare Benefits Administration, Department of Labor.

[FR Doc. 86-9479 Filed 4-28-86; 8:45 am]

BILLING CODE 4510-29-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[86-32]

NASA Advisory Council, Space Systems and Technology Advisory Committee (SSTAC); Open Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Space Systems and Technology Advisory Committee, Informal Task Force on Automation and Robotics.

DATE AND TIME: May 14, 1986, 8 a.m. to 4:30 p.m.

ADDRESS: National Aeronautics and Space Administration, Jet Propulsion Laboratory, 4800 Oak Grove Drive, Pasadena, CA 91109.

FOR FURTHER INFORMATION CONTACT: Dr. Melvin Montemerlo, Code R, National Aeronautics and Space Administration, Washington, DC 20546 (202/453-2743).

SUPPLEMENTARY INFORMATION: The Space Systems and Technology Advisory Committee (SSTAC) was established to provide technology activities in the Office of Aeronautics and Space Technology (OAST). The Informal Task Force on Automation and Robotics, chaired by Dr. Stanley Weiss, is comprised of seven members and was formed to provide a review of OAST's automation and robotics program.

The purpose of the meeting is to provide the Task Force with in-depth briefings on the Telerobotics and the Systems Autonomy elements of the OAST Automation and Robotics program. The meeting will be opened to the public up to the seating capacity of the room (approximately 30 persons including the Task Force members and other participants).

Type of Meeting: Open.

Richard L. Daniels,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

April 22, 1986.

[FR Doc. 86-9482 Filed 4-28-86; 8:45 am]

BILLING CODE 7510-01-M

NATIONAL COMMUNICATIONS SYSTEM

National Security Telecommunications Advisory Committee; Closed Meeting

A meeting of the National Security Telecommunications Advisory Committee (NSTAC) will be held on May 22, 1986. The meeting will be held at United States Readiness Command (US REDCOM) in Tampa, MacDill, AFB, Florida.

May 22, 1986

- Call to Order
- Welcome Remarks
- Remarks by President's representative
- Opening Remarks
- Government response to NSTAC V Recommendations
- Review of ongoing NSTAC activities
- Information briefings
- Closing Remarks
- Adjournment

Due to the requirement to discuss classified information in conjunction with the issues listed above, the meeting will be closed to the public in the interest of National Defense. Any person desiring information about the meeting may telephone (202-692-9274) or write the Manager, National Communications System, Washington, DC 20305-2010.

Charles F. Noll,

Captain, USN, Assistant Manager, NCS Joint Secretariat.

[FR Doc. 86-9490 Filed 4-28-86; 8:45 am]

BILLING CODE 3610-05-M

NATIONAL FOUNDATION ON ARTS AND HUMANITIES

Music Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Music Advisory Panel (Solo Recitalists Fellowships Section) to the National Council on the Arts will be held on May 14-15, 1986 from 9:00 a.m. to 5:30 p.m., Room 730 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW, Washington, DC 20506.

A portion of this meeting will be open to the public on May 15, 1986 from 11:30

a.m. to 1:30 p.m. to discuss Policy and guidelines.

The remaining sessions of this meeting on May 14, 1986 from 9:00 a.m. to 5:30 p.m., May 15, 1986 from 9:00 a.m. to 11:30 a.m., and May 15, 1986 from 1:30 p.m. to 5:30 p.m. are for the purpose of Panel review discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and 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 subsection (c)(4), (6) and 9(B) of section 552b of Title 5, United States Code.

If you need accommodations due to a disability, please contact the Office for Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW, Washington DC 20506, 202/682-5532, TTY 202/682-5496 at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682-5433.

April 22, 1986.

John H. Clark,

Director, Office of Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 9497 Filed 4-28-86; 8:45 am]

BILLING CODE 7537-01

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50-390 and 50-391]

Tennessee Valley Authority Watts Bar Nuclear Plant, Units 1 and 2; Order Extending Construction Completion Dates

Tennessee Valley Authority is the current holder of Construction Permit Nos. CPPR-91 and CPPR-92, issued by the Atomic Energy Commission¹ on January 23, 1973, for construction of the Watts Bar Nuclear Plant, Units 1 and 2. These facilities are presently under construction at the applicant's site on the west branch of the Tennessee River

¹ Effective January 19, 1975, the Atomic Energy Commission became the Nuclear Regulatory Commission and permits in effect on that day were continued under the authority of the Nuclear Regulatory Commission.

approximately 50 miles northeast of Chattanooga, Tennessee.

On November 19, 1984, the Tennessee Valley Authority (the applicant) filed a request for an extension of the completion dates. This request was amended by letters dated September 3, 1985, and January 31, 1986. The extension has been requested because construction has been delayed by the following events:

1. Delays in completion of piping analysis, hanger design, and installation.
2. Delays in completion of work in support of the preoperational test program, including resolution of deficiencies identified during testing.
3. Delays in the completion of instrument sensing lines installation.
4. Modifications resulting from 10 CFR 50, Appendix R, fire protection requirements.
5. Delays resulting from analysis and modifications required to resolve concerns raised in TVA's Employee Concern Program.
6. Delays resulting from resolution of environmental qualification of electrical equipment documentation problems.
7. Selection of a site director.
8. Delays resulting from resolution of welding problems.

This action involves no significant hazards consideration; good cause has been shown for the delays; and the extension is for a reasonable period, the basis for which are set forth in the staff's evaluation of the request for extension dated November 19, 1984, as amended by letters dated September 3, 1985 and January 31, 1986.

Pursuant to 10 CFR 51.32, the Commission has determined that extending the construction completion dates will have no significant impact on the environment (51 FR 12662).

The NRC staff safety evaluation of the request for extension of the construction permits is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C. 20555 and the Chattanooga Hamilton County Bicentennial Library, 1001 Broad Street, Chattanooga, Tennessee 37402.

It is hereby ordered that the latest completion date for Construction Permit No. CPPR-91 is extended from January 1, 1985 to March 1, 1987, and the latest completion date for Construction Permit No. CPPR-92 is extended from July 1, 1986 to September 1, 1987.

Date of Issuance: April 23, 1986.

For the Nuclear Regulatory Commission.

Thomas M. Novak,

Acting Director, Division of PWR Licensing-A, Office of Nuclear Reactor Regulation.

[FR Doc. 86-9539 Filed 4-28-86; 8:45 am]

BILLING CODE 7590-01

[Docket Nos. 50-456-OL, 50-457-OL, ASLBP No. 79-410-03-OL]

**Commonwealth Edison Co.
(Braidwood Station, Unit Nos. 1 and 2);
Hearing**

April 23, 1986.

Please take notice that at 9:00 a.m. on Tuesday, May 6, 1986, the evidentiary hearing in the matter of the Braidwood Station operating license will reconvene in the Council Chambers, Second Floor, City Hall Building, at 385 East Oak Street, Kankakee, Illinois 60901, and will continue at that location through May 9, 1986. Thereafter, the hearing will be moved to a different location, as yet undetermined.

The subject of the reconvened hearing will be the quality assurance issues admitted to the proceeding. Limited appearance statements concerning quality assurance will be heard at the opening session. The public is invited to attend all hearing sessions.

For the Atomic Safety and Licensing Board.

Herbert Grossman,

Chairman, Administrative Judge.

[FR Doc. 86-9538 Filed 4-28-86; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-333]

Power Authority of the State of New York; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC/the Commission) is considering issuance of an exemption from the requirements of Appendix R of 10 CFR Part 50 to the Power Authority of the State of New York (PASNY/the licensee) for the James A. FitzPatrick Nuclear Power Plant located in Oswego County, New York.

Environmental Assessment

Identification of Proposed Action

The licensee would be exempted from the requirement of section III.G.2 of Appendix R to 10 CFR Part 50 that ventilation-related penetrations in fire barriers separating redundant shutdown-related systems be provided with fire dampers. Specifically, the exemption would apply to three fire dampers located in the floor/ceiling

assembly between the screenwell house and safety-related pump houses.

The Need for the Proposed Action

Because of low combustible loadings, a fire in one of these areas would be of low intensity and short duration. Furthermore, safe shutdown could be affected if a fire occurred in the screenwell house or either pump house, because a single fire in any one of these areas would not render redundant shutdown systems located in the remaining areas inoperable. Therefore, installation of fire dampers in the floor/ceiling assembly would not enhance the level of fire protection and are unnecessary.

Environmental Impacts of the Proposed Action

The proposed action would not impact the ability to effect safe shutdown of the plant in the event of a fire in the above mentioned areas and would provide an acceptable level of safety, equivalent to that attained by compliance with Section III.G of Appendix R to 10 CFR Part 50. On this basis, the Commission concludes there are not significant radiological environmental impacts associated with this proposed exemption.

With regard to potential nonradiological impacts, the proposed exemption involves features located entirely within the restricted areas as defined in 10 CFR Part 20. It does not affect nonradiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed exemption.

Alternative Use of Resources

This action involves no use of resources not previously considered in the Final Environmental Statement (construction permit and operating license) for the James A. FitzPatrick Nuclear Power Plant.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of no Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed exemption.

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the application for exemption dated April 12, 1985 which is available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC, and at the Penfield Library, State University College of Oswego, Oswego, New York.

Dated at Bethesda, Maryland, this 23rd day of April 1986.

For the Nuclear Regulatory Commission.

Daniel R. Muller,

Director, BWR Project Directorate No. 2,
Division of BWR Licensing.

[FR Doc. 86-9540 Filed 4-28-86; 8:45 am]

BILLING CODE 7590-01-M

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review

AGENCY: Railroad Retirement Board.

ACTION: In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Board has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

Summary of Proposal(s)

- (1) Collection title: Debtor's Financial Statement
- (2) Form(s) submitted: G-423
- (3) Type of request: Revision of a currently approved collection
- (4) Frequency of use: On occasion
- (5) Respondents: Individuals or households
- (6) Annual responses: 1,550
- (7) Annual reporting hours: 1,550
- (8) Collection description: Under the Railroad Retirement and Railroad Unemployment and Insurance Acts, the Board has authority to secure from a debtor a statement of the individual's assets and liabilities if waiver of the overpayment is requested.

Additional Information or Comments

Copies of the proposed forms and supporting documents may be obtained from Pauline Lohens, the agency clearance officer (312-751-4692). Comments regarding the information collection should be addressed to Pauline Lohens, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611 and the OMB reviewer, Judy McIntosh (202-395-6880), Office of

Management and Budget, Room 3208,
New Executive Office Building,
Washington, DC 20503.

Pauline Lohens,

Director of Information and Data
Management.

[FR Doc. 86-9485 Filed 4-28-86; 8:45 am]

BILLING CODE 7905-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-23153; File No. SR-Amex-86-10]

Self-Regulatory Organizations; Proposed Rule Change by American Stock Exchange, Inc.

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 4, 1986, the American Stock Exchange, Inc. filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The American Stock Exchange, Inc. is filing for the Commission's permanent approval of the pilot procedure under the Exchange's equities allocations procedures which permits a newly listed company which so desires to select the specialist unit for its stock from a list of seven specialist units selected by the Exchange's Committee on Equities Allocations.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

(1) Purpose: In June 1984, the Commission approved on a twelve month pilot basis a "modified" equities allocation procedure proposed by the Exchange in order to increase the involvement of a newly listed company in the selection of the specialist unit in its stock.¹ The Exchange made the modified procedure available to companies listing on the Exchange on or after July 1, 1984 as an alternative to the allocation procedure which permits company participation in the selection process to a limited extent (the "limited participation procedure").² In June 1985, the Commission granted a six month extension of the modified procedure and in January and in March 1986, three month extensions, respectively, to permit it to further review the adequacy of the Exchange's procedures under the pilot and to provide the exchange with the opportunity to continue to assess the pilot's impact prior to requesting permanent approval.³ The pilot is scheduled to terminate on June 30, 1986 and the Exchange is now requesting the Commission's permanent approval.

At the Commission's request, the Exchange is currently compiling information regarding its experience under the pilot to provide the Commission with a comprehensive review of the operation of the pilot to date. The Exchange expects to file its report shortly with the Commission. We anticipate that the information contained therein will reflect that the modified procedure has reasonably fulfilled its purposes: to assist the Exchange in attracting new listings and to preserve strong incentives for quality specialist performance.

(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 the proposed procedure is designed to promote just and equitable principles of trade, remove impediments to and

¹ See Securities Exchange Act of 1934 Release No. 34-21062 (June 18, 1984).

² Under the limited participation procedure, the Exchange's Committee on Equities Allocations ("Allocations Committee") submits a list of ten eligible specialist units to the company, which has the right to eliminate three units from further consideration. The Allocations Committee then reconvenes to make its final selection from the remaining seven units.

³ See Securities Exchange Act of 1934 Release No. 34-22185, (June 28, 1985), Securities Exchange Act of 1934 Release No. 34-22780 (January 8, 1986) and Securities Exchange Act of 1934 Release No. 34-23000 (March 12, 1986).

perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest. The proposed rule change also furthers the purposes of section 11A(a)(1)(C)(ii) in that it will stimulate fair competition among brokers and dealers, among exchange markets, and between exchange markets and markets other than exchange markets.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will impose no burden on competition. Rather, the proposed rule change, by rewarding superior performance, will enhance competition among Exchange specialists, and, by improving the ability of the Exchange to attract prospect companies which desire greater participation in the specialist selection process, will enhance competition among markets.

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. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- (A) By order approve such proposed rule change, or
- (B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission

and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 553, 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 May 20, 1986.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: April 21, 1986.

John Wheeler,
Secretary.

[FR Doc. 86-9560 Filed 4-28-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-23164; File No. SR-CBOE-85-40]

Self-Regulatory Organizations; Amendment No. 2 to Proposed Rule Change by the Chicago Board Options Exchange, Inc.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934,¹ notice is hereby given that on April 11, 1986, the Chicago Board Options Exchange, Incorporated ("CBOE") filed with the Securities and Exchange Commission ("Commission") Amendment No. 2 to a proposed rule change as described below. The Commission is publishing this notice to solicit comments on the amended proposed rule change.

The proposed rule change as amended by Amendment No. 1 would fix position limits on options on Treasury Bonds and Notes at no greater than 10% of the value of the initial or reopened public issuance of the underlying security, rounded to the next lower \$100 million amount.² The proposal as amended by Amendment No. 1 also would require that, if government stripping of principal and interest causes the position limit as initially established to exceed 12% of the non-stripped underlying securities, the position limit would be adjusted to no greater than 12% of the non-stripped underlying securities. Amendment No. 2 to the proposal provides that the

position limit shall not exceed \$1.2 billion dollars of underlying securities.

CBOE states that the purpose of Amendment No. 2 is to place a 12,000 contract cap on government securities options position limits. The current cap is 4,000 contracts. According to CBOE, this cap would assure that the increase of position limits for government securities options is "gradual."³

CBOE indicates that the statutory basis of the amended proposed rule change remains as stated in the original filing, i.e., section 6(b)(5) of the Act.⁴ CBOE also requests approval of Amendment No. 2 prior to the thirtieth day after publication of this notice in the **Federal Register** on the basis that, because Amendment No. 2 limits the size of position limits that otherwise would be available under the filing as previously noticed, there is no "need for a renewed comment period for this one amendment."⁵

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submission should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing also will be available for inspection and copying at the principal office of CBOE. All submissions should refer to the file number in the caption above and should be submitted by May 20, 1986.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁶

Dated: April 22, 1986.

John Wheeler,
Secretary.

[FR Doc. 86-9561 Filed 4-28-86; 8:45 am]

BILLING CODE 8010-01-M

¹ 15 U.S.C. 78s(b)(1)(1982).

² Notice of the original proposal was published in Securities Exchange Act Release No. 22456 (September 25, 1985); 50 FR 40093 (October 1, 1985). Notice of Amendment No. 1 to the proposal was published in Securities Exchange Act Release No. 23117 (April 10, 1986); 51 FR 12956 (April 16, 1986).

³ Amendment No. 2 to CBOE filing, p. 3.

⁴ 15 U.S.C. 78f(b)(5)(1982).

⁵ Amendment No. 2 to CBOE filing, p. 4.

⁶ 17 CFR 200.30-3(a)(12)(1985).

[Release No. 34-23152; File No. SR-CSE-86-2]

**Self-Regulatory Organizations;
Cincinnati Stock Exchange, Inc.; Order
Approving Proposed Rule Change**

The Cincinnati Stock Exchange, Inc. ("CSE"), submitted on March 7, 1986, copies of a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") and Rule 19b-4 thereunder, to extend the coverage of the CSE's trade-through and block policies to additional trading situations involving CSE members.

Notice of the proposed rule was given by the issuance of Securities Exchange Act Release No. 23008 (March 12, 1986) and by publication in the *Federal Register* (51 FR 9737 (March 20, 1986)). No comments were received with respect to the proposed rule change.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to an exchange, and, in particular, the requirements of section 6 and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: April 21, 1986.

John Wheeler,

Secretary.

[FR Doc. 86-9562 Filed 4-28-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-23165; File No. S7-433]

**Joint Industry Plan; Filing and
Immediate Effectiveness of
Amendment to the Consolidated Tape
Association Plan Relating to Line
Splitter Charges.**

The participants in the Consolidated Tape Association ("CTA") on March 18, 1986, submitted an amendment¹ to the "Restated and Amended Plan submitted to the Securities and Exchange Commission pursuant to Rule 17a-15 under Securities Exchange Act of 1934" ("CTA Plan").²

¹ The amendment to the CTA Plan was submitted pursuant to Rules 11Aa3-1 and 11Aa3-2 under the Securities Exchange Act of 1934 ("Act").

² The CTA Plan and subsequent amendments are contained in File No. S7-433. The Commission approved the CTA Plan in Securities Exchange Act Release No. 16983 (July 16, 1980), 45 FR 49414.

I. Description of the Amendment

The amendment introduces a monthly charge to Network B participants who attach "line splitter" devices to the lines and satellite transmissions by which they receive the Network B ticker signal. The devices permit a single land line or satellite receiver to service more devices than would otherwise be possible. The new change is contained in Schedule A-3, attached to the CTA Plan as part of Exhibit D. The new rate is effective retroactively to January 1, 1986.

II. Request for Comment

Although the amendment was effective upon filing with the Commission, the Commission may summarily abrogate the amendment within 60 days of its filing and require refiling and approval of the amendment by Commission order pursuant to Rule 11Aa3-2(c)(2), if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to and perfect the mechanisms of a national market system, or otherwise in furtherance of the purposes of the Act.

In order to assist the Commission in determining whether to abrogate the amendments and to require refiling and further review, interested persons are invited to submit their views to John Wheeler, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549, within 21 days from the date of publication of this notice in the *Federal Register*. The amendment to the CTA Plan will be available for public inspection in the Commission's public reference room. All communications should refer to File No. S7-433.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.³

Dated: April 22, 1986.

John Wheeler,

Secretary.

[FR Doc. 86-9556 Filed 4-28-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-23154; File No. SR-MCC-86-3]

**Self-Regulatory Organizations;
Proposed Rule Change by Midwest
Clearing Corp.**

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15

³ 17 CFR 200.30-3(a)(27).

U.S.C. 78s(b)(1), notice is hereby given that on March 21, 1986, the Midwest Clearing Corporation ("MCC") 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**

Attached as Exhibit A is MCC's proposed Schedule of Charges (see file no. SR-MCC-86-1).

**II. Self-Regulatory Organization's
Statement of the Purpose of, and
Statutory Basis for, the Proposed Rule
Change**

In its filing with the Commission, the MCC included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The MCC 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, Proposed Rule Change.* On January 16, 1986 MCC filed its Schedule of Charges. Certain fee adjustments were inadvertently omitted from or incorrectly stated in such schedule. Exhibit A reflects the revised fees, which will be effective with the February 1986 or March 1986 billing statements as shown.

The proposed rule change is consistent with Section 17A of the Securities Exchange Act of 1934 in that it provides for the equitable allocation of reasonable dues, fees and other charges among MCC's Participants.

(B) *Self-Regulatory Organization's Statement on Burden on Competition.* The Midwest Clearing Corporation does not believe that any burdens will be placed on competition as a result of the proposed rule change.

(C) *Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others.* Comments have neither been solicited nor received.

**III. Date of Effectiveness of the
Proposed Rule Change and Timing for
Commission Action**

The foregoing rule change has become

effective pursuant to section 19(b)(3) of the Securities Exchange Act of 1934 and subparagraph (e) of Securities Exchange Act Rule 19b-4. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 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, N.W., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-referenced self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by May 20, 1986.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: April 21, 1986.

John Wheeler,
Secretary.

EXHIBIT A.—MIDWEST CLEARING CORPORATION SCHEDULE OF CHARGES, 1986 PRICING REVISIONS, EFFECTIVE FEBRUARY/MARCH 1986

	1985	1986
Manual trade input fee: ¹ Non-machine readable tape input charged per transaction to submitting participant via miscellaneous billing.....	.10	.12
Special security movement: Receipt.....	2.50	5.00

¹ NOTE.—These fees will be effective with March 1986 Billing statements.

[FR Doc. 86-9563 Filed 4-28-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-23155; File No. SR-MSTC-86-2]

Self-Regulatory Organizations; Proposed Rule Change by Midwest Securities Trust Co.

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 March 21, 1986, the Midwest Securities Trust Company ("MSTC") 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

Attached as Exhibit A is MSTC's proposed Schedule of Charges (see file no. SR-MSTC-86-1).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the MSTC included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The MSTC 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.* On January 28, 1986 MSTC filed its Schedule of Charges. Certain fee adjustments were inadvertently omitted from or incorrectly stated in such schedule. Exhibit A reflects the revised fees, which will be effective with the February 1986 or March 1986 billing statements.

The proposed rule change is consistent with Section 17A of the Securities Exchange Act of 1934 in that it provides for the equitable allocation of reasonable dues, fees and other charges among MSTC's Participants.

(B) *Self-Regulatory Organization's Statement on Burden on Competition.* The Midwest Securities Trust Company does not believe that any burdens will be placed on competition as a result of the proposed rule change.

(C) *Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others.*

Comments have neither been solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3) of the Securities Exchange Act of 1934 and subparagraph (e) of Securities Exchange Act Rule 19b-4. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-referenced self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by May 20, 1986.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: April 21, 1986.

John Wheeler,
Secretary.

EXHIBIT A.—MIDWEST SECURITIES TRUST COMPANY SCHEDULE OF CHARGES, 1986 PRICING REVISIONS, EFFECTIVE FEBRUARY/MARCH 1986

	1985	1986
Standing Instructions (Physical withdrawal or book-entry):		
Primary account.....	\$300.00	\$320.00
Secondary account.....	50.00	75.00

EXHIBIT A.—MIDWEST SECURITIES TRUST
COMPANY SCHEDULE OF CHARGES, 1986
PRICING REVISIONS, EFFECTIVE FEBRUARY/
MARCH 1986—Continued

	1985	1986
Automatic intra account DDI	100.00	105.00
Settling trade option	100.00	105.00
Demand street withdrawal	10.00	12.00
Certificate deposits ¹		
7:30 a.m. to 11:00 a.m. CST.	.94/item	1.00/item
Corrected rate for 1986 s/ b. ¹		1.10/item
11:00 a.m. to 11:30 a.m. CST.	7.59/item	10.00/item
11:30 a.m. to 4:00 a.m. CST.	.79/item	.85/item
Corrected rate for 1986 s/ b. ¹		.90/item
Form preparation service ² (by Participant Services Dept. and Midwest Clearing Dept.)	6.00/item	7.00/item

¹ NOTE.—These fees will be effective with March 1986
Billing statements.

[FR Doc. 86-9564 Filed 4-28-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-23151; File No. SR-NSCC-
86-04]

**Self-Regulatory Organizations;
National Securities Clearing
Corporation; Order Approving
Proposed Rule Change**

On February 11, 1986, the National Securities Clearing Corporation ("NSCC") filed with the Commission, pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"), 15 U.S.C. 78b(1), a proposed rule change amending its Clearing Fund requirements for Municipal Securities Brokers' Brokers Sponsored Account¹ Members. The Commission published notice of the proposal on March 14, 1986.² No comments were received. This Order approved the proposal.

I. Description

The proposed rule change adds to Part XIV of NSCC's Procedures an "Alternative Clearing Fund Formula"

¹ NSCC's "sponsored account service" enables NSCC Members that cannot, or choose not to, participate in the Depository Trust Company ("DTC") directly to access DTC services through an NSCC subaccount at DTC. Each sponsored member is assigned a subaccount number and uses that account like a direct DTC participant. A sponsored account member generally can use all DTC services and facilities as if it were a direct participant. NSCC, however, remains liable to DTC on all activity in sponsored accounts, including the payment of fees to DTC. Because of its potential exposure, NSCC is authorized to verify all data for accuracy and reasonableness before submission to DTC and to reject any items that create liabilities inconsistent with the Member's normal level of business or financial capability.

² See Securities Exchange Act Release No. 22980 (March 7, 1986), 51 FR 8931 (March 14, 1986).

(the "Alternative Formula") that NSCC will use to determine the minimum required Clearing Fund contribution levels of Municipal Securities Brokers' Broker Members using NSCC's sponsored account service ("Municipal Brokers").³ The rule change also amends NSCC's "Standards of Financial Responsibility and Operational Capability" (the "Standards") to set out eligibility standards for Alternative Formula use and additional guidelines for Municipal Brokers that elect the new formula and are subject to closer than normal surveillance.⁴

The Alternative Formula differs from NSCC's original formula⁵ in several respects. Under the original formula, each member must contribute an amount equal to: (A) 2½% of the Member's average daily settlement debits and credits, other than those relating to envelope settlement systems ("ESS"), plus (B) the greater of (1) 2½% of the member's average daily ESS debits and credits or (2) 5% of ESS debits; increased by a multiplication factor.⁶ Under the Alternative Formula,

³ The rule change amends NSCC Rule 1 to define "Municipal Securities Brokers' Broker" to mean "any municipal securities broker as defined in Rule 15c3-1(a)(8)(ii) of the Securities Exchange Act of 1934, as amended." Rule 15c3-1(a)(8)(ii) defines these brokers as brokers who act as agent for registered brokers, dealers or municipal securities dealers, have no public customers and maintain no municipal securities in proprietary or other accounts.

Municipal Brokers play an essential role in the municipal securities markets. Unlike equity securities, municipal securities are not traded on national securities exchanges. Municipal Brokers provide the fundamental service of confidentially bringing together buyers and sellers of municipal securities. For clearing and settlement purposes, the Broker is interposed between each buyer and seller and the Broker's daily depository settlement obligations are netted, typically resulting in a money credit reflecting the commissions the Municipal Broker earns on trades.

⁴ NSCC's Standards of Financial Responsibility and Operational capability provide that NSCC may place a member on surveillance if NSCC deems it necessary. Generally speaking, any change in member status which NSCC believes subjects it to greater risk is justification for placing the member on surveillance. Once placed on surveillance, a Clearing Member can be required to deposit larger Clearing Fund contributions with NSCC.

⁵ See NSCC Procedures, Part XIV, Section A. NSCC Members not qualifying to use the Alternative Formula generally must continue to contribute to NSCC's Clearing Fund under the original formula.

⁶ The factor is calculated by dividing the Member's excess net capital into the Member's average daily ESS debits. The factor then is adjusted to provide a minimum of one and a maximum of three. The object of the factor is to increase the Clearing Fund deposits of Clearing Members that use ESS to protect NSCC more adequately against the substantial financial exposure from Clearing Members whose average daily ESS debits exceed their average daily ESS credits and whose net ESS debit balances significantly exceed excess net capital. See File

clause (A) is essentially eliminated,⁷ and clauses (B)(1) and (B)(2) are carried over unchanged except that a new clause adds back into the calculation 2% of the Member's average daily qualified securities depository debits and the multiplication factor applied to ESS actively under the original formula is eliminated. In sum, a Municipal Broker's Clearing Fund contribution under the Alternative Formula equals the larger of the daily average of: 2½% of ESS debits and credits or 5% of ESS debits, plus 2% of qualified securities depository debits. The alternative Formula thus reduces substantially the required Clearing Fund contributions of Municipal Brokers.⁸

The rule change adds new section B.3 to Part I of the Standards. That section specifies three conditions that must be met by each Municipal Broker applicant for NSCC membership before it can qualify for Alternative Formula use. First, each applicant would have to be in compliance with Commission Rule 15c3-1(a)(8).⁹ Second, each applicant would need to enter into an agreement with NSCC that it will not transfer, withdraw or deliver to a third party securities received on a business day through a qualified securities depository for no value prior to paying for the securities or paying its net settlement obligations for

Nos. SR-NSCC-82-10, approved in Securities Exchange Act Release No. 18852 (June 28, 1982) 47 FR 29426 (July 6, 1982). See also File Nos. SR-NSCC-82-24, Securities Exchange Act Release No. 19147 (October 18, 1982), 47 FR 47351 (October 25, 1982) and SR-NSCC-82-30, Securities and Exchange Act Release No. 19426 (January 13, 1982), 48 FR 2877 (January 21, 1982).

⁷ Clause A is modified to exclude "qualified securities depository" debits and credits as well as ESS debits and credits. A "qualified securities depository" is defined in NSCC Rule 1 as a depository that has entered into an agreement with NSCC to act for NSCC by effecting book-entry transfers of securities to and by NSCC. NSCC's only "qualified securities depository" is the The Depository Trust Company ("DTC").

⁸ NSCC expects that each Municipal Brokers' Clearing Fund requirement under the Alternative Formula will amount to about 13% of the requirement as calculated under the original formula. The rule change, however, does not alter the minimum required level of Member Clearing Fund cash contributions. See NSCC Procedures, Part XV, for a description of these required contribution levels. Both the original and Alternative Clearing Fund formulas are used to calculate each Member's Clearing Fund contribution requirements above the minimum required cash contribution levels. These additional contributions can take the form of other assets, such as U.S. government securities and certain letters of credit and "valued" securities. See NSCC Rule 4.

⁹ 17 CFR 240.15c3-1(a)(8)(1985). Rule 15c3-1(a)(8) provides that Municipal Brokers: (1) Need only deduct 1% of outstanding fails-to-deliver aged 21 business days or more; (2) take no deduction for aged fails-to-deliver; (3) may exclude from aggregate indebtedness overnight bank loans and (4) must maintain minimum net capital of not less than \$150,000.

that business day, whichever is less. Third, the applicant also would need to agree not to pledge any securities received on a business day through a qualified securities depository prior to the day's money settlement unless the pledge agrees to pay NSCC directly the amount due for the securities received or the applicant's net settlement obligation for that business day, whichever is less.

Finally, the rule change adds to the Standards new Part IV, "Guidelines for Computing Clearing Fund Deposits for Sponsored Account Municipal Securities Brokers' Broker Members on Surveillance Who Elect the Alternative Clearing Fund Formula." This Part essentially mirrors already-established guidelines for all other Members on surveillance status.¹⁰ Indeed, under new Part IV, NSCC could demand from Municipal Broker Members on closer than normal surveillance Clearing Fund contributions calculated under NSCC's ordinary guidelines, *i.e.*, under Part III of the Standards. NSCC, however, would retain discretion to require Municipal Brokers on surveillance status to contribute lesser amounts of additional Clearing Fund collateral.

II. NSCC's Rationale for the Proposal

NSCC believes that the rule change would facilitate Municipal Broker participation in the National Clearance and Settlement System (the "National System"). NSCC states in its filing that substantially reduced Clearing Fund requirements for Municipal Brokers are appropriate for several reasons. While Municipal Brokers account for a substantial portion of all inter-dealer transactions in both the when-issued and secondary municipal securities markets, those Brokers, for the most part, have been unable to qualify for direct DTC membership. Moreover, NSCC represents that its original Clearing Fund formula seems to have deterred both their direct participation in NSCC and their indirect participation in DTC through NSCC's "sponsored account service." Thus, Municipal Brokers experience substantially higher clearance and settlement costs because economic considerations have forced them to process transactions either outside National System facilities or through those facilities via correspondent arrangements with direct clearing agency members.

NSCC believes that the unique role of Municipal Brokers in the municipal securities markets presents reduced financial exposure to NSCC and justifies

reduced Clearing Fund contributions.¹¹ Thus, NSCC believes, the rule change adjusts Clearing Fund levels for Municipal Brokers to reflect more accurately their unique role in the marketplace.

NSCC believes that the Alternative Formula should bring most, if not all, Municipal Brokers directly into the National System. NSCC believes that, by joining NSCC, those Brokers should experience substantially reduced clearance and settlement costs by becoming direct, active users of National System services. Indeed, NSCC believes that the National System, and its user community generally, would benefit because the proposal should facilitate the further depository immobilization of municipal securities. In addition, NSCC believes that the Alternative Formula could, by bringing a substantial number of municipal transactions into the System, help facilitate development of a meaningful Continuous Net Settlement ("CNS") environment for municipal securities.

III. Discussion

Under section 19(b)(2) of the Act, the Commission must approve NSCC's proposed rule change if it finds NSCC's proposal is consistent with the Act and Commission rules applicable to registered clearing agencies. The Commission may not approve NSCC's proposal if it is unable to make such a finding.

Section 17A sets out the standards the Commission must use in reviewing proposed rule changes of registered clearing agencies. Section 17A(b)(3)(F) provides that the rules of a clearing agency must be designed to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible. That subsection also provides that the clearing agency's rules be designed to promote the prompt and accurate clearance and settlement of securities transactions and, in general, to protect investors and the public interest.

The Commission believes the NSCC proposed rule change furthers those important statutory objectives. The primary benefit of reducing Clearing Fund contributions for Municipal Brokers would be increased participation of Municipal Brokers in the National System. The Commission agrees with NSCC that this proposed rule change will bring into the National System those Municipal Brokers who have, in the past, found participation in

registered clearing agencies more costly than processing their trades manually. Additionally, lower Clearing Fund contribution requirements should make it economically feasible for Municipal Brokers who are currently processing trades through clearing agents to become direct NSCC participants, thus also cutting their processing costs significantly.

NSCC believes and the Commission agrees that a much larger percentage of municipal securities transactions would be processed through the National System if Municipal Brokers' direct participation was encouraged through lower Clearing Fund contributions. Municipal Brokers account for a large percentage of all municipal securities transactions. Their participation, therefore, could facilitate much-needed automation of the municipal securities industry. In fact, as NSCC pointed out, by bringing these Municipal Brokers into the National System, a meaningful CNS environment for municipal securities might be developed. Furthermore, direct participation in NSCC would facilitate Municipal Brokers' compliance with Municipal Securities Rulemaking Board ("MSRB") Rules G-12 and G-15. Those Rules generally require municipal securities dealers that are either direct or indirect participants to use the facilities of automated clearing agencies. The Rules were adopted in response to the tremendous paperwork burden experienced by the Municipal securities industry from manual trade processing.¹²

On the other hand, the proposed rule change would appear to increase NSCC's financial exposure. NSCC's Clearing Fund is designed to protect NSCC and its Members against losses and liabilities incident to the operation of its clearance and settlement systems. Thus, permitting Municipal Brokers direct participation in NSCC at lower Clearing Fund contribution levels may expose NSCC to greater risk. At present, Municipal Brokers either process transactions outside the National System, thus exposing NSCC to no risk on those transactions, or they process transactions through direct NSCC participants who are required, under the original Clearing Fund formula, to make larger clearing fund contributions that presumably reflect the Municipal Broker trades they process as well as their other activity.

¹² See Securities Exchange Act Release No. 20365 (November 14, 1983), 48 FR 52531 (November 18, 1983), corrected at 48 FR 54310 (December 1, 1983) (approving File No. SR-MSRB-83-13).

¹⁰ See Part III of the Standards.

¹¹ See note 3, *supra*.

Nevertheless, for the reasons discussed below, the Commission is satisfied that NSCC has taken adequate measures to control the increased risks posed by affording Municipal Brokers direct participation in NSCC at reduced Clearing Fund contribution levels. First, the Commission agrees with NSCC that Municipal Brokers' trading and settlement activity is unique. By matching buyers and sellers before entering its transactions for comparison and subsequent settlement, the Municipal Broker, in effect, eliminates its own net settlement obligation and, thus, any exposure to adverse market movements. The Municipal Broker can experience such settlement exposure, however, if one side of a brokered transaction fails to settle and the Municipal Broker settles the transaction as if it were itself trading as a principal. Such a failure would expose the Municipal Broker to liability only if the Municipal Broker in effect acts as principal in the failed trade and then only to the extent that the contract price of the failed transaction differs from the market value of the securities to the detriment of the Municipal Broker. NSCC, in turn, would be exposed to this liability only if the Municipal Broker itself failed as a result of *contra* party failure, because of NSCC's special status as the insolvent's sponsor into DTC.

To guard against that risk, NSCC relies on the Municipal Broker's Clearing Fund deposits and the control NSCC exercises over sponsored account depository activity. Under the proposal, NSCC would require Municipal Brokers to agree to certain limitations on their activities. Municipal Brokers could be prevented from withdrawing, transferring, or pledging securities in the depository account prior to *intra*-day or end-of-the-day money payment for those securities. Accordingly, NSCC would be exposed only to the extent of adverse market movements on the day of insolvency; that is, if the market value of securities credited to the Municipal Broker's depository account, but not yet paid for, differed from the contract price to the detriment of the Municipal Broker. This *intra*-day exposure currently exists in many of NSCC's processing systems, including CNS.

NSCC also developed new Standards applicable to Municipal Broker Sponsored Account Members. Part I of NSCC's Standards has been amended to require each Municipal Broker applicant to enter into an agreement with NSCC that it will not transfer, withdraw or deliver to a third party securities received through a qualified securities

depository for no value prior to paying for the securities or paying its net settlement obligation for that business day, whichever is less. Also, NSCC would require the applicant to agree not to pledge any securities received on a business day through a qualified securities depository prior to the day's money settlement unless the pledgee agrees to pay NSCC directly the amount due for the securities received or the applicant's net settlement obligation for that business day, whichever is less.¹³ The rule change also gives NSCC the authority to put Municipal Brokers on closer than normal surveillance status¹⁴ and to require larger Clearing Fund contributions if, in NSCC's judgment, larger contributions are needed.¹⁵ These safeguards are in addition to NSCC's already existing safeguard mechanisms.¹⁶

The Commission believes that the reduced financial exposure presented by Member Municipal Brokers appears to justify NSCC's proposed reduced Clearing Fund requirements for Municipal Brokers. The commission understands, however, that NSCC's sponsored depository accounts are difficult to monitor on a real-time, on-line basis. NSCC does monitor, however, the sponsored account activity of its current Sponsored Account Members on a historical basis and also plans to use sponsored account data to monitor Municipal Brokers' Compliance with the Standards and agreements. The Commission requests that NSCC monitor Municipal Brokers' activity under the Alternative Formula and perform a risk analysis regarding NSCC potential financial exposure from Municipal Broker Sponsored Account Activity. As part of that effort, the

¹³ NSCC stated that it has already contacted its pledgee banks and that they have assured NSCC that they are willing to enter into such agreements with applicant Municipal Brokers.

¹⁴ Before a Member actually defaults on a settlement, NSCC is empowered to place the Member on special surveillance to monitor the Member's capacity to meet its commitments to NSCC and to impose any conditions that NSCC deems necessary for its protection or the protection of its Members.

¹⁵ See NSCC Standards Part IV, added by this rule change.

¹⁶ NSCC Rule 46 provides that NSCC may suspend a Settling Member or prohibit or limit such Settling Member with respect to access to services offered by NSCC if, among other things, the Member "is in such financial or operating difficulty that the Corporation determined, in its discretion, that such action is necessary for the protection of [NSCC], Settling Members, creditors or investors . . ." or "any circumstances in which, in the discretion of [NSCC], adequate cause exists to do so." See NSCC Rule 46. Section 1. Action taken by NSCC may include ceasing to act for the Settling Member or such other limits on access to its services that NSCC determines to be appropriate. (See NSCC Rule 46, Section 4.)

Commission requests that NSCC report after six months from implementation on its experience under its Municipal Broker Sponsored Account program, both with respect to its ability to monitor depository sponsored account activity and any risks to which it has been imposed.

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.

Dated: April 21, 1986.

John Wheeler,

Secretary.

[FR Doc. 86-9565 Filed 4-28-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-23158; SR-NASD-86-4]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change

April 21, 1986.

The National Association of Securities Dealers, Inc. ("NASD") submitted on March 14, 1986, copies of a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") and Rule 19b-4 thereunder, to establish a two-year pilot program with The Stock Exchange, London, England ("LSE"), for the exchange and distribution of international securities information.

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by the issuance of a Commission release (Securities Exchange Act Release No. 23022, March 14, 1986) and by publication in the *Federal Register* (51 FR 9738, March 20, 1986). All written statements filed with the Commission and all written communications between the Commission and any person relating to the proposed rule change were considered and (with the exception of those statements or communications that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552) were made available to the public at the Commission's public reference room.

The Commission received one comment letter on the proposed rule change,¹ from Instinet Corporation

¹ See letter from Daniel T. Brooks, Cadwalader, Wickersham & Taft, Counsel for Instinet, to John Wheeler, Secretary, SEC, dated April 16, 1986.

("Instinet") raising two issues. First, Instinet asserts that the NASD's decision not to charge a fee to the LSE or its subscribers for the quotation information it is receiving from the NASD poses a significant competitive disadvantage for Instinet. The NASD is requiring both Instinet and its subscribers, domestically as well as abroad, to pay for the quotation information they receive from the NASD.²

Second, Instinet argues that the NASD is obtaining the quotation information from the LSE on a preferential basis. It states that the NASD-LSE agreement appears to contemplate the use of the information for automated trading purposes at some future date and asserts that neither Instinet nor other vendors is able to obtain the data from the LSE on this basis. Instinet asserts that the LSE is granting the NASD uniquely favorable terms of access because of the NASD's status as a self-regulatory organization ("SRO"). It argues that this constitutes a discriminatory grant of access by the LSE to its data which is not consistent with the pro-competitive goals of the Act. Instinet also argues that the NASD is using its special status as an SRO to receive LSE market information on more favorable terms (without fee and for automated trading purposes) than are available to other vendors. Instinet argues that using SRO status to achieve this preferential position is unfair and anticompetitive.

The Commission believes the pilot program represents an important step in the internationalization of the securities markets. It will be the first program for the exchange of information between a non-North American securities exchange and a U.S. self-regulatory organization. The Commission believes the NASD's approach, a two-year pilot program for the exchange of quotation information, is a useful first step to ascertain the degree of interest in London for OTC securities and in the U.S. for LSE securities. The two-year pilot program will enable the NASD and LSE to explore the possibility for and implications of a trading link between the two entities while they address any

problems that might arise with the information exchange. The Commission believes this is a rational way to approach a possible intercontinental linkage. However, the Commission believes the proposed rule change raises a number of issues.

First, the agreement provides in general terms that the NASD and LSE each will have access to such regulatory information from the other party as it needs for purposes of its surveillance and investigation responsibilities with respect to securities in the pilot program. The NASD states that for several years the LSE has been willing to cooperate with the NASD in the areas of information disclosure, quotation and trading halts, suspensions and resumption of trading, and the surveillance and investigation of trading in securities of mutual market concern. The agreement reached between the NASD and LSE specifically confirms that the Commission and the U.K. regulatory authorities will have access to shared surveillance information.

The Commission notes however, that the U.K. has a blocking statute.³ Before the Commission approved the linkage agreement between the American Stock Exchange and Toronto Stock Exchange, the Commission required not only a written surveillance information sharing agreement between the two exchanges, but also exchanged reciprocal surveillance and investigation cooperation undertakings with the Ontario Securities Commission.⁴ Included in the Toronto Stock Exchange and Ontario Securities Commission correspondence were representations of those organizations' interpretations that the blocking statute would only be applied in the most unusual of circumstances. The Commission's staff is currently discussing this specific issue, as well as surveillance cooperation arrangements more generally, with the U.K.

The NASD-LSE pilot program provides only for the exchange of quotation information with respect to the securities specified in the agreement.

It does not, as do the U.S./Canadian exchange linkages approved to date, contemplate a trading linkage. Investors in the United States as well as investors in the United Kingdom will continue to purchase securities in the same manner as before. Indeed, U.S. retail investors as a practical matter will not have access to U.K. quotation information under the pilot; that information only will be disseminated over NASDAQ Level 2 and 3 terminals, which for the most part are only located in firm upstairs trading rooms and headquarters offices and not retail branch offices. These market professionals already have access to this information to some extent through foreign vendor systems. Finally, any potential for increased manipulative activity is reduced by the fact that the NASDAQ and LSE quotation information will not be integrated into a single quotation stream in either market.⁵

Under these limited circumstances, the Commission believes that the exchange of quotation information will enhance market efficiency without raising significant new concerns regarding the enforcement of the U.S. securities laws. The Commission emphasizes, however, the importance of assurances of cooperation among the relevant regulatory authorities with respect to the reciprocal exchange of surveillance and investigatory information. For this reason, the Commission underscores the importance which it attaches to reaching an understanding between the U.S. and U.K. regarding the applicability of the U.K.'s blocking statute prior to the creation of intermarket trading linkages between markets in the two countries.

Second, an issue unique to the LSE-NASD agreement is Instinet's argument that the NASD's proposed fee arrangement is discriminatory and will have an anticompetitive effect on Instinet. As discussed, the agreement does not provide for any fees for the provisions of quotation information, either for the LSE or the NASD, while Instinet and its subscribers are required to pay the NASD for the information they receive. Instinet argues that providing the LSE and its subscribers a subset of the NQDS information at no charge, while imposing a charge on Instinet and its subscribers, is

² Instinet currently pays \$1,600 a month, or half the \$3,200 monthly vendor charge for National Quotation Data Service ("NQDS"). See Securities Exchange Act Release No. 22935 (February 21, 1986). Instinet intervened in a proceeding involving the Commission and the NASD in which the Commission found that the NASD's initial proposed subscriber fee constitutes an inappropriate denial of access to quotation information. See Securities Exchange Act Release Nos. 20874 (April 17, 1984), 21471 (March 8, 1985), and 21831 (November 8, 1985). The NASD sought review of this matter in federal court, see *NASD v. SEC*, No. 85-1012 (D.C. Cir. filed January 7, 1985), and has filed a revised fee proposal. See Securities Exchange Act Release No. 22935 (February 21, 1986). There also is an interim \$6.75 monthly fee for each subscriber. The Commission is now considering the NASD's proposal for a permanent \$79 subscriber fee.

³ The Protection of Trading Interests Act of 1980 enables U.K. government officials to limit the production or transfer of information and documents between United Kingdom private citizens, self-regulatory organizations or regulatory officials to persons or agencies from a foreign country under certain circumstances. Absent a clear understanding to the contrary, such a statute could impede the Commission or the contrary, such a statute could impede the Commission or the self-regulatory authorities from obtaining the trading records or other information needed to prosecute securities cases effected through trading linkages or otherwise involving transactions from or through another country.

⁴ Securities Exchange Act Release No. 22442 (September 20, 1985).

⁵ For example, although Imperial Chemical Industries (ICI) is actively traded both on NASDAQ and the LSE, in the pilot program NASDAQ market maker quotations and the LSE middle price (after Big Bang Day, the quotes of LSE market makers) would be displayed on different pages of each system; i.e., would have to be called up separately on the computer terminal.

discriminatory and inhibits Instinet's ability to compete. Similarly, Instinet argues that it is competitively disadvantaged because the NASD is receiving LSE quotation information on a preferential basis.

The Commission does not believe that these concerns require the Commission to withhold temporary approval of the proposed rule change and the underlying international agreement. At the staff's suggestion, the NASD has agreed to request six-month temporary approval of the two-year pilot program.⁶ The Commission believes that during the six-month period the Commission will be able to consider carefully the merits of Instinet's arguments.

The Commission finds that approval of the proposed rule change on a temporary six-month pilot basis is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD and, in particular, the requirements of sections 11A and 15A, and the rules and regulations thereunder. In making this decision in this limited context, the Commission emphasizes that it is not reaching any final determination with respect to the issues raised by Instinet.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and hereby is approved for a period of six months from the date of this order.

By the Commission.

John Wheeler,
Secretary.

[FR Doc. 86-9566 Filed 4-28-86 8:45 am]

BILLING CODE 8010-01-M

**Self-Regulatory Organizations;
Applications for Unlisted Trading
Privileges and of Opportunity for
Hearing by Philadelphia Stock
Exchange, Inc.**

April 21, 1986.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following stock: L. F. Rothschild, Unterberg, Towbin Holdings, Inc.

Common Stock, \$1.00 Par Value (File No. 7-8940)

This security is listed and registered on one or more other national securities

⁶ See letter from Frank J. Wilson, to Richard G. Ketchum, SEC dated April 21, 1986, requesting approval of the proposed rule change for a six-month period.

exchange and is reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before May 12, 1986 written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

John Wheeler,
Secretary.

[FR Doc. 86-9559 Filed 4-28-86; 8:45 am]

BILLING CODE 8010-01-M

[File No. 81-726]

**Application and Opportunity for
Hearing; Citicorp Homeowners, Inc.**

April 22, 1986.

Notice is hereby given that Citicorp Homeowners, Inc. ("Applicant") has filed an application pursuant to section 12(h) of the Securities Exchange Act of 1934, as amended, (the "1934 Act") for an order exempting Applicant from certain reporting requirements under section 13 and from the operation of section 16 of the 1934 Act.

For a detailed statement of the information presented, all persons are referred to the application which is on file at the offices of the Commission in the Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549.

Notice is further given that any interested person, not later than May 19, 1986, may submit to the Commission in writing his views or any substantial facts bearing on the application or the desirability of a hearing thereon. Any such communication or request should be addressed: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549, and should state briefly the nature of the interest of the person submitting such information or requesting the hearing, the reason for such request, and the issues of fact and law raised by the application which he desires to controvert.

Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices and

orders issued in this matter, including the date of the hearing (if ordered) and any postponement thereof. At any time after that date, an order granting the application may be issued upon request or upon the Commission's own motion.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

John Wheeler,
Secretary.

[FR Doc. 86-9557 Filed 4-28-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-15066; 812-6019]

**Salomon Brothers Unit Investment
Trust, Insured Tax-Exempt Series One
et al.; Application**

April 23, 1986.

Notice is hereby given that the Salomon Brothers Unit Investment Trust, Insured Tax-Exempt Series One ("Series One"), and all subsequent trusts and similar series of trusts (collectively, "Trusts"), unit investment trusts registered or to be registered under the Investment Company Act of 1940 ("Act"), and their sponsor, Salomon Brothers Inc. ("Sponsor" or "Solomon Brothers") (Sponsor and Trusts collectively, "Applicants") One New York Plaza, New York, New York 10004, filed an application on January 10, 1985, and amendments thereto on March 20, May 10, July 18, 1985 and February 19, 1986, for an order of the Commission (1) pursuant to sections 6(c) and 11(a) of the Act, exempting Applicants from the provisions of section 11(c) of the Act to the extent necessary to permit a certain exchange offer ("Exchange Offer"), (2) pursuant to sections 6(c) and 17(b) of the Act exempting Applicants from the provisions of sections 17(a) and 26(a)(2)(C) of the Act, and (3) pursuant to sections 6(c) and 17(d) of the Act and Rule 17d-1 thereunder, permitting a certain joint transaction. On April 8, 1985, a Notice (Investment Company Act Release No. 14461) was issued on the amended and restated application. On March 17, 1986, an order was issued (Investment Company Act Release No. 14994) with respect to the Exchange Offer terms of the application ("Order"). All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, to the Order for its terms and conditions, and to the Act and the rules thereunder for the text of the applicable provision thereof.

According to the application, Series One is, and each future Trust will be

formed pursuant to a trust indenture ("Indenture") under New York and a standard terms and conditions of trust ("Agreement") (collectively Indenture and Agreement"). The Sponsor will act as depositor, United States Trust Company of New York will act as Trustee, and Standard & Poor's Corporation and Kenny Information Systems will act as independent evaluator ("Evaluator").

Applicants propose to insure certain portfolio bonds ("Securities") held in future Trusts under insurance policies to be issued by Bond Investors Guaranty Insurance Company ("BIG"). Applicant states that BIG is an affiliated person of the Sponsor because Philbro-Salomon Inc., which owns 100% of the Sponsor, also owns 20% of BIG's parent corporation, Bond Investors Group, Inc.

Applicants state that there are three principal methods of insuring municipal bonds in a unit investment trust: (1) Bonds insured when the bond is deposited into trust for coverage while the bond is held by the trust ("Portfolio Insurance"); (2) bonds insured to maturity ("Insurance to Maturity") by the sponsor with the premiums paid by the sponsor, or (3) bonds insured by the Trust under an enhanced form of portfolio insurance which provides an additional insured-to-maturity feature ("EPI"). The application states that the Sponsor proposes to cause the Trust to obtain EPI from BIG covering each Security deposited in the portfolio.

Applicant states that the Indenture and Agreement provide for sales of Securities by the Trustee under the following conditions:

1. Default by an issuer in the payment of principal or interest on such Securities, or any other outstanding obligations of such issuer, when due and payable;
2. Institution of legal proceedings seeking to restrain or enjoin the payment of any of the Securities or attacking their validity;
3. A breach of a covenant or warranty which could adversely affect the payment of debt service on the Securities;
4. Default in the payment of principal or interest on any other outstanding obligations of the same issuer of any of the Securities;
5. In the case of revenue bonds, if the revenues, based upon official reports, fall substantially below the estimated revenues calculated to be necessary to pay principal of and interest on the bonds;
6. A decline in market price, or such other market or credit factor, as in the opinion of the Trustee would make retention of any of the Securities detrimental to the Unitholders;
7. The loss of federal tax-exemption on the Securities;
8. Termination of the Trust Fund; or,
9. Refunding or refinancing of any Security, as set forth in the Indenture and Agreement.

The Trustee will sell Securities to meet redemptions of Trust units and the

Sponsor intends to maintain a secondary market for the units. The Trustee will reject any offer made by an issuer of any of the Securities to issue new obligations in exchange and substitution for any of the Securities pursuant to a refunding or refinancing plan; however, the Trustee may accept or reject such an offer or may take any other action with respect to the Securities as it deems proper if it determines that (1) the insurance covering the Securities while they are held in the Trust is inadequate, or (2) that the issuer is in default with respect to the Securities or the issuer will probably default with respect to the Securities in the reasonably foreseeable future.

According to the application, the Trusts will be structured so that the Sponsor has no involvement in determining if and which Security should be sold from the Trust. The Trustee will be compensated for portfolio supervisory services; this portfolio supervisory fee is separate and in addition to the Trustee's ordinary annual administrative fee. Applicants also state that, pursuant to the Indenture and Agreement, the Trustee, in its sole discretion, will determine whether the Trust should terminate. Applicants believe that this structure assures that no conflict could arise between the Sponsor and BIG in connection with the sale of Securities from the Trust. Applicants further represent that the Sponsor is not able to influence the transactions in such a way as to give preferential consideration to the interest of its affiliated insurer.

Applicants represent that all dealings with BIG will be at arm's length and will be based entirely on competitive considerations. Applicants represent that they will choose as insurer the company that offers, in the Sponsor's judgment, the best value to unitholders. Applicants state that the Sponsor will select the "AAA" rated insurer that offers the lowest premiums, although nonprice factors, including availability of insurance, may affect the Sponsor's choice.

Applicants represent that under EPI, Securities are insured while they are on deposit in a Trust with Portfolio Insurance, paid for by the Trust in periodic premiums. In addition, EPI provides an option to buy Insurance to Maturity for the security should the Trustee sell the Security from the Trust. Insurance to Maturity will be obtained when the insured value of a portfolio Security to be sold, less the cost of the pre-determined premium, exceeds the value of that portfolio Security without such insurance ("Enhancement Point").

The pre-determined premium is fixed by a formula at the time the Security is initially deposited into the Trust, which Formula takes into account the declining coverage necessary as the Security moves toward maturity. The premium will be paid to the insurer out of the proceeds from the sale of the Security. At the time of the sale of a Security, if the Enhancement Point is reached, the Trustee must obtain Insurance to Maturity for such Security.

Applicants represent that EPI combines the advantages of Insurance to Maturity and Portfolio Insurance and eliminates the disadvantages of either form of insurance alone. In addition, EPI provides three benefits to investors in the Trust. First, bonds that are not insured to Maturity are generally priced lower than bonds that are insured. Consequently, they are evaluated upon deposit into Trust at a lower price and thus result in a higher yield. Second, the Portfolio Insurance feature of EPI ceases when it is no longer needed. Thus, if a bond is called for redemption or is sold, and EPI does not require the purchase of Insurance to Maturity, the premiums cease. Third, Insurance to Maturity must be purchased under EPI when it is advantageous to do so. Applicants represent that there is no additional premium charged for the right to obtain Insurance to Maturity.

Applicants state that the premium rates for EPI will be at least as favorable as the rates charged by BIG to all of its customers who are unaffiliated entities and comparable to prevailing rates charged by insurers of similar stature and creditworthiness who are not affiliated with the Sponsor. Applicants submit that the terms of EPI are reasonable and fair, do not involve overreaching and are consistent with the purposes of the Act. Applicants request an exemption from section 17(a) of the Act to the extent that the provision by BIG of Enhanced Portfolio Insurance to the Trust might be deemed the sale of property to the Trust, as principal. Applicants also request an order of the Commission pursuant to section 6(c) of the Act for exemption from the provisions of section 28(a)(2)(c) of the Act to the extent necessary to permit the Trust to pay BIG for Insurance to Maturity from the proceeds of Securities sales. Applicants also request an order pursuant to section 17(d) of the Act and Rule 17d-1 thereunder to permit BIG to provide Enhanced Portfolio Insurance to the Trust.

According to Applicants, the proposed transactions would involve the payment by the Trust to BIG of monthly premiums with respect to any security

while on deposit in the Trust. The Application states that the premium rates will be determined by BIG within a rate framework applicable to all trust sponsors and filed with applicable state insurance regulatory authorities, based upon BIG's determinations of the creditworthiness of the issuer of the bonds, the risk of default by the bond issuer, the potential liability arising from insuring such bond issue, and the demand of sponsors to apply for such insurance on behalf of their trusts. The Applicants state that the proposed insurance transactions with BIG will be identical or substantially identical to insurance currently being offered by BIG to other sponsors of insured municipal bond trusts.

Applicants assert that EPI adds significant additional protection from the Sponsor influencing Security sales by eliminating the possibility of bias in connection with the sale of Securities from the Trust. Applicants state that as an example, when a defaulting Security is covered by EPI, and the defaulting Security remains in the Trust, BIG is obligated to insure principal and interest payments. On the other hand, if such defaulting Security is sold, then BIG would remain obligated to insure principal and interest payments because a defaulting Security's value would have reached the Enhancement Point, automatically resulting in the Trustee's obtaining Insurance to Maturity from BIG. In either case, BIG must continue to insure the defaulted Security under EPI and the Sponsor has no discretion in deciding whether to sell Securities or whether to obtain Insurance to Maturity.

Applicants state that BIG remains liable for principal and interest should a Security default, whether that Security remains in Trust or is sold. In contrast, a conflict of interest is presented with Portfolio Insurance only. With EPI, applicants assert, no benefit could accrue to the insurer if a defaulting Security were sold. Applicants also state that based on yields calculated at the date a Security is deposited into Trust, there would be no economic benefit to BIG if the Trustee were to purchase Insurance to Maturity by exercise of the option upon sale of the Security from the Trust, thus there is no incentive to cause the Trustee to select for sale a Security that has reached the Enhancement Point.

Applicants conclude that the order requested is appropriate in the public interest, consistent with the protection of investors and purposes and policies of the Act.

Notice Is Further Given that any interested person wishing to request a hearing on the application may, not later

than May 14, 1986, at 5:30 p.m., do so by submitting a written request setting forth the nature of his/her interest, the reasons for his/her request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, DC 20549. A copy of the request should be served personally or by mail upon Applicant(s) at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with request. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 86-9558 Filed 4-28-86; 8:45 am]

BILLING CODE 8010-01-M

[File No. 81-733]

Application and Opportunity for Hearing: Towers, Perrin, Forster & Crosby, Inc.

April 18, 1986.

Notice Is Hereby Given that Towers, Perrin, Forster & Crosby, Inc. ("Applicant") has filed an application pursuant to section 12(h) of the Securities Exchange Act of 1934, as amended ("1934 Act"), for an order exempting Applicant from the registration provisions of section 12(g) of the 1934 Act.

The Applicant states, in part:

1. In the absence of an exemption, Applicant will be required to register its securities under section 12(g) of the 1934 Act, and will be required to comply with all reporting requirements thereunder.
2. Applicant believes that the exemptive order it requests is appropriate in view of the fact that there are no public stockholders of the Applicant and there is no trading interest in its stock.

For a more detailed statement of the information presented all persons are referred to the application which is on file at the offices of the Commission in the Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549.

Notice Is Further Given that any interested person not later than May 13, 1986 may submit to the Commission in writing his views or any substantial facts bearing on the application or the desirability of hearing thereon. Any such communication or request should be addressed: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549, and should

state briefly the nature of the interest of the person submitting such information or requesting the hearing, the reason for such request, and the issues of fact and law raised by the application which he desires to controvert.

Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof. At any time after that date, an order granting the application may be issued upon request or upon the Commission's own motion.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 86-9580 Filed 4-28-86; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirement Submitted to OMB for Review

Dated: April 24, 1986.

The Department of Treasury has submitted the following public information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of this submission may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Room 7221, 1201 Constitution Avenue, NW., Washington, DC 20220.

OMB Number: New

Form Number: 8508

Type of Review: New

Title: Request for Waiver from Filing Information Returns on Magnetic Media

Clearance Officer: Garrick Shear, (202) 566-6150, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224

OMB Reviewer: Robert Neal, (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503

Joseph F. Maty,

Departmental Reports Management Office.

[FR Doc. 86-9568 Filed 4-28-86; 8:45 am]

BILLING CODE 4810-25-M

Public Information Collection Requirement Submitted to OMB for Review

Dated: April 24, 1986.

The Department of Treasury has submitted the following public information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of these submissions may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding these information collections should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Room 7221, 1201 Constitution Avenue, NW., Washington, DC 20220.

Bureau of Alcohol, Tobacco and Firearms

OMB Number: 1512-0242

Form Number: ATF F 5400.6

Type of Review: Extension

Title: User-Limited Permit (Explosives)

Clearance Officer: Robert G. Masarsky,

(202) 566-7077, Bureau of Alcohol, Tobacco and Firearms, Room 7202, Federal Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20226

OMB Reviewer: Milo Sunderhauf, (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503

Joseph F. Maty,

Departmental Reports Management Office,

[FR Doc. 86-9589 Filed 4-25-86; 8:45 am]

BILLING CODE 4810-25-M

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition; Determination

Notice is hereby given of the following determination: Pursuant to the authority vested in me by the act of October 19,

1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation of Authority of June 27, 1985 (50 FR 27939, July 2, 1985), I hereby determine that the objects to be included in the exhibit, "The Great Eastern Temple: Treasures of Japanese Buddhist Art from Todai-ji, Nara" (included in the list¹ filed as a part of this determination) imported from abroad for the temporary exhibition without profit within the United States are of cultural significance. These objects are imported pursuant to a loan agreement between the Art Institute of Chicago and The Asahi Shimbun of Tokyo. I also determine that the temporary exhibition or display of the listed exhibit objects at The Art Institute of Chicago, Chicago, Illinois, beginning on or about June 28, 1986, to on or about September 7, 1986, is in the national interest.

Public notice of this determination is ordered to be published in the **Federal Register**.

Dated: April 23, 1986.

Thomas E. Harvey,

General Counsel and Congressional Liaison.

[FR Doc. 86-9491 Filed 4-28-86; 8:45 am]

BILLING CODE 8230-01-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

¹ An itemized list of objects included in the exhibit is filed as part of the original document. A copy of this list may be obtained by contacting Mr. John Lindburg of the Office of the General Counsel of USIA. The telephone number is 202-485-7976, and the address is Room 700, 301 4th Street SW., Washington, DC 20547.

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) how often the form must be filled out, (5) who will be required or asked to report, (6) an estimate of the number of responses, (7) an estimate of the total number of hours needed to fill out the form, and (8) an indication of whether section 3504(h) of Public Law 96-511 applies.

ADDRESSES: Copies of the form and supporting documents may be obtained from Nancy C. McCoy, Agency Clearance Officer (732), Veterans Administration, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 389-2146. Comments and questions about the items on the list should be directed to the VA's OMB Desk Officer, Dick Eisinger, Office of Management and Budget, 726 Jackson Place, NW, Washington, DC 20503, (202) 395-7316.

DATES: Comments on the information collection should be directed to the OMB Desk Officer within 60 days of this notice.

Dated: April 23, 1986.

By direction of the Administrator.

Randall H. Bryant II,

Executive Assistant to the Associate Deputy Administrator for Management.

Extension

1. Department of Veterans Benefits.
2. Supplemental Physical Examination Report.
3. VA Form 29-8100 (Series).
4. On occasion.
5. Individuals or households.
6. 3,391 responses.
7. 678 hours.
8. Not applicable.

[FR Doc. 86-9493 Filed 4-28-86; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register

Vol. 51, No. 82

Tuesday, April 29, 1986

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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1

FEDERAL COMMUNICATIONS COMMISSION

April 24, 1986.

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on Thursday, May 1, 1986, which is scheduled to commence at 9:30 a.m., in Room 856, at 1919 M Street, NW., Washington, DC.

Agenda, Item No., and Subject

Private Radio—1—Title: Amendment of Parts 2 and 94 of the Rules to accommodate radio local area network stations in the 1700-1710 MHz band. (RM-5972) Summary: The FCC will consider whether to adopt a Notice of Proposed Rule Making to permit radio local area networks and similar type system to operate in the 1700-1710 MHz band.

Common Carrier—1—Title: In the Matter of International Communications Policies Governing Designation of Recognized Private Operating Agencies, Grants of IRUs in International Facilities and Assignment of Data Network Identification Codes. Summary: The Commission will consider comments filed in response to its Notice of Proposed Rulemaking in CC Docket No. 83-1230.

Common Carrier—2—Title: Report and Order revising the Uniform System of Accounts for Class A, Class B, and Class C Telephone Companies. (CC Docket 78-196) Summary: The Commission will decide whether to rescind the Uniform System of Accounts for Class A, Class B, and Class C Telephone Companies in Parts 31 and 33 of the Commission's Rules and Regulations and replace these parts with a single new uniform system of accounts in a new Part 32 for all telephone companies subject to FCC jurisdiction.

Mass Media—1—Title: Deregulation of Radio. Summary: The Commission will consider what program record keeping requirements should be adopted for commercial radio licensees.

Mass Media—2—Title: Revision of Programming and Commercialization

Policies, Ascertainment Requirements, and Program Log Requirements for Commercial Television Stations. Summary: The Commission will consider petitions for reconsideration of its *Report and Order* in the television deregulation proceeding.

This meeting may be continued the following work day to allow the Commission to complete appropriate action.

Additional information concerning this meeting may be obtained from Judith Kurtich, FCC Office of Congressional and Public Affairs, telephone number (202) 254-7674.

Issued: April 24, 1986.

Federal Communications Commission,
William J. Tricarico,
Secretary.

[FR Doc. 86-9638 Filed 4-25-86; 3:06 pm]

BILLING CODE 6712-01-M

2

FEDERAL ENERGY REGULATORY COMMISSION

TIME AND DATE: April 30, 1986. 10:00 a.m.

PLACE: 825 North Capitol Street, NE., Room 9306, Washington, DC 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

Note.—Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE

INFORMATION: Kenneth F. Plumb, Secretary, Telephone (202) 357-8400.

This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the Division of Public Information.

Consent Power Agenda, 834th Meeting—April 30, 1986, Regular Meeting (10:00 a.m.)

CAP-1.

Project No. 1962-007, Pacific Gas & Electric Co.

Project No. 3223-003, Sacramento Municipal Utility District, Northern California Power Agency, and the cities of Anaheim, Azusa, Banning, Colton and Riverside, California.

CAP-2.

Project No. 4660-004, Independence County, Arkansas

CAP-3.

Project No. 4204-004, city of Batesville, Arkansas

CAP-4.

Project No. 4659-004, Independence County, Arkansas

CAP-5.

Project No. 7149-002, Brazos River Authority

CAP-6.

Project No. 9597-002, Hazard Creek Conservationists

Project No. 9598-002, Hard Creed Conservationists

CAP-7.

Omitted

CAP-8.

Project No. 9234-001, Adirondack Hydro

CAP-9.

Project No. 9371-001, Browns Valley Associates

CAP-10.

Project No. 5896-004, city of Rome, New York

CAP-11.

Project No. 2427-003, Woods Falls B. Hydro, Inc.

Project No. 8763-001, Power Mining, Inc.

CAP-12.

Project Nos. 6810-006, and 6811-006, Douglas Mendenhall

CAP-13.

Project Nos. 3749-000, and 002, Mitex, Inc.

Project Nos. 4210-000, and 002, Energenics Systems, Inc.

Project Nos. 5006-000, and 002, Central Montana Electric Generation and Transmission Cooperative, Inc.

Project No. 8341-000, Crow Indian Tribe

CAP-14.

Project No. 4919-004, city of Gillette, Wyoming

Project No. 3749-003, Mitex, Inc.

Project No. 4210-003, STS Energenics, Ltd.

Project No. 5006-003, Central Montana Electric Generation and Transmission Cooperative, Inc.

CAP-15.

Project No. 6046-002, Placer County Water Agency

Project No. 6714-000, Gold Run Hydro Associates

CAP-16.

Omitted

CAP-17.

Docket Nos. EL85-18-003, 004 and 005, city of Tacoma, Washington v. the Washington Water Power Company, the Montana Power Company, Portland General Electric Company, Pacific Power and Light Company and Puget Sound and Light Company

CAP-18.

Docket Nos. ER86-262-002 and ER85-598-007, et al., New York State Electric and Gas Corporation

CAP-19.

Docket No. ER86-287-000, Cambridge Electric Light Company

CAP-20.

Docket No. ER86-328-000, Pacific and Electric Company

- CAP-21.
Docket No. ER86-344-000, Niagara Mohawk Power Corporation
- CAP-22.
Docket No. ER85-689-002, Holyoke Water Power Company and Holyoke Power and Electric Company
Docket No. ER85-707-002, Western Massachusetts Electric Company
Docket No. ER85-720-002, Connecticut Light & Power Company
- CAP-23.
Docket No. ER85-724-001, New England Power Company
- CAP-24.
Docket No. EL85-46-000, EUA Power Corporation
- CAP-25.
Docket Nos. RE80-89-005 and 006, Interstate Power Company
- CAP-26.
(A) Docket No. IR-000-1004, Public Works Commission, Fayetteville, North Carolina
(B) Docket No. IR-000-1191, Public Lighting Department of Detroit, Michigan
(C) Docket No. IR-000-370, Pacific Northwest Generating Company
(D) Docket No. IR-000-980, California Department of Water Resources
- Consent Miscellaneous Agenda*
- CAM-1.
Docket No. FA84-46-000, Iowa-Illinois Gas and Electric Company
- CAM-2.
Docket No. FA83-18-001, Transcontinental Gas Pipe Line Corporation
- CAM-3.
Docket No. RM85-1-000 (Parts A-D), regulation of natural gas pipelines after partial wellhead decontrol (Transcontinental Gas Pipe Line Corporation)
- CAM-4.
Omitted
- CAM-5.
Omitted
- CAM-6.
Docket Nos. RM85-1-000 (Parts A-D), regulation of natural gas pipelines after partial wellhead decontrol (Endevco, Inc., Vessels Oil and Gas Company, Santo Resources, Inc. and Petro-Energy Exploration, Inc., Standard Gas Marketing Company, Kaiser-Francis Oil Company, Essex Exploration Company, Quintana Petroleum Company, Panda Resources, Inc., Trinity Pipeline Company, Moody Gas Gathering System, Tejas Power Corporation, Txo Production Corp., Creole Gas Pipeline Corporation and Texas Gas Exploration Corporation)
- CAM-7.
Omitted
- CAM-8.
Docket No. GP86-27-000, Texas Railroad Commission, NGPA Section 103 Determination, MR Oil Company, University Sec. 30 #2 well, TRC Docket No. F-08-062389, FERC No. JD86-18383
- CAM-9.
Docket No. GP85-45-000, State of New Mexico, Section 103 Determinations, Tenneco Oil Exploration and Production Company, #3 Leonard Brothers Well,
- FERC JD No. 80-02575, #3 Leonard Federal Well, FERC JD No. 80-02564
- CAM-10.
Docket No. GP80-15-005, ANR Pipeline Company (formerly Michigan Wisconsin Pipe Line Company)
- CAM-11.
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- CAM-12.
Docket No. RO85-13-000, South Central Terminal Company, Inc.
- CAM-13.
Docket No. RO86-3-001, CPI Crude, Inc.
- CAM-14.
Docket No. RO84-15-001, Keystone Fuel Oil Company
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- CAG-1.
Docket No. RP84-59-004, Northwest Pipeline Corporation v. Colorado Interstate Gas Company
Docket No. RP85-13-012, Northwest Pipeline Corporation
- CAG-2.
Docket No. RP86-42-002, El Paso Natural Gas Company
- CAG-3.
Docket No. TA86-2-28-002, Panhandle Eastern Pipe Line Company
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Docket Nos. ST85-956-001, ST85-1572-001 and ST86-6-001, Acadian Gas Pipeline System
- CAG-5.
Docket Nos. TA86-2-35-000, 001 and 002, West Texas Gas, Inc.
- CAG-6.
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- CAG-7.
Docket Nos. TA86-3-43-000, 001 and 002, Northwest Central Pipeline Corporation
- CAG-8.
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Docket Nos. CI85-695-002 and CI86-210-001, TXP Operating Company
Docket No. CI86-282-001, Fina Oil and Chemical Company, et al.
- CAG-23.
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- P-1.
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- II. Electric Rate Matters**
- ER-1.
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- ER-2.
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- M-1.
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- M-2.
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- RP-1.
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- RP-2.

Docket Nos. TA86-5-29-000 and 001 (PGA86-2 and IPR86-2).
Transcontinental Gas Pipe Line Corporation

II. Producer Rate Matters

CI-1
Reserved.

III. Pipeline Certificate Matters

CP-1.
Docket Nos. CP86-83-000, CP86-106-000, CP86-107-000, CP86-108-000, CP86-131-000, CP86-132-000, CP86-133-000, CP86-134-000, CP86-135-000, CP86-136-000, CP86-137-000, and CP86-186-000, Natural Gas Pipeline Company of America

CP-2.
(A) Docket Nos. CP86-216-000, CP86-217-000, CP86-222-000, CP86-223-000, CP86-242-000, CP86-255-000 and CP86-256-000, Panhandle Eastern Pipe Line Company

(B) Docket No. CP86-317-002, Panhandle Eastern Pipe Line Company

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Kenneth F. Plumb,
Secretary.

[FR Doc. 86-9639 Filed 4-25-86; 3:11 pm]

BILLING CODE 6717-01-M

3

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

April 24, 1986.

TIME AND DATE: 10:00 a.m., Thursday, May 1, 1986.

PLACE: Room 600, 1730 K. St., NW., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will hear oral argument on the following:

1. Amax Chemical Corporation, Docket No. CENT 84-91-M. (Issues include whether the administrative law judge properly concluded that the operator violated 30 CFR § 57.3-22 (1984), a ground control standard.)

Any person intending to attend this hearing who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 20 CFR § 2706.150(a)(3) and § 2706.160(e).
TIME AND DATE: Immediately following the oral argument.

STATUS: Closed (Pursuant to 5 U.S.C. § 552(b)(10)).

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the above captioned case.

CONTACT PERSON FOR MORE INFORMATION: Jean Ellen (202) 653-5629.

Jean I. Ellen
Agenda Clerk.

[FR Doc. 86-9652 Filed 4-28-86; 8:45 am]

BILLING CODE 6735-01-M

4

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of April 28, May 5, 12, and 19, 1986.

PLACE: Commissioners' Conference Room, 1717 H Street, NW., Washington, DC.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of April 28

Thursday, May 1

9:30 a.m.

Discussion of Management-Organization and Internal Personnel Matters (Closed—Ex. 2 & 6)

11:30 a.m.

Affirmation/Discussion and Vote (Public Meeting)
a. Advanced Reactor Policy Statement (postponed from 4/23)

Week of May 5—Tentative

Wednesday, May 7

10:00 a.m.

Discussion/Possible Vote on Full Power Operating License for Catawba-2 (Public Meeting)

Thursday, May 8

2:00 p.m.

Meeting with Advisory Committee on Reactor Safeguards on Safety Goal Policy (Public Meeting)

3:30 p.m.

Affirmation Meeting (Public Meeting) (if needed)

Week of May 12—Tentative

Thursday, May 15

9:30 a.m.

Briefing by AIF on State of the Industry (Public Meeting)

3:30 p.m.

Affirmation Meeting (Public Meeting) (if needed)

Week of May 19—Tentative

Tuesday, May 20

2:00 p.m.

Discussion of Management-Organization and Internal Personnel Matters (Closed—Ex. 2 & 6)

Wednesday, May 21

10:00 a.m.

Briefing by Staff on Status of TVA (Open/Portion Closed—Ex. 5 & 7)

2:00 p.m.

Discussion of Management-Organization and Internal Personnel Matters (Closed—Ex. 2 & 6)

Thursday, May 22

10:00 a.m.

Briefing by Davis-Besse Ad Hoc Review Group (Open/Portion May be Closed)

2:00 p.m.

Affirmation Meeting (Public Meeting) (if needed)

TO VERIFY THE STATUS OF MEETINGS

CALL (RECORDING): (202) 634-1498.

CONTACT PERSON FOR MORE

INFORMATION: L. Ong, (202) 634-1410.

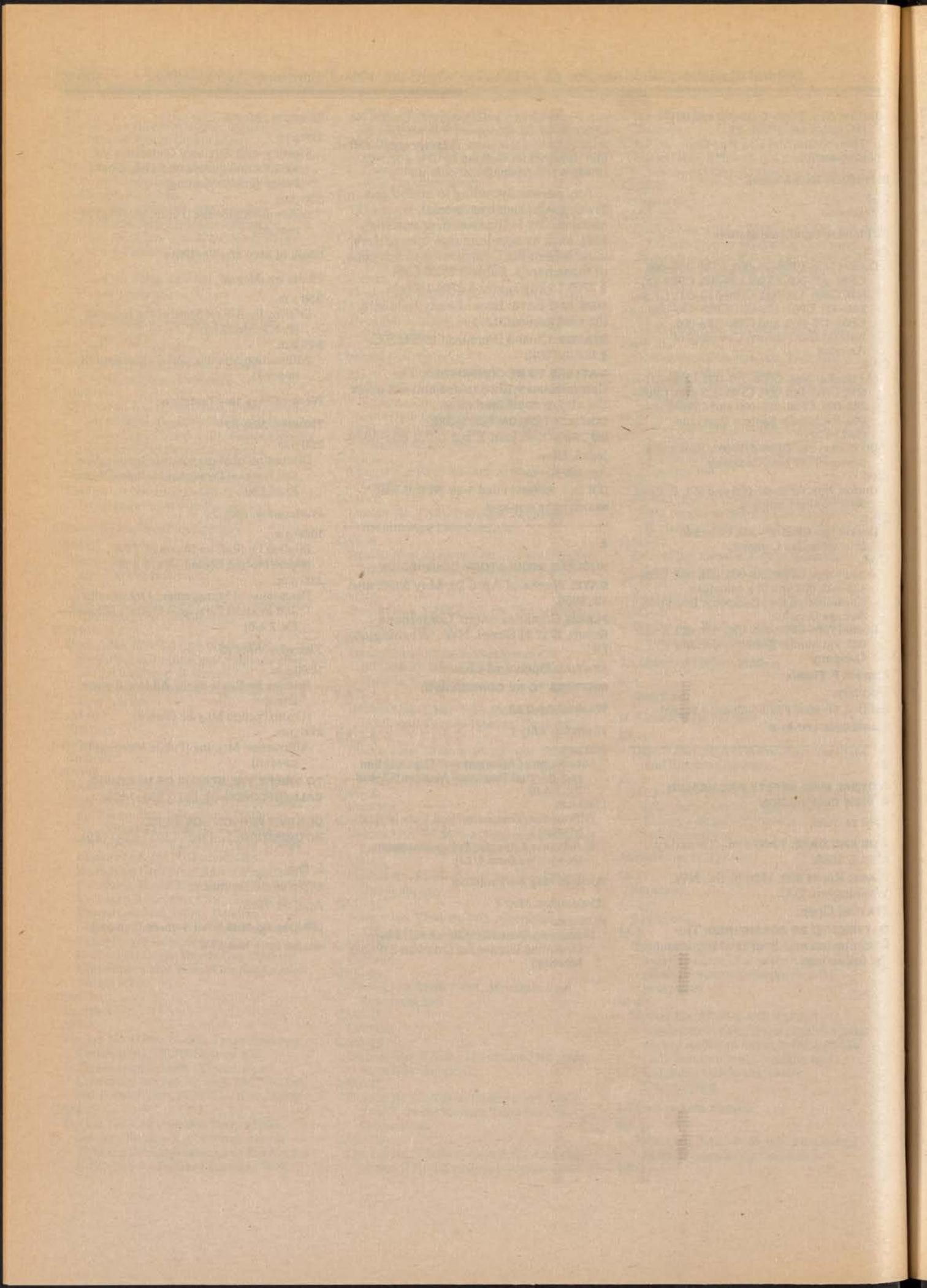
L. Ong,

Office of the Secretary.

April 24, 1986.

[FR Doc. 86-9641 Filed 4-25-86; 3:16 pm]

BILLING CODE 7590-01-M



Register **Register** **Register**

Tuesday
April 29, 1986

Part II

**Department of the
Interior**

Bureau of Indian Affairs

**Indian Trust Funds; Policy Decision
Concerning the Management and
Administration**

Department of the Interior

Part II

Division of Indian Affairs

General Administration

REPORT

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DEPARTMENT OF THE INTERIOR**Bureau of Indian Affairs****Indian Trust Funds; Policy Decision on Management and Administration**

AGENCY: The Bureau of Indian Affairs, Interior.

ACTION: Notice of policy decision concerning the management and administration of Indian Trust Funds.

SUMMARY: Bureau of Indian Affairs will strengthen its internal management and administration of Indian trust funds by contracting for certain services.

FOR FURTHER INFORMATION CONTACT: Betty L. Wilkinson, Chief, Division of Accounting Management, Main Interior Building, Room 4604, (202) 343-7336 or Charles Hughes, Attorney-Advisor, SOL-1A, Main Interior Building, Room 6459, (202) 343-9401.

SUPPLEMENTARY INFORMATION: The Secretary of the Interior has broad responsibilities in managing Indian trust funds, including collections, accounting, investments, and certification of disbursements to Indian beneficiaries. The Bureau of Indian Affairs carries out these functions except for collection of royalties from Indian oil and gas production which are administered by the Minerals Management Service. Collections are deposited through the banking system into Department of

Treasury accounts specified for Indian trust funds. Treasury is responsible for maintaining all Indian trust fund cash accounts and for all disbursement of such funds upon Bureau of Indian Affairs request. The Bureau of Indian Affairs is responsible for investment of the funds in securities authorized by law. Bureau of Indian Affairs accounts are maintained to reflect tribal and individual Indian interests in fund invested and funds held in Treasury.

The Department of the Interior, with Department of Treasury concurrence, has determined that increased, expert assistance is needed to strengthen the management and administration of Indian trust funds and that such assistance should be sought from the private sector.

The Bureau has obtained an independent evaluation of the trust fund operation and has considered numerous audits and reports concerning the funds. In response to a request for information published by the Bureau, a wide range of materials have been received on relevant private sector capabilities. The Department of Treasury has assisted in assessing how the government might strengthen its Indian trust fund operation. It has been determined that the need for improvements requires immediate action and that there is no likelihood that the government could effectively duplicate the needed

assistance already available in the private sector.

The procurement will be directed at a streamlined collection process through use of lock boxes, faster concentration of funds for investment, improved accounting and reporting to Indian beneficiaries and the government, and strengthened investment management.

All controls required by law of the government as trustee will continue, including approval of investment decisions. Treasury responsibility to maintain Indian trust fund accounts and to disburse trust funds will not be affected. All activities conducted under contract will involve internal trust fund operations.

The procurement will not restrict or negatively affect any existing tribal or individual Indian right or relationship to the funds. Rather, the procurement will be designed to enhance rights of and services rendered to Indian beneficiaries by better accountability, more frequent and detailed reporting on the status of funds, a modernized collection process and a better managed investment operation.

EFFECTIVE DATE: This policy shall become effective April 29, 1986.

Ross O. Swimmer,

Assistant Secretary—Indian Affairs.

[FR Doc. 86-9610 Filed 4-28-86; 8:45 am]

BILLING CODE 4310-02-M

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Tuesday, April 29, 1986

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LIST OF PUBLIC LAWS**Last List April 28, 1986.**

This is a continuing list of public bills from the current session of Congress which have become Federal laws. The text of laws is not published in the **Federal Register** but may be ordered

in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone 202-275-3030).

H.R. 4551/Pub. L. 99-278

To extend for 3 months the emergency acquisition and net worth guarantee provisions of the Garn-St Germain Depository Institutions Act of 1982. (Apr. 24, 1986; 100 Stat. 397; 1 page) Price: \$1.00

H.R. Res. 599/Pub. L. 99-279

Commemorating the twenty-fifth anniversary of the Bay of Pigs invasion to liberate Cuba from Communist tyranny. (Apr. 24, 1986; 100 Stat. 398; 1 page) Price: \$1.00

S. 1282/Pub. L. 99-280

Health Services Amendments Act of 1986. (Apr. 24, 1986; 100 Stat. 399; 3 pages) Price: \$1.00

S.J. 286/Pub. L. 99-281

To designate the week of April 20, 1986, through April 26, 1986, as "National Reading Is Fun Week." (Apr. 24, 1986; 100 Stat. 402; 1 page) Price: \$1.00

S.J. 303/Pub. L. 99-282

To designate April 1986, as "Fair Housing Month." (Apr. 24, 1986; 100 Stat. 403; 1 page) Price: \$1.00