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Briefings on How To Use the Federal Register—
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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.

NEW YORK, NY

WHEN: December 5 at 10:00 a.m.,

WHERE: Room 305A, 26 Federal Plaza, New York, NY

RESERVATIONS: Arlene Shapiro or Stephen Colon, New York Federal Information Center, 212–264–4810.

PITTSBURGH, PA

WHEN: December 8 at 1:30 p.m.,

WHERE: Room 2212, William S. Moorehead Federal Building, 1000 Liberty Avenue, Pittsburgh, PA

RESERVATIONS: Kenneth Jones or Lydia Shaw
Pittsburgh: 412–644–INFO
Philadelphia: 215–597–1707, 1709

Contents

Federal Register

Vol. 51, No. 229

Friday, November 28, 1986

Separate Parts In This Issue

Reader Aids
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

5 CFR
831 42987

7 CFR
226 42990
271 42992
272 42992
273 42992
274 42992
275 42992
276 42992
277 42992
278 42992
279 42992
280 42992
281 42992
282 42992
284 42992
285 42992

10 CFR
463 42994
904 43124

14 CFR
Proposed Rules:
39 43010
71 43011
73 43012

16 CFR
Proposed Rules:
13 (2 documents) 43013, 43022

18 CFR
282 42995

19 CFR
12 42996
113 42997
141 42997

21 CFR
172 (3 documents) 42999–43001
175 43120
178 43120
558 43121
Proposed Rules:
1308 43025

31 CFR
Proposed Rules:
357 43027

33 CFR
Proposed Rules:
117 43047

34 CFR
668 43160
690 43160

40 CFR
52 (2 documents) 43120
62 43120

42 CFR
Proposed Rules:
57 43048

43 CFR
Public Land Orders:
6631 43003
6632 43003

46 CFR
281 43003

47 CFR
Proposed Rules:
73 (11 documents) 43050–43054

50 CFR
Proposed Rules:
216 43055
652 43055
655 43056
663 43057

Rules and Regulations

Federal Register
Vol. 51, No. 229
Friday, November 28, 1986

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 831

Retirement; Alternative Forms of Annuity

AGENCY: Office of Personnel Management.

ACTION: Interim rules with request for comments.

SUMMARY: The Office of Personnel Management (OPM) is issuing interim rules and requesting comment on the rules to implement section 204 of the Federal Employees' Retirement System Act of 1986, which requires OPM to offer alternative forms of annuity. These interim rules specify what types of benefits will be offered and how OPM will administer them.

DATES: Interim rules effective June 6, 1986; comments must be received on or before January 27, 1987.

ADDRESSES: Send comments to Reginald M. Jones, Jr., Assistant Director for Pay and Benefits Policy, Retirement and Insurance Group, P.O. Box 57, Washington, DC 20044, or deliver to OPM, Room 4351, 1900 E Street, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Robert M. Rosenblatt, (202) 632-5560.

SUPPLEMENTARY INFORMATION:

I. Introduction

Effective June 6, 1986, section 204 of the Federal Employees' Retirement System Act of 1986, Pub. L. 99-335, amended the civil service retirement law by adding section 8343a to subchapter III of chapter 83 of title 5, United States Code. Section 8343a requires OPM to offer alternative forms of annuities under the Civil Service Retirement System (CSRS). These interim regulations establish the rules OPM will use in administering the new provision.

II. Eligibility

Section 8343a states that retiring employees may elect to receive benefits other than those otherwise payable under CSRS. Eligibility for the alternative forms of annuities is limited to non-disability annuitants. If the retiring employee is married, the employee and the employee's spouse must jointly waive any survivor benefit otherwise payable under CSRS. If this waiver is not made, the employee is ineligible to elect the alternative form of annuity. Also ineligible is any employee who has a former spouse entitled by court order to receive a portion of the employee's annuity or a survivor annuity based on the employee's service.

Section 81.2203 (a), (b), and (c) of the interim regulations restate these basic eligibility requirements, specifying that the employee's status at the time of retirement will govern OPM's determination. This gives effect to the statutory language of section 8343a(a), which provides that the employee may make the election "at the time of retiring." "Time of retirement" is defined in these interim regulations in the same way as in OPM's survivor benefit regulations (Subpart F of 5 CFR Part 831) to mean the date on which the annuity benefit begins to accrue.

Section 831.2203(d) provides that an election of an alternative form of annuity must be filed on a form prescribed by OPM and that the form will require, in the case of a married annuitant, that the spouse of the retiree consent to the specific election of the alternative form of annuity made by the retiree. The regulatory requirement that the spouse consent to the exact election made by the retiree will ensure that the spouse is fully informed of the election.

Section 831.2203(e) provides a time limit for electing an alternative form of annuity consistent with the limits imposed under Subpart F of this part for making survivor benefit elections.

Sections 831.2203 (f) and (g) provide for situations in which a retiree dies before making an election regarding the alternative form of annuity. Under the CSRS, the majority of married retirees elect a full survivor benefit for their spouse. Under the method of computing the alternative forms of annuity (described in paragraph III) the rate of survivor benefits will be the same regardless of whether the retiree elects to receive an alternative form of annuity (and the lump-sum credit) or just the annuity otherwise payable under CSRS. Therefore, if a retiree dies before making an election, OPM will deem the annuitant to have elected the full survivor benefit for any current spouse plus the alternative form of annuity (and the lump-sum credit). The regulations provide one exception to this rule: If the retiree had submitted to OPM a valid election of survivor benefits in which the current spouse consented not to receive the maximum survivor benefit, *and* the election named a former spouse to receive a survivor benefit, OPM will honor that election by paying the former spouse the full or partial survivor benefit that had been elected by the decedent and will also deem that the decedent elected the alternative form of annuity. Under both in general rule and the exception, the lump-sum credit will be paid in the order of precedence for lump-sum payments in section 8342(c) of title 5, United States Code.

III. Alternative Forms of Annuity

Section 8343a(b) requires OPM to offer at least 2 alternative forms of annuity, each of which includes payment of the employee's lump-sum credit (employee deductions and deposits for civilian and military service deposits, plus interest, if any, that was added before 1957), plus an annuity payable for the life of the annuitant. Under one of these mandatory offerings, no survivor annuity would be payable; and under the other, a survivor benefit for the spouse would be payable.

Under § 831.2204(a), OPM will offer any of the 4 types of annuity otherwise available under the CSRS: (1) A self-only annuity; (2) an annuity with a reduction to provide an annuity for the current spouse; (3) an annuity with a reduction to provide a survivor annuity to a named person having an insurable interest; and (4) an annuity with a reduction to provide an annuity for a former spouse. Certain combinations of these types of annuities are available under existing rules governing survivor benefit elections (Subpart F of 5 CFR Part 831), and will also be available as section 8343a benefits. The rate of annuity payable to the annuitant will be further reduced in accordance with § 831.2205.

Section 831.2204(b) provides that once OPM has established the rate of annuity

payable to retirees who have elected to receive an alternative form (and the lump-sum credit), OPM will treat these annuitants and their survivors in the same way as other annuitants with regard to post-retirement rights and obligations that would be otherwise applicable to annuitants under the CSRS. The established rate of annuity payable will be increased by cost-of-living adjustments provided under 5 U.S.C. 8340. Survivor benefits (including children's benefits) will be payable and terminable in accordance with 5 U.S.C. 8341. Recomputations of annuity, as in the case of a post-retirement marriage, divorce, or remarriage will be calculated in accordance with 5 U.S.C. 8339, and subject to the same notice requirements, if any. Subsequent changes in post-retirement statutory or regulatory provisions will be similarly applied equally to both the alternative and non-alternative annuitants, unless future law or regulations specifically provide otherwise.

IV. Computation of the Alternative Forms of Annuity

With regard to computation of the alternative form of annuity, section 8343a simply requires that the present value of the combined lump-sum credit and alternative form of annuity payable to the retiree be "actuarially equivalent" to the present value of the annuity otherwise payable to the retiree under the CSRS. The law provides no specific guidance on determining actuarial equivalence under section 8343a. These interim regulations provide that OPM will use the dynamic interest and inflation assumptions currently adopted by the Board of Actuaries as applicable to the CSRS: a 6.5 percent interest rate and a 5 percent rate of inflation (that is, yearly cost-of-living adjustment in annuities). OPM will also use its mortality tables (life expectancy) for non-disability CSRS annuitants.

The present value of an annuity is the amount of money, together with interest, needed at the time of retirement to fund an annuity for the life of the annuitant. This amount of money (present value) earns interest at an assumed rate (6.5% per year in this case) and the annuity increases at an assumed rate (5% per year in this case). Using these assumptions, the annuity payments gradually delete the initial amount of money, until by the end of the expected lifetime, the amount is reduced to zero. Of course, this computation is done at the time of retirement and is based on actuarially-determined assumptions and expectancies for a large group rather than on individual cases.

The present value of an annuity may be determined by multiplying the monthly rate of annuity by a "present value factor" defined under § 831.2202. Using the elements described above, OPM's Office of the Actuary has created the following table for this purpose. The table applies equally to men and women, even though their life expectancies are slightly different. This unisex table was obtained by averaging separate present value factors for male and female retirees weighted by the total dollar value of annuities typically paid to new retirees under CSRS.

Present Value Factors

Age at retirement:	*Present value of a monthly annuity*
40	346.2
41	339.9
42	333.5
43	327.0
44	320.3
45	312.0
46	303.0
47	292.5
48	283.9
49	277.0
50	269.0
51	261.9
52	256.0
53	249.4
54	243.1
55	236.0
56	229.2
57	222.9
58	216.7
59	210.1
60	204.6
61	199.6
62	191.7
63	185.2
64	178.1
65	171.3
66	164.6
67	158.8
68	152.7
69	146.4
70	140.8
71	134.6
72	129.5
73	123.7
74	118.1
75	111.6
76	107.1
77	102.5
78	96.5
79	90.3
80	84.7
81	80.0
82	76.0
83	72.4
84	69.2
85	66.1
86	62.3
87	58.7
88	55.2
89	51.9
90	48.7

The present value factor of 236.0, for example, represents the amount of money earning interest at 6.5 percent (the present value) theoretically needed at the time of retirement to fund the annuity of a 55-year-old retiree if the annuity starts out at the rate of $1 per month and is payable for the annuitant's lifetime with yearly cost-of-living increases of 5 percent. If the table must be changed because of changes in underlying assumptions or mortality rates, OPM will publish a **Federal Register** notice of the proposed change at least 30 days before the effective date of the change.

The actuarial equivalence between: (i) The present value of the lump-sum credit/alternative form of annuity and (ii) the annuity ordinarily payable (without the lump-sum credit payment) may be determined in either of 2 ways that produce mathematically identical results. The first method is:

(1) Monthly annuity ordinarily payable under CSRS (including any reductions for survivor benefits elected), multiplied by

(2) Present value factor, yields

(3) Present value of annuity ordinarily payable, minus

(4) Lump-sum credit, yields

(5) Present value of alternative form of annuity, divided by

(6) Present value factor, yields

(7) Monthly rate of alternative form of annuity, rounded to the next lowest dollar.

The second method (which is prescribed into the regulations at § 831.2205) simply produces the dollar reduction in the commencing rate of annuity attributable to the payment of the lump-sum credit:

(1) Lump-sum credit, divided by

(2) Present value factor, yields

(3) Monthly reduction (in dollars, rounded up), subtracted from the monthly rate ordinarily payable, yields

(4) Monthly rate of alternative form of annuity.

Examples

Under the first method, for an annuitant whose commencing date of annuity is his or her 55th birthday, OPM would compute the rate of his or her alternative form of annuity as follows, assuming his or her ordinarily payable monthly rate would be $1000 (after a reduction to provide a survivor annuity):

(1) $1000, multiplied by

(2) 236.0, yields

(3) $236,000, minus

(4) $20,000, yields

(5) $216,000, divided by

(6) 236.0, yields

(7) $915.

Using the second method for the same retiree, OPM will compute the reduction attributable to the payment of the lump-sum credit, as follows:

(1) $20,000, divided by
(2) 236.0, yields
(3) $85 subtracted from $1000, yields
(4) $915.

It should be noted that survivor benefits are not reduced by a retiree's election of the alternative form of annuity. An election to provide survivor benefits requires a reduction in the retiree's annuity, but this reduction is made before computing the alternative form of annuity. Therefore, the reduction in annuity to provide the survivor benefit is the same for the alternative form of annuity as for the annuity ordinarily available. Because the reduction for survivor benefits is the same regardless of the payment of the lump-sum credit, the rate of survivor annuity is unaffected by election of the alternative form of annuity. This methodology is intended to give effect to the language in 5 U.S.C. 8343a(c) requiring OPM to consider only the annuity "provided the employee" in determining actuarial equivalence.

In the event of a recomputation of an annuity, for example because of post-retirement marriage or divorce, which may give rise to a new survivor reduction in the retiree's annuity or elimination of the reduction, OPM recomputes the annuity in the same way as if there has been no election of the alternative form of annuity. OPM then applies the same reduction attributable to payment of the lump-sum credit as was currently in effect at the time of the recomputation.

V. Deposits and Redeposits for Civilian Service

Section 831.2206 addresses situations in which a retiree elects the alternative form of annuity but owes a deposit for prior civilian service not subject to retirement deductions or a redeposit for a period of service that was subject to deductions but the deductions were refunded to the employee. Under our current procedures, retiring employees may make deposits or redeposits for civilian service (military service deposits must be made directly to the employing agency before retirement) at any time before final adjudication of their annuity in order to increase the rate of annuity, but are barred from making these payments after OPM's final adjudication of the rate of annuity. Deposits and redeposits an employee makes (including interest charged by OPM) are included in the lump-sum credit.

Employees who elect an alternative form of annuity and who elect to make a deposit or redeposit while OPM is processing their annuity application will, under § 831.2206, be paid the actual lump-sum credit (not including these deposits or redeposits) but these deposits and redeposits will be deemed to have been made for the purpose of computing the alternative form of annuity. This procedure will eliminate the administrative burden of first receiving deposit or redeposit payments from the retiree and then merely returning them to the retiree in the payment of the lump-sum credit.

Waiver of Notice of Proposed Rulemaking and 30-Day Delay of Effective Date

Under 5 U.S.C. 553(b)(3)(B) and (d)(3), I find that good cause exists for waiving the general notice of proposed rulemaking and for making these amendments effective in less than 30 days. The regulations are effective on June 6, 1986, the effective date of section 204 of Pub. L. 99–335, to give immediate effect to the new benefit provisions that are implemented by these regulations.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because the regulation will only affect retired Government employees and spouses.

List of Subjects in 5 CFR Part 831

Administrative practice and procedures, Claims, Disability benefits, Firefighters, Government employees, Income taxes, Intergovernmental relations, Law enforcement officers, Pensions, Retirement.

U.S. Office of Personnel Management
Constance Horner,
Director.

Accordingly, OPM is amending 5 CFR Part 831 to add a new Subpart V to read as follows:

PART 831—RETIREMENT

* * * * *

Subpart V—Alternative Forms of Annuities

Sec.
831.2201 Purpose.
831.2202 Definitions.
831.2203 Eligibility.
831.2204 Alternative forms of annuities available.
831.2205 Computation of alternative form of annuity.
831.2206 Election to pay deposit or redeposit for civilian service.

Subpart V—Alternative Forms of Annuities.

Authority: 5 U.S.C. 8343a.

§ 831.2201 Purpose.

This subpart explains the benefits available to employees and Members who elect an alternative form of annuity under section 8343a of title 5, United States Code.

§ 831.2202 Definitions.

In this subpart—

"Alternative form of annuity" means the benefit elected under § 831.2204.

"Current spouse annuity" has the same meaning as in § 831.603.

"Date of final adjudication" means the date 30 days after the date of the first regular monthly payment as defined in § 831.603.

"Former spouse annuity" has the same meaning as in § 831.603.

"Present value factor" represents the amount of money (earning interest at an assumed rate) required at the time of retirement to fund an annuity that: (a) Starts out at the rate of $1 a month and is payable in monthly installments for the annuitant's lifetime based on mortality rates for non-disability annuitants under the Civil Service Retirement System; and (b) increases each year at an assumed rate of inflation. Interest, mortality, and inflation rates used in computing the present value are those used by the Board of Actuaries of the Civil Service Retirement System for valuation of the System, based on dynamic assumptions. The present value factors are unisex factors obtained by averaging sex-distinct present value factors, weighted by the total dollar value of annuities typically paid to new retirees at each age.

"Time of retirement" has the same meaning as in § 831.603.

§ 831.2203 Eligibility.

(a) Except as provided in paragraphs (b) and (c) of this section, an employee or Member whose annuity entitlement commences after June 5, 1986, under any provision of subchapter III of chapter 83 of title 5, United States Code (other than section 8337 of that title), may elect an alternative form of annuity instead of any other benefits under the subchapter.

(b) An employee or Member who, at the time of retirement, has a former spouse who is entitled to a portion of the employee's or Member's retirement benefits or a former spouse annuity under a qualifying court order as defined by § 831.1703 may not elect an alternative form of annuity.

(c) An employee or Member who is married at the time of retirement may not elect an alternative form of annuity unless the employee's or Member's spouse specifically consents to the election before the date of final adjudication. OPM may waive spousal consent only under the conditions prescribed by § 831.608.

(d) The election of an alternative form of annuity and evidence of spousal consent must be filed on a form prescribed by OPM. The form will require that a notary public or other official authorized to administer oaths certify that the current spouse presented identification, gave consent to the specific election as executed by the retiree, signed or marked the form, and acknowledged that the consent was given freely in the notary's or official's presence.

(e) An employee or Member may not elect an alternative form of annuity unless written notice of the election is received in OPM from the employee or Member on or before the date of final adjudication. An affirmative election under paragraph (a) cannot be revoked after the date on which OPM authorizes payment of the lump-sum credit.

(f) Except as provided in paragraph (g), an annuitant who dies before the date of final adjudication is deemed to have made an affirmative election under paragraph (a) with a fully reduced annuity to provide a current spouse annuity, regardless of any election completed under § 831.607, and the lump-sum credit will be paid in accordance with the order of precedence established under 5 U.S.C. 8342(c).

(g) If an annuitant described in paragraph (f) has completed an election under § 831.605(a) or (b)—

(1) The lump-sum credit will be paid in accordance with the order of precedence established under 5 U.S.C. 8342(c); and

(2) The election under § 831.605(a) or (b) will be honored.

§ 831.2204 Alternative forms of annuities available.

(a) An employee or Member who is eligible to make an election under § 831.2203 may elect to receive his or her lump-sum credit plus an annuity computed in accordance with section 8339 of title 5, United States Code, for which they qualify (including any reduction for survivor benefits) and reduced under § 831.2206.

(b) A retired employee or Member who elected an alternative form of annuity is subject to all provisions of subchapter III of chapter 83 of title 5, United States Code, as would otherwise apply to a retired employee or Member who did not elect an alternative form of annuity.

§ 831.2205 Computation of alternative form of annuity.

(a) To compute the beginning rate of annuity payable to a retiree who elects an alternative form of annuity, OPM will first compute the monthly rate of annuity otherwise payable under subchapter III of chapter 83 of title 5, United States Code, including all reductions provided under the subchapter other than those in § 8343a. That monthly rate is then reduced by an amount equal to the retiree's lump-sum credit divided by the present value factor for the retiree's attained age (in full years) at the time of retirement. The reduced monthly rate is then rounded to the next lowest dollar and becomes the rate of annuity payable.

(b) OPM will publish a notice in the **Federal Register** announcing any proposed ajustments in present value factors at least 30 days before the effective date of the adjustments.

§ 831.2206 Election to pay deposit or redeposit for civilian service.

If an employee or Member who elects an alternative form of annuity owes a deposit or redeposit for civilian service, and elects to pay that deposit or redeposit before the date of final adjudication, OPM will compute the annuity as if the deposit or redeposit had been made and will deem that deposit or redeposit to be included in the lump-sum credit for the purpose of computing the reduction in annuity under § 831.2205.

[FR Doc 86-26893 Filed 11-26-86; 8:45 am]
BILLING CODE 6325-01-M

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 226

[Amdt. 14]

Child Care Food Program; Reviews of Sponsoring Organizations of Day Care Homes

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule.

SUMMARY: This rule amends the Child Care Food Program (CCFP) regulations to require States to conduct biennial reviews of institutions which sponsor large numbers of day care homes. The rule also reduces the number of facilities which States must review as part of the overall sponsor review of sponsors with more than 200 homes. Finally, in the interest of clarity, this rule revises and reorganizes the section of the CCFP regulations which sets out State agencies' responsibilities for monitoring institutions' performance. This regulation will enhance accountability in the CCFP.

EFFECTIVE DATE: October 1, 1986.

FOR FURTHER INFORMATION CONTACT: Mr. Lou Pastura, Chief, Policy and Program Development Branch, Child Nutrition Division, FNS, USDA, Alexandria, Virginia 22302, (703) 756-3620. Copies of all written comments on the proposed rule are available for review during normal business hours at 3101 Park Center Drive, Room 509, Alexandria, Virginia 22302.

SUPPLEMENTARY INFORMATION:

Classification

This action has been reviewed under Executive Order 12291 and has been classified as not major because it will not have an annual effect on the economy of $100 million, will not cause a major increase in costs or prices for Program participants, individual industries, Federal agencies, State or local government agencies or geographic regions, and will not have a significant economic impact on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or foreign markets.

This regulation has also been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601-612). Pursuant to the review, the Administrator of the Food and Nutrition Service has certified that this final rule does not have a significant economic impact on a substantial number of small entities because State agencies are not "small entities" as defined under the Act.

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3507), the reporting and recordkeeping requirements that are included in this final rule have been approved by the Office of Management and Budget (OMB) under clearance 0584-0055.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.558 and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. (7 CFR Part 3015, Subpart V, 48 FR 29112, June 24, 1983)

Background

On April 15, 1986, the Department published a proposed rule at 51 FR 12711 which would modify the State agencies' review requirements with respect to sponsoring organizations of day care homes. First, the proposal would have required States to conduct biennial reviews of all sponsors which administer more than 200 day care homes. In addition, States would have been required to conduct reviews of all sponsors whenever they initially exceed the levels of 50, 200, and 1,000 homes. Moreover, to avoid an increase in States reporting burden, the Department proposed to reduce the number of homes which States are required to sample as part of a sponsor review. Finally, the Department proposed to revise and reorganize the section of the CCFP regulations specifying State agencies' review responsibilities. For a complete discussion of the Department's rationale, interested parties should consult the preamble to that proposed rule.

During the official comment period, 26 commenters responded to various aspects of the proposed rule (1 advocacy group; 19 State agencies; 5 FNS regional offices; 1 interested party). In general, commenters tended to favor the proposal, except for the provision requiring reviews within 30 days of a sponsors' move above 50, 200, or 1,000 homes. On this point, a solid majority of commenters either opposed the provision outright or recommended modifications. All comments have been considered in the development of this final regulation, and the remainder of this preamble addresses the issues raised by commenters.

Fourteen commenters approved of the proposal to require biennial reviews of sponsors with 200 or more homes. Most of these commenters were State agencies which already conduct reviews biennially. Five commenters disapproved. By and large, these latter comments objected to what they perceived would be an additional administrative burden; two of these commenters also observed that biennial organization-wide audits would tend to make more frequent administrative reviews unnecessary, while one commenter felt that States could achieve the same ends without conducting formal reviews.

The Department does not believe that more frequent reviews will duplicate the findings of audits or that informal contacts with a sponsor can substitute for a review. The Department recognizes the value of organization-wide audits; such audits, however, are concerned primarily with the sponsor's financial management system. Auditors do ensure that sponsors can document that administrative responsibilities have been fulfilled (e.g., training and monitoring) but they do not routinely visit a representative sample of homes to observe conditions on site. Reviews of individual facilities, of course, constitute an integral part of sponsors reviews. Consequently, while an audit provides a useful management tool for State agencies, it does not represent an appropriate substitute for a State agency's detailed review of the sponsor's overall operations.

For much the same reason, the Department does not believe that informal contact with a sponsor would yield results as satisfactory as those obtained through a formal review. It is only through a structured review of an adequate sample of a sponsor's facilities that the State can make a reasonable assessment of the quality of that sponsor's overall operation. The Department continues to believe, therefore, that thorough biennial reviews of larger sponsors offer the best means of ensuring accountability in this area of the CCFP.

With respect to commenters' concerns about possible burden implications for State agencies, the Department wishes to reiterate that fewer than 90 sponsors nationwide actually operate 200 or more day care homes. Consequently, States should be able to schedule biennial reviews of these sponsors within the context of the current review requirements, which mandate that one third of all institutions be reviewed every year. The Department also notes that other provisions, which are discussed below, will further reduce the likelihood of any increase in burden for State agencies. For these reasons, the Department is adopting the biennial review of day care home sponsors with more than 200 homes as proposed.

In conjunction with the proposal for biennial reviews of large sponsors, the Department also proposed to require States to conduct additional reviews whenever a sponsor initially added enough homes to move into a different tier for calculating maximum administrative reimbursement (50, 200 and 1,000 homes). States would have had to conduct these reviews within 30 days of the date that the sponsor actually moved into the higher tier. The Department believed this proposal would improve the State's oversight of growing sponsors by ensuring that these sponsors have sufficient capability to administer the CCFP before they are permitted to expand significantly.

Three commenters favored this proposal. Fourteen, however, opposed the provision, while another eight believed the proposal would need to be modified substantially before they could support it. Generally commenters considered the proposal to be burdensome, and several noted that such reviews may, in many cases, be redundant since sponsors may have already been reviewed recently. Others pointed out that States have no mechanism for learning of a sponsor's increase in homes within 30 days and suggested that States would encounter significant problems with scheduling these "extra" reviews.

In light of these comments, the Department has reconsidered this proposal. The Department continues to believe that sponsors should be approved for expansion only if they have administered the program properly at a lower level. The Department recognizes, however, that States have means other than reviews for making this determination in most cases. Moreover, sponsors moving above 200 or 1,000 homes would be subject to biennial reviews, thereby reducing the need for an immediate review of these sponsors. For these reasons, and because the scheduling of large numbers of extra reviews could create an additional burden for States, the Department is withdrawing the proposal for extra reviews whenever a sponsor exceeds 50, 200, or 1,000 homes.

The Department continues to be concerned, however, that some smaller sponsors, particularly those that are rapidly growing, may not always receive adequate technical assistance from State agencies. Since there can sometimes be a significant potential for program losses and abuse, regardless of a sponsor's actual size, the Department believes that additional reviews may be justified in these cases. For these reasons, the Department is presently considering the possibility of a future regulatory change to require either biennial reviews of smaller sponsors or special reviews of rapidly growing sponsors. The Department is weighing the advantages and disadvantages of additional reviews and is reviewing various methods for identifying additional sponsors whose size or rapid growth could create potential deficiencies. Following its consideration of these issues, the Department expects to issue an appropriate proposed rulemaking for public comment in the near future.

Finally, the Department proposed to reduce the number of homes which State agencies must visit as part of their

reviews of sponsors with more than 200 homes. Instead of reviewing 10 percent of the first 1,000 homes and 5 percent of all homes over 1,000, the proposal would have required States to sample 5 percent of the first 1,000 homes and 2.5 percent of all homes over 1,000. Eleven commenters approved of the proposal; two commenters were opposed, and one commenter discussed the proposal without expressing clear cut support or opposition. The two disapproving commenters believed that the proposal could impair accountability, since a smaller selection of homes might reduce the State's ability to detect problems.

The Department agrees that a larger sample of homes will render a more complete picture of a sponsor's operations than will a smaller sample. The Department does not agree, however, that the reduction presented in the proposal will result in less effective oversight of the program. First, the number of homes selected will still be adequate to reveal the existence of widespread problems, and States may expand their samples when significant abuses are detected. Moreover, since States will be required to review larger sponsors twice as often as before (the reduction in home visits would not apply to reviews of sponsors with 200 or fewer homes), the number of homes reviewed during the four-year review cycle would remain the same. To this end, States are reminded that homes should be selected randomly except when follow up reviews of specific homes are indicated. Consequently, the Department is adopting this provision as proposed.

List of Subjects in 7 CFR Part 226

Day care, Food assistance programs, Grant programs—health, infants and children, Reporting and recordkeeping requirements, Surplus agricultural commodities.

Accordingly, 7 CFR Part 226 is amended as follows:

PART 226—CHILD CARE FOOD PROGRAM

1. The authority citation for Part 226 continues to read as follows:

Authority: Sections 803, 810, and 820, Public Law 97–35, 95 Stat. 521–535 (42 U.S.C. 1758, 1766); Section 2, Public Law 95–627, 92 Stat. 3603 (42 U.S.C. 1766); Section 10, Public Law 89–642, 80 Stat. 889 (42 U.S.C. 1779), unless otherwise noted.

2. Section 226.6(k) is amended by removing the last three sentences, adding two new sentences to the end of the paragraph, and adding new paragraphs (k)(1) though (k)(3) to read as follows:

§ 226.6 State agency administrative responsibilities.

* * * * *

(k) *Program assistance.** * * State agencies shall annually review 33.3 percent of all institutions. State agencies shall also ensure that each institution is reviewed according to the following schedule.

(1) Independent centers, sponsoring organizations of centers, and sponsoring organizations of day care homes with 1 to 200 homes shall be reviewed at least once every four years. Reviews of sponsoring organizations shall include reviews of 15 percent of their child care and outside-school-hours care centers and 10 percent of their day care homes.

(2) Sponsoring organizations with more than 200 homes shall be reviewed at least once every two years. Reviews of such sponsoring organizations shall include reviews of 5 percent of the first 1,000 homes and 2.5 percent of all homes in excess of 1,000.

(3) Reviews shall be conducted for newly participating sponsoring organizations with five or more child care facilities within the first 90 days of program operations.

* * * * *

Dated: November 19, 1986.

Robert E. Leard,

Administrator.

[FR Doc. 86–26814 Filed 11–26–86; 8:45 am]

BILLING CODE 3410-30-M

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7 CFR Parts 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 284 and 285

[Amdt. No. 279]

Food Stamp Program; Dependent Care Deduction

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule.

SUMMARY: This action amends Food Stamp Program (FSP) regulations to implement a technical amendment provision contained in Pub. L. 99–500. In accordance with the statute, this action establishes a maximum dependent care deduction limit of $160 per month for all FSP households which incur dependent care expenses. Currently, only households which contain no elderly or disabled members are subject to the $160 a month limit. This action will result in all households being subject to the same dependent care deduction limit.

EFFECTIVE DATE: This action is effective retroactive to May 1, 1986 for households residing in States which elected to implement, prior to October 18, 1986, a dependent care deduction limit consistent with the limit required by this final action. For households residing in all other States, this action is effective on December 1, 1986.

FOR FURTHER INFORMATION CONTACT: Questions regarding this rulemaking should be addressed to Judith M. Seymour, Supervisor, Certification Rulemaking Section, Eligibility and Monitoring Branch, Program Development Division, Family Nutrition Programs, Food and Nutrition Service, 3101 Park Center Drive, Alexandria, VA 22302, or by telephone at (703) 756–3429.

SUPPLEMENTARY INFORMATION:

Classification

Executive Order 12291

This final action has been reviewed under Executive Order 12291 and Secretary's Memorandum No. 1512–1. The Department has classified this action as nonmajor. The annual effect of this action on the economy will be less than $100 million. This final action will have no effect on costs or prices. Competition, employment investment, productivity, and innovation will remain unaffected. There will be no effect on the competition of United States-based enterprises with foreign-based enterprises.

Executive Order 12372

The Food Stamp Program is listed in the catalog of Federal Domestic Assistance under No. 10.551. For the reasons set forth in the Final rule and related Notice to 7 CFR 3015, Subpart V (48 FR 29115, June 24, 1983), this Program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Regulatory Flexibility Act

This action has been reviewed with regard to the requirements of the Regulatory Flexibility Act of 1980 (Pub. L. 96–354, Stat. 1164, September 19, 1980). Robert E. Leard, Administrator of the Food and Nutrition Service, has certified that this rule does not have a significant economic impact on substantial number of small entities. State welfare agencies are affected to the extent that they must implement the provisions described in this action. Potentially eligible and currently participating households are affected to the extent that they contain elderly or disabled member and the households incur dependent care expenses. Such households in Alaska, Hawaii and Guam will realize reduced benefits. This

same type of household residing in the 48 States and District of Columbia or the Virgin Islands could realize an increase in benefits under this action.

Paperwork Reduction Act

This action does not contain reporting or recordkeeping requirements subject to approval by the Office of Management and Budget (OMB).

Public Participation

This action is being finalized without prior notice of proposed rulemaking or public comment. The provision of this final action is mandated by Pub. L. 99–500 and is nondiscretionary in nature. Therefore, this action constitutes an interpretative rule for which notice and public comment are not required under 5 U.S.C. 553(b).

Justification for Publishing a Final Rule Effective Less Than Thirty Days From Publication

Pub. L. 99–500 mandates that the provision of this final action is effective on December 1, 1986. The statute also provides that for some States, the provision is effective retroactive to May 1, 1986. Therefore, this action is nondiscretionary and must be promulgated as quickly as possible in order to notify the public of the new rule and its statutory effective dates. Thus, publication not less than 30 days prior to the effective date is not required under 5 U.S.C. 553(d) because this is an interpretive rule and the effective dates are mandated by law.

Background

Dependent Care Income Deduction Limit

Section 638 of Pub. L. 99–500, enacted October 18, 1986, changes the dependent care deduction limit for households containing an elderly or disabled member. The statute establishes the limit at a flat rate of $160 per month, per household. In accordance with Food Stamp Act provisions in effect prior to Pub. L. 99–500, such households, effective October 1, 1986, could begin to receive a maximum monthly dependent care deduction amount of $149 in the 48 States and DC, $260 in Alaska, $213 in Hawaii, $182 in Guam and $111 in the Virgin Islands. These limits were subject to annual cost-of-living adjustments.

On December 23, 1985, Pub. L. 99–198 was anacted which contained a provision to establish a flat monthly dependent care income deduction rate of $160 per month for nonelderly/nondisabled households. This rate is not subject to annual cost-of-living adjustments. Previously the dependent care deduction limit was capped at the excess shelter expense deduction limit and subject to annual cost-of-living adjustments. While the legislative history accompanying Pub. L. 99–198 discussed application of the flat dependent care limit to all households, the language of the statute did not contain a conforming amendment to require that the $160 rate be applied to households with an elderly or disabled member. Thus, the Department published final rules on April 1, 1986 which implemented the $160 dependent care deduction limit for nonelderly/nondisabled households only. Households containing an elderly or disabled member continued to be entitled to a dependent care deduction amount capped at the excess shelter expense deduction limit and subject to annual costs-of-living adjustments.

Pub. L. 99–500 contains the necessary technical amendments to amend the language of the Food Stamp Act to provide that households containing an elderly or disabled member shall also be subject to a dependent care deduction limit of $160 per month. Therefore, effective December 1, 1986, the FSP Dependent Care Deduction Amounts for elderly/disabled households published by the Department in the **Federal Register** of October 8, 1986 (51 FR 36043) become moot and are hereby rescinded on December 1, 1986. Accordingly, this final action amends 7 CFR 273.9(d)(4) and 273.10(e)(1)(i)(E) to reflect that all households which incur dependent care expenses shall be eligible for an income deduction for such expenses up to a maximum deduction amount of $160 per month, per household.

Implementation

As explained earlier, the Department published final rules which required State agencies to implement a $160 dependent care deduction limit for nonelderly/nondisabled households on May 1, 1986 in accordance with Pub. L. 99–198. Some State agencies, expecting immediate passage of a technical amendment to apply this deduction limit to elderly/disabled households, implemented the deduction limit for elderly/disabled households prior to enactment of the technical amendment on October 18, 1986 (Pub. L. 99–500). In accordance with the technical amendment, the $160 dependent care deduction provision of Pub. L. 99–500 is effective retroactive to May 1, 1986 for State agencies which implemented the provision prior to the enactment date of Pub. L. 99–500. Accordingly, this final action amends 7 CFR 271.2(g) to provide: (1) A retroactive effective date of the deduction limit for State agencies which implemented the provision of this final action early and (2) that quality control reviewers shall not include in the error determination variances which resulted from early implementation of the provision of this final rule provided that implementation occurred during the period beginning May 1, 1986 through October 1986.

For all other State agencies, section 638 of Pub. L. 99–500 specifically provides that the $160 dependent care deduction limit for elderly/disabled households is effective thirty days after enactment of Pub. L. 99–500 (November 17, 1986) and is not applicable when determining benefit levels for any month beginning prior to that effective date. Therefore, this final action amends 7 CFR 271.2(g) to provide that State agencies which did not implement a $160 dependent care deduction limit for elderly/disabled households prior to October 18, 1986, shall implement such a deduction limit on December 1, 1986 (the first month after the effective date of Pub. L. 99–500 for which benefits are to be computed using the new cap). This final action also provides that: (1) If for any reason the State agency fails to implement the provision on the required date, affected households shall be provided lost benefits, back to December 1, 1986 and (2) State agencies shall implement the deduction provision in accordance with the mass change procedures outlined in 7 CFR 273.12(e), except that, for affected households in Alaska, Hawaii and Guam, State agencies shall send an individual notice to affected households describing the new statutory change. Although, such a notice is not required under the provisions of 7 CFR 273.12(e), the Department believes that affected households should be notified as some of the households could realize a significant reduction in benefits or termination from the Program under this statutory change. We recognize, that the immediate implementation schedule of this final action may cause some difficulties for State agencies and could result in increased error rates. Therefore, 7 CFR 271.2(g) is amended by this final action to provide that for quality control purposes only, quality control reviewers shall not include in the error determination variances which result solely from a State agency's implementation or nonimplementation of the rule for the period between December 1, 1986 and January 1, 1987.

Authority Citations

The Department is taking this opportunity to amend Title 7 of the Code of Regulation (CFR) to change the

statutory authority references appearing after the table of contents for Parts 271 through Part 285. The Authority citations as currently referenced are misleading to users of the CFR.

List of Subjects

7 CFR Part 271

Administrative practice and procedure, Food stamps, Grant programs-social programs.

7 CFR Part 272

Alaska, Civil rights, Food Stamps, Grant programs-social programs, Reporting and recordkeeping requirements.

7 CFR Part 273

Administrative practice and procedure, Aliens, Claims, Food Stamps, Fraud, Grant programs-social programs, Penalties, Reporting and recordkeeping requirements, Social security, Students.

7 CFR Part 274

Administrative practice and procedure, Food stamps, Grant programs-social programs, Reporting and recordkeeping requirements.

7 CFR Part 275

Administrative practice and procedure, Food stamps, Reporting and recordkeeping requirements.

7 CFR Part 276

Administrative practice and procedure, Food stamps, Fraud, Grant programs-social programs, Penalties.

7 CFR Part 277

Food stamps, Government procurement, Grant programs-social programs, Investigations, Reporting and recordkeeping requirements.

7 CFR Part 278

Administrative practice and procedure, Banks, Banking, Claims, Food stamps, Groceries-retail, Groceries, general line-wholesaler, Penalties.

7 CFR Part 279

Administrative practice and procedure, Food stamps, Groceries-retail, Groceries, general line-wholesaler.

7 CFR Part 280

Disaster assistance, Food stamps, Grant programs-social programs.

7 CFR Part 281

Administrative practice and procedure, Food stamps, Grant programs-social programs, Indians.

7 CFR Part 282

Food stamps, Government contracts, Grant programs-social programs, Research.

7 CFR Part 284

Administrative practice and procedure, Food assistance programs, Grant programs-social programs, Health, Nutrition.

7 CFR Part 285

Administrative practice and procedure, Food assistance programs, Grant programs-social programs, Health, Nutrition.

Accordingly, 7 CFR Parts 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 284 and 285 are amended as follows:

1. The authority citation for Parts 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 284 and 285 is revised to read as follows:

Authority: 7 U.S.C. 2011–2029

PART 272—REQUIREMENTS FOR PARTICIPATING STATE AGENCIES

2. In § 272.1, a new paragraph (g)(81) is added to read as follows:

§ 272.1 General terms and conditions.

* * * * *

(g) *Implementation.* * * *

(81) Amendment No. 279. (i) For State agencies which elected to implement a $160 dependent care deduction limit for all households prior to October 18, 1986, the dependent care deduction provision of Amendment No. 279 is effective retroactive to May 1, 1986 in accordance with section 638 of Pub. L. 99–500. In such States, for QC purposes only, QC reviewers shall not include in the error determination variances which resulted from early implementation by these States of the deduction limit provided the implementation occurred during the period beginning May 1, 1986 through October 1986.

(ii) For all other State agencies, the $160 dependent care deduction provision of Amendment No. 279 shall be implemented for elderly and disabled applicant and participating households on December 1, 1986. State agencies shall implement the provision as a mass change in accordance with § 273.12(e), except that affected households in Alaska, Hawaii and Guam shall be issued an individual notice which, at a minimum, informs the households of the general nature of the mass change, the effect of the deduction limit on the household's allotment, and the month the change will take effect. If for any reason the State agency fails to implement the provision on the required date, affected households shall be provided restored benefits, back to December 1, 1986. For QC purposes only in such States, QC reviewers shall not include in the error determination variances which resulted solely from a State agency's implementation or nonimplementation of the deduction limit between December 1, 1986 and January 1, 1987.

PART 273—CERTIFICATION OF PARTICIPATING HOUSEHOLDS

3. In § 273.9, paragraph (d)(4) is amended by revising the second sentence and by removing the last sentence.

The revision reads as follows:

§ 273.9 Income and deductions.

* * * * *

(d) *Income deductions.* * * *

(4) * * * The maximum monthly dependent care deduction amount households shall be granted under this provision is $160 per month, per household.

* * * * *

4. In § 273.10, the first sentence of paragraph (e)(1)(i)(E) is revised to read as follows:

§ 273.10 Determining household eligibility and benefit levels.

* * * * *

(e) *Calculating net income and benefit levels.* (1) *Net monthly income.* * * *

(i) * * *

(E) Subtract monthly dependent care expenses, if any, up to a maximum amount of $160. * * *

* * * * *

Dated: November 21, 1986.

Sonia F. Crow,

Acting Administrator, Food and Nutrition Service.

[FR Doc. 86–26714 Filed 11–26–86; 8:45 am]

BILLING CODE 3410–30–M

DEPARTMENT OF ENERGY

Economic Regulatory Administration

10 CFR Part 463

[Docket No. ERA–R–79–19]

Annual Reports From States and Non-Regulated Utilities on Progress in Considering the Ratemaking and Other Regulatory Standards Under the Public Utility Regulatory Policies Act of 1978

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice and availability of Form ERA–166.

SUMMARY: Sections 116 and 309 of the Public Utility Regulatory Policies Act of 1978 (PURPA) require State regulatory authorities and certain nonregulated utilities to submit to the Department of Energy (DOE) annual reports on their progress in considering ratemaking and other regulatory standards established by Titles I and III of PURPA. Under the present DOE regulations (10 CFR Part 463), as amended, each of the reporting entities must file an annual report by February 28, 1987, covering the calendar year 1986 reporting period. All reports are to be made on Form ERA–166.

DATE: Reports are due by February 28, 1987.

ADDRESS: All completed Forms ERA–166 should be addressed to: Office of Fuels Programs, Economic Regulatory Administration, Department of Energy, Form ERA–166, Room GA–076, 1000 Independence Avenue SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Steven Mintz, Office of Fuels Programs, Economic Regulatory Administration, U.S. Department of Energy, 1000 Independence Avenue SW., Room GA–076, Washington, DC 20585, Phone (202) 252–9506.

SUPPLEMENTARY INFORMATION:

I. Background

On August 1, 1979 (44 FR 47264, August 13, 1979), DOE issued a rule (10 CFR Part 463) setting forth the manner in which State regulatory authorities and certain nonregulated gas and electric utilities are required to report on their consideration of the ratemaking and other regulatory standards established by sections 111(d), 113(b), and 303(b) of the Public Utility Regulatory Policies Act of 1978 (PURPA).

On August 4, 1982 (47 FR 33679), DOE amended Part 463 by revising § 463.3 (a) and (c). The revised rule requires the reporting entities to file their annual reports on February 28 of each year. Each annual report must cover the immediately preceding calendar year (for example, the report due on February 28, 1987, shall cover the period January 1, 1986–December 31, 1986).

II. The Report Form

The Form ERA—166 is identical to the form published on January 7, 1986 (51 FR 593) except for date changes. It was approved by the Office of Management and Budget (OMB Control Number 1903–0060), and is being sent to each electric and gas utility listed in appendices A and B of ERA **Federal Register** notice [Docket No. ERA–R–79–43B] which is published annually at the end of each calendar year. Copies of this form are also available upon request from this office at the address referenced in this announcement.

(Public Utility Regulatory Policies Act of 1978, Pub. L. 95–617, 92 Stat. 3117 *et seq.* (16 U.S.C. 2601 *et seq.*); Department of Energy Organization Act, Pub. L. 95–91 (42 U.S.C. 7101 *et seq.*)

Issued in Washington, DC, on November 24, 1986.

Robert L. Davies,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 86–26838 Filed 11–26–86; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

18 CFR Part 282

[Docket No. RM 79–14]

Incremental Pricing Regulations Implementing the Incremental Pricing Provision of the Natural Gas Policy Act of 1978

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Order prescribing incremental pricing thresholds.

SUMMARY: The Director of the Office of Pipeline and Producer Regulation is issuing the incremental pricing acquisition cost thresholds prescribed by Title II of the Natural Gas Policy Act and 18 CFR 282.304. The Act requires the Commission to compute and publish the threshold prices before the beginning of each month for which the figures apply. Any cost of natural gas above the applicable threshold is considered to be an incremental gas cost subject to incremental pricing surcharging.

EFFECTIVE DATE: December 1, 1986.

FOR FURTHER INFORMATION CONTACT: Richard P. O'Neill, Federal Energy Regulatory Commission, 825 N. Capitol Street, NE., Washington, DC 20426, (202) 357–8500.

SUPPLEMENTARY INFORMATION: In the matter of Publication of Prescribed Incremental Pricing Acquisition Cost Threshold of the NGPA of 1978.

Issued: November 24, 1986.

Section 203 of the NGPA requires that the Commission compute and make available incremental pricing acquisition cost threshold prices prescribed in Title II before the beginning of any month for which such figures apply.

Pursuant to that mandate and pursuant to § 375.307(1) of the Commission's regulations, delegating the publication of such prices to the Director of the Office of Pipeline and Producer Regulation, the incremental pricing acquisition cost threshold prices for the month of December, 1986 are issued by the publication of a price table for the month. The incremental pricing acquisition cost threshold prices for months prior to those reflected on the table are found in § 282.304.

The incremental pricing thresholds for December, 1986 reflect a two-month lag adjustment described in the notice of the March 1, 1986 thresholds.

List of Subjects in 18 CFR Part 282

Natural gas.

Richard P. O'Neill,

Director, Office of Pipeline and Producer Regulation.

TABLE I.—INCREMENTAL PRICING ACQUISITION COST THRESHOLD PRICES

	January	February	March	April	May	June	July	August	September	October	November	December
Calendar year 1985												
Incremental Pricing Threshold	$2.373	$2.378	$2.383	$2.388	$2.399	$2.410	$2.421	$2.427	$2.433	$2.439	$2.446	$2.453
NGPA Section 102 Threshold	3.869	3.890	3.911	3.932	3.962	3.992	4.022	4.045	4.068	4.091	4.116	4.141
NGPA Section 109 Threshold	2.452	2.457	2.462	2.467	2.478	2.489	2.500	2.506	2.512	2.518	2.525	2.532
130% of No. 2 Fuel Oil in New York City Threshold	7.170	7.310	7.090	6.920	7.210	7.120	7.400	7.000	6.520	6.630	6.940	7.140
Calendar year 1986												
Incremental Pricing Threshold	$2.460	$2.467	$2.474	$2.481	$2.487	$2.493	$2.499	$2.504	$2.509	$2.514	$2.522	$2.530
NGPA Section 102 Threshold	4.166	4.191	4.216	4.241	4.264	4.287	4.310	4.332	4.354	4.376	4.403	4.431
NGPA Section 109 Threshold	2.539	2.546	2.553	2.560	2.566	2.572	2.578	2.583	2.588	2.593	2.601	2.609
130% of No. 2 Fuel Oil in New York City Threshold	7.370	7.930	5.040	5.290	4.680	3.980	3.800	3.190	3.310	4.020	3.320	3.240

[FR Doc. 86–26820 Filed 11–26–86; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 12

[T.D. 86-203]

Importations of Motor Vehicles and Boats by Employees of Public International Organizations

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations by deleting the privilege previously available to members of the Secretariat of a public international organization to import into the U.S., motor vehicles, boats, or related pieces of equipment exempt from federal emission or safety standards. Currently, more than 15,000 staff personnel of such organizations are eligible to make nonconforming importations and the State Department has determined that the number of exemptions has extended well beyond the intended limits of the program.

The State Department has informed Customs that the exemptions are not required by international law and are no longer warranted. Also, continuation of the exemption program would allow the continued unjustified introduction into the U.S. of motor vehicles and boats which injure the public health and pose an unnecessary risk to the public safety.

Therefore, this document amends the regulations to remove the exemptions available to public international organization employees. In the rare instance when some international agreement might require such a privilege being granted, or to accommodate special circumstances, the regulations allow for individuals who receive special State Department designation to have the privilege of making nonconforming importations. It should also be noted that these amendments in no way prohibit an employee of a public international organization from importing a motor vehicle or boat into the U.S. under other Customs Regulations and having it modified to meet U.S. standards.

EFFECTIVE DATE: December 29, 1986.

FOR FURTHER INFORMATION CONTACT: Louis Alfano, Commercial Compliance Division (202-566-5307).

SUPPLEMENTARY INFORMATION:

Background

The Customs Service, in the discharge of its duties, is often called upon to help enforce some 400 statutory and regulatory requirements on behalf of approximately 40 other Federal agencies. Three such instances are the cooperative efforts of Customs and the Environmental Protection Agency, the National Highway Traffic Safety Administration, and the Coast Guard, respectively, in enforcing regulations pertaining to the importation of motor vehicles, motor vehicle engines, boats, and related equipment. The specific regulations involved are § 12.73, Customs Regulations (19 CFR 12.73), concerning emission standards for imported motor vehicles and engines, § 12.80, Customs Regulations (19 CFR 12.80), concerning safety standards for imported motor vehicles, and § 12.85, Customs Regulations (19 CFR 12.85), concerning safety standards for imported boats.

In all three of these regulations, there are examples of certain types of importations which will be exempted from compliance with the applicable emission or safety standard. Common to all three is the exemption available to members of the Secretariat of a public international organization. The exemptions appear at §§ 12.73(b)(5)(iv), 12.80(b)(1)(vi), and 12.85(c)(5), Customs Regulations (19 CFR 12.73(b)(5)(iv), 12.80(b)(1)(vi), and 12.85(c)(5)). More precisely, the exemption is available to a member of the Secretariat of a public international organization, so designated pursuant to the International Organizations Immunities Act (22 U.S.C. 288), on assignment in the U.S. A list of these organizations is included in § 148.87, Customs Regulations (19 CFR 148.87).

The International Organizations Immunities Act (the IOIA) was passed in 1945 to bring some standardization to the conduct of affairs with public international organizations. The U.S. had been dealing directly with other governments for a very long time, and diplomatic law was fairly well established. However, the U.S. was dealing with other countries through the medium of public international organizations with increasing frequency at this time. The IOIA was the U.S. response to the need for formal methods of dealing with public international organizations. The law was passed with the thought in mind that public international organizations, and the employees thereof, should be granted privileges and immunities similar to, but less extensive, than the privileges and immunities granted to foreign governments and diplomats. This reflected the fact that public international organizations were not foreign governments but were public organizations oftern carrying on work or research of a governmental nature.

The use of the IOIA in the three Customs Regulations mentioned above had expanded beyond the concept of the law as passed in 1945. It was not a necessary practice to grant employees of public international organizations the right to import nonconforming motor vehicles or boats for personal use. The IOIA was intended to extend privileges and immunities only to official acts of the organization and its employees.

Accordingly, a notice proposing to remove these exemptions was published in the **Federal Register** on February 7, 1986 (51 FR 4760). In the notice it stated that the State Department had advised Customs that the current exemption program was not required by any international law and was no longer warranted. Over 15,000 staff employees of public international organizations were eligible to import nonconforming motor vehicles, motor vehicle engines, boats, and related pieces of equipment for personal use. The State Department's Office of Foreign Missions informed Customs that this number of exemptions extended well beyond the intended limits of the program. Also contributing to the proposal to eliminate the exemption program was the unnecessary harm inflicted on the U.S. environment by these nonconforming imports and the unnecessary risk they pose to the public safety. Accordingly, §§ 12.73, 12.80, and 12.85 would be amended by removing the exemption available to employees of public international organizations.

To accommodate the rare instance in which a binding international commitment requires that such an exemption be granted, or special circumstances exist, it was proposed to add language to §§ 12.73, 12.80, and 12.85, permitting the State Department to designate individuals who are not foreign government diplomatic personnel, but who are otherwise entitled to import nonconforming motor vehicles, motor vehicle engines, boats or related equipment.

The notice requested public comment on the matter.

Discussion of Comments

Six comments were received in response to the proposal, four from various representatives of the automotive industry, one from a "Legal Foundation", and one from an employee of a public international organization.

With the exception of the employee, the commenters were supportive of the amendments for a variety of reasons.

The automotive industry commenters included both domestic and foreign car dealers, and franchised as well as grey-market dealers. All agreed that the exemptions should be removed. All were concerned with the public health and safety threats associated with nonforming vehicles being allowed to operate on U.S. highways. The franchised dealers of foreign-made vehicles asserted that servicing of nonconforming vehicles is difficult and can damage the reputations of the vehicles they sell and service. Representatives of the grey-market vehicle modifiers and testers expressed concerns that exempt nonconforming vehicles would be sold in the U.S. and confused with those which had been modified by their members after importation, damaging the reputation of their industry.

The public international organization employee commented that the exemptions should be retained since he believed that far fewer than the 15,000 employees eligible for the exemption actually use it, and therefore it was not a major problem. Customs is of the opinion that the administrative problems experienced by the State Department and the health and safety problems recognized by EPA, NHTSA, and the Coast Guard are very real now, and could only be exacerbated if the exemptions were retained and at some point in the future were used by all eligible employees.

After careful analysis of the comments received, and further consideration of the matter, it has been determined to adopt the amendments as proposed. It should be noted that these amendments in no way prohibit an employee of a public international organization from importing a motor vehicle or boat into the U.S. under other Customs Regulations and having it modified to meet U.S. standards (see § 12.73(b)(5)(x), Customs Regulations (19 CFR 12.73(b)(5)(x)), for example).

Regulatory Flexibility Act

Pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), it is certified that the regulations set forth in this document will not have significant economic impact on a substantial number of small entities. Accordingly, they are not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604.

Executive Order 12291

This document does not meet the criteria for a "major rule" as specified in section 1(b) of E.O. 12291. Accordingly, no regulatory impact analysis has been prepared.

Drafting Information

The principal author of this document was John Doyle, Regulations Control Branch, U.S. Customs Service. However, personnel from other offices participated in its development.

List of Subjects in 19 CFR Part 12

Air pollution control, Marine safety, Motor vehicle pollution, Motor vehicle safety, Motor vehicles.

Amendments to the Regulations

Part 12, Customs Regulations (19 CFR Part 12), is amended as set forth below.

PART 12—SPECIAL CLASSES OF MERCHANDISE

1. The authority citation for Part 12 continues to read as follows:

Authority: 5 U.S.C. 301, 19 U.S.C. 66, 1202 (Gen. Hdnote 11, Tariff Schedules of the United States), 1624. Section 12.73 also issued under 19 U.S.C. 1484; 42 U.S.C. 7522, 7601; section 12.85 also issued under 19 U.S.C. 1623; 46 U.S.C. 4302, 4306, 4310.

2. Section 12.73(b)(5)(iv) is revised to read as follows:

§ 12.73 Federal motor vehicle air pollution control.

* * * * *

(b) * * *

(5) * * *

(iv) Such motor vehicle or motor vehicle engine is not covered by a certificate of conformity with Federal motor vehicle emission standards, and the importer or consignee is a member of the armed forces of a foreign country on assignment in the U.S. or is a member of the personnel of a foreign government on assignment in the U.S. or other individual who comes within the class of persons for whom free entry of motor vehicles has been authorized by the Department of State in accordance with general principles of international law and that such vehicle or engine will not be sold in the U.S.; or

* * * * *

3. Section 12.80(b)(1)(vi) is revised to read as follows:

§ 12.80 Federal motor vehicle safety standards.

* * * * *

(b) * * *

(1) * * *

(vi) The importer or consignee is a member of the armed forces of a foreign country on assignment in the U.S. or is a member of the personnel of a foreign government on assignment in the U.S. or other individual who is within the class of persons for whom free entry of vehicles has been authorized by the Department of State in accordance with general principles of international law, is importing the vehicle or equipment item for purposes other than resale; and a copy of his official orders, if any, is attached to the declaration (or, if a qualifying member of the personnel of a foreign government on assignment in the U.S., the name of the Embassy to which he is accredited is stated on the declaration).

* * * * *

4. Section 12.85(c)(5) is revised to read as follows:

§ 12.85 Coast Guard boat and associated equipment safety standards.

* * * * *

(c) * * *

(5) *Products owned by certain foreign governments.* In the case of an importer or consignee employed in one of the capacities set forth in this subparagraph, a declaration will be filed in accordance with paragraph (d) of this section. The declaration shall state that the importer or consignee is either a member of the armed forces of a foreign country on assignment in the U.S. or is a member of the personnel of a foreign government on assignment in the U.S. or other individual who comes within the class of persons for whom free entry of boats has been authorized by the Department of State in accordance with general principles of international law, and that he is importing the product for purposes other than resale.

* * * * *

William von Raab,

Commissioner of Customs.

Approved:

Francis A. Keating, II,

Assistant Secretary of the Treasury.

November 12, 1986

[FR Doc. 86-26760 Filed 11-26-86; 8:45 am]

BILLING CODE 4820-02-M

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19 CFR Parts 113 and 141

[T.D. 86-204]

Customs Regulations Amendments Relating to Bonds and Powers of Attorney

AGENCY: U.S. Customs Service, Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations to clarify that bonds submitted by limited partnerships need only have the firm name and the names of the general partners authorized to bind the firm placed on the bonds. Also, the regulations are being clarified to provide that limited partnerships need only name the general partners who have authority to bind the firm, on a power of attorney, unless the partnership agreement provides otherwise. These amendments are necessary inasmuch as the existing regulations only treat the subject of partnerships generally and do not differentiate between the ordinary partnership and a limited partnership.

EFFECTIVE DATE: November 28, 1986.

FOR FURTHER INFORMATION CONTACT: Jerry C. Laderberg, Entry Procedures and Penalties Division (202–566–5765).

SUPPLEMENTARY INFORMATION:

Background

Section 113.32(a), Customs Regulations (19 CFR 113.32(a)), provides that unless written notice of the full names of all partners in the firm has been previously filed with the district director or regional commissioner (of Customs) in the case of a bond relating to repayment of erroneous drawback payment, the names of all persons composing the partnership shall appear in the body of the bond. Section 141.39(a), Customs Regulations (19 CFR 141.39(a)), similarly provides for the names of all members of a partnership on a power of attorney granted by a partnership. The rationale for the naming of the partners on the bond, as noted in § 113.32(c), is that when a bond is executed by any member of the partnership, it shall be binding on the other partners in like manner and to the same extent as if such other partners had personally joined in the execution, pursuant to section 495, Tariff Act of 1930, as amended (19 U.S.C. 1495).

These requirements make no distinction between an ordinary partnership and a limited partnership. In the ordinary partnership, all the partners are personally liable for the debts of the partnership and are bound by the actions of each other.

In a limited partnership, the limited partners are liable for the debts of the partnership only in an amount not exceeding their investment in the partnership. Also, they are not bound by the actions of any other partner in the firm, except as provided for in the partnership agreement. The general partners in a limited partnership, however, usually have the same liabilities as the general partners in the ordinary partnership.

In return for the limited liability of the limited partner, his activities in the partnership are restricted. In fact, his name may not even appear in the business name of the partnership. Because of the extensive responsibility of the general partner, however, it is necessary for his name to be included in all documents of the partnership, as well as on bonds and powers of attorney.

Action

Because of the substantially different liabilities of limited partners, Customs believes that the regulations concerning the naming of all partners on bonds and powers of attorney should be amended to require, with respect to limited partnerships, only the name of the firm and the names of the general partners who have authority to bind the partnership on the bond or power of attorney (unless the partnership agreement provides otherwise with respect to a power of attorney), and to exempt the limited partners from being bound by the actions of other partners in the firm, except as provided for in the partnership agreement. Also, a copy of this agreement will be required to be submitted with each bond executed by the partnership, or each power of attorney submitted by it.

Accordingly, § 113.32 (a) and (c), and § 141.39(a), Customs Regulations, are amended to reflect these changes.

The amendments are in conformity with existing Customs policy which requires only the names of the general partners in a limited partnership who have authority to bind the firm, on a Customs bond or power of attorney. This policy was expressed in a Customs Headquarters ruling dated February 15, 1985 (723977JLF).

Inapplicability of Public Notice and Delayed Effective Date Provisions

Inasmuch as these amendments merely clarify existing regulations, pursuant to 5 U.S.C. 553(b)(B) and (d)(3), notice and solicitation of comments is unnecessary and good cause is found for dispensing with a delayed effective date for adoption of the amendments.

Executive Order 12291

This document does not meet the criteria for a "major rule" as specified in section 1(b) of E.O. 12291. Accordingly, no regulatory impact analysis has been prepared.

Regulatory Flexibility Act

This document is not subject to the provisions of the "Regulatory Flexibility Act" (5 U.S.C. 601 et seq.). That Act does not apply to any regulation, such as this, for which a notice of proposed rulemaking is not required by the Administrative Procedure Act (5 U.S.C. 551 et seq.) or any other statute.

Drafting Information

The principal author of this document was Susan Terranova, Regulations Control Branch, U.S. Customs Service. However, personnel from other offices participated in its development.

List of Subjects in 19 CFR Parts 113 and 141

Customs duties and inspection, Customs bonds and principals, Powers of attorney.

Amendments to the Regulations

Parts 113 and 141, Customs Regulations (19 CFR Parts 113, 141), are amended as set forth below.

PART 113—CUSTOMS BONDS

1. The authority citation for Part 113 continues to read as follows:

Authority: 19 U.S.C. 66, 1623, 1624. Subpart E also issued under 19 U.S.C. 1484.

2. Section 113.32 is amended by revising paragraphs (a) and (c) to read as follows:

§ 113.32 Partnerships as principals.

(a) *Names of partners on the bond—*(1) *In general.* Unless written notice of the full names of all partners in the partnership has been previously filed with the district director, or regional commissioner in the case of a bond relating to repayment of erroneous drawback payment, the names of all persons composing the partnership shall appear in the body of the bonds.

(2) *Limited partnerships.* Bonds submitted by limited partnerships need only have the firm name and the names of the general partners authorized to bind the firm on them. The bond must be accompanied by a copy of the partnership agreement. For this purpose, a partnership or a limited partnership means any business association recognized as such under the laws of the state where the association is organized.

* * * * *

(c) *Action of one principal binding on all principals of the partnership.* Pursuant to section 495, Tariff Act of 1930, as amended (19 U.S.C. 1495), when a bond is executed by any member of the partnership, the bond shall be binding on the other partners in like manner and to the same extent as if such other partners had personally joined in the execution. However, in the case of a limited partnership, the limited

partners will not be bound by the actions of any other partner in the firm, except as provided for in the partnership agreement.

PART 141—ENTRY OF MERCHANDISE

1. The authority citation for Part 141 continues to read as follows:

Authority: 19 U.S.C. 66, 1448, 1484, 1624. Subpart G also issued under 19 U.S.C. 1505.

2. Section 141.39(a) is revised to read as follows:

§ 141.39 Partnerships.

(a)(1) *General.* A power of attorney granted by a partnership shall state the names of all members of the partnership. One member of the partnership may execute a power of attorney in the name of the partnership for the transaction of all its Customs business.

(2) *Limited partnership.* A power of attorney granted by a limited partnership need only state the names of the general partners who have authority to bind the firm unless the partnership agreement provides otherwise. A copy of the partnership agreement must accompany the power of attorney. For this purpose, a partnership or limited partnership means any business association recognized as such under the laws of the state where the association is organized.

* * * * *

Alfred R. De Angelus,

Acting Commissioner of Customs.

Approved:

Francis A. Keating, II,

Assistant Secretary of the Treasury.

November 10, 1986.

[FR Doc. 86-26761 Filed 11-26-86; 8:45 am]

BILLING CODE 4820-02-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 172

[Docket No. 83F-0035]

Food Additives Permitted for Direct Addition to Food for Human Consumption; Aspartame

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of aspartame in noncarbonated frozen or refrigerated, concentrated and single-strength fruit juices, fruit drinks, fruit flavored drinks and ades, and imitation fruit flavored drinks and ades, and also in frozen stick-type confections and novelties. This action responds to petitions filed by the Coca-Cola Co., Division of Foods, and Tropicana Products, Inc.

DATES: Effective November 28, 1986; objections by December 29, 1986.

ADDRESS: Written objections may be sent to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Carl L. Giannetta, Center for Food Safety and Applied Nutrition (HFF-334), Food and Drug Administration, 200 C Street SW., Washington, DC 20204, 202-426-5487.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of March 18, 1983 (48 FR 11513), FDA announced that a food additive petition (FAP 3A3694) had been filed by the Coca-Cola Co., Division of Foods, P.O. Box 2079, Houston, TX 77001, proposing that § 172.804 *Aspartame* (21 CFR 172.804) be amended to provide for the safe use of aspartame (1-methyl *N-L-alpha*-aspartyl-*L*-phenylalanine) as a sweetener in frozen concentrated and single-strength beverages, the latter being shipped, stored, and sold refrigerated; and that a food additive petition (FAP 3A3695) had been filed by Tropicana Products, Inc., P.O. Box 338, Bradenton, FL 33560, also proposing that § 172.804 be amended to provide for the safe use of aspartame as a sweetener in refrigerated single-strength nonstandardized dilute fruit juice beverages, frozen concentrated nonstandardized fruit juice containing beverages, and frozen fruit juice containing confections.

The agency received a citizen's petition (FAP 6CP3956) (dated July 17, 1986) from James S. Turner and Diane T. Dean, consumer attorneys, on behalf of the Community Nutrition Institute (CNI). The petition requested: reconsideration and repeal of 21 CFR 172.804 (c) and (d); and convening of a public hearing to receive and consider the evidence supporting these requests. The petition alleged that current food use of aspartame presents an imminent health hazard and fails to meet the legal safety standard. On October 23, 1986, CNI amended its petition. The petition further contends that new evidence (eye damage) shows that aspartame creates an imminent health hazard to the American consumer and that new evidence shows that aspartame is not shown to be safe. By letter dated November 21, 1986, the agency denied the petition (This document is incorporated by reference and is on public display at the agency's Dockets Management Branch.)

One comment was received in response to the filing of the Tropicana petition. General Foods Corp. requested that the use of aspartame in frozen confections not be restricted to those confections containing fruit juice so that "any regulation which issues with respect to FAP 3A3695 include the use of APM [aspartame] in frozen novelties (e.g., gelatin pops) as well as in frozen fruit juice containing confections." The agency has considered this comment in evaluating the Tropicana petition and agrees that restricting the use of aspartame to juice-containing confections does not appear to be necessary. However, the frozen confection and novelties covered by this regulation are only those sold ready-to-eat on a stick.

In determining whether the proposed use of aspartame is safe, FDA has considered whether the estimated daily intake of the additive by the 90th percentile consumer will be less than the acceptable daily intake established by the agency. In the final regulation approving the use of aspartame in carbonated beverages (48 FR 31376; July 8, 1983), the agency established an acceptable daily intake of 50 milligrams per kilogram of body weight for aspartame. The agency determines the estimated daily intake for various age groups by making conservative projections based on data about particular food consumption levels and the amount of additive proposed for use in the particular food.

The agency concludes that consumption of aspartame will be well below the acceptable daily intake and that the proposed new uses will be safe. Therefore, the agency concludes that the regulation should be amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition (address above) by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any material that are note available for public disclosure before making the documents available for inspection.

The agency commonly uses the estimated daily intake for the 90th percentile consumer of a food additive as a measure of high chronic exposure

because that level of consumption is significantly above the intake of the average consumer and provides an added conservatism with respect to the acceptable daily intake for those individuals who regularly consume food containing the additive. Because of initial concerns about the potential consumer overexposure to one or a few types of products containing an artificial sweetener, the FDA Commissioner previously elected to be as cautious as possible and rely upon an even more conservative measure of potential aspartame consumption, the 99th percentile eater, in assessing the safety of aspartame for use in carbonated beverages.

However, as the number of uses of aspartame increases, the probability that a single individual will be a 99th percentile consumer for all uses diminishes significantly. For this reason, the increased number of uses of aspartame in food has made the use of the cumulative 99th percentile estimated daily intake an unrealistic measure of chronic exposure to aspartame. Under these circumstances, the use of the cumulative 90th percentile estimated daily intake is more realistic and more in accord with the agency's customary conservative way of calculating chronic exposure to food additives. Accordingly, the agency is no longer relying upon the cumulative 99th percentile estimated daily intake in evaluating the safety of aspartame.

The agency has carefully considered the potential environmental effects of this action and has concluded that the action will not have a significant impact on the human environment and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday. Under FDA's regulations implementing the National Environmental Policy Act (21 CFR Part 25), an action of this type would require an environmental assessment under 21 CFR 25.31a(a).

Any person who will be adversely affected by this regulation may at any time on or before December 29, 1986, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 172

Food additives.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, Part 172 is amended as follows:

PART 172—FOOD ADDITIVES PERMITTED FOR DIRECT ADDITION TO FOOD FOR HUMAN CONSUMPTION

1. The authority citation for 21 CFR Part 172 continues to read as follows:

Authority: Secs. 201(s), 409, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 349); 21 CFR 5.10, 5.61.

2. In § 172.804 by adding new paragraphs (c)(8) and (c)(9) to read as follows:

§ 172.804 Aspartame.

* * * * *

(c) * * *

(8) Noncarbonated, refrigerated single-strength and frozen concentrates of the following beverages:

(i) Fruit juice based drinks (where food standards do not preclude such use).

(ii) Fruit flavored drinks and ades.

(iii) Imitation fruit flavored drinks and ades.

(9) Frozen stick-type confections and novelties.

* * * * *

Dated: November 24, 1986

Sanford A. Miller,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 86–26859 Filed 11–25–86; 10:29 am]

BILLING CODE 4160–01–M

21 CFR Part 172

[Docket No. 84F–0137]

Food Additives Permitted for Direct Addition to Food for Human Consumption; Aspartame

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of aspartame in breath mints. This action responds to a petition filed by the Shaklee Corp.

DATES: Effective November 28, 1986; objections by December 29, 1986.

ADDRESS: Written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Carl L. Giannetta, Center for Food Safety and Applied Nutrition (HFF–334), Food and Drug Administration, 200 C Street SW., Washington, DC 20204, 202–426–5487.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of May 18, 1984 (49 FR 21118), FDA announced that food additive petition FAP 4A3766 had been filed by the Shaklee Corp., Shaklee Terraces, 444 Market St., San Francisco, CA 94111, proposing that § 172.804 *Aspartame* (21 CFR 172.804) be amended to provide for the safe use of aspartame (1-methyl *N-L-alpha*-aspartyl-*L*-phenylalanine) as a sweetener in natural flavor products sold exclusively as breath mints.

The agency received a citizen's petition (FAP 6CP3956) (dated July 17, 1986) from James S. Turner and Diane T. Dean, consumer attorneys, on behalf of the Community Nutrition Institute (CNI). The petition requested: reconsideration and repeal of 21 CFR 172.804 (c) and (d); and convening of a public hearing to receive and consider the evidence supporting these requests. The petition alleged that currrent food use of aspartame presents an imminent health hazard and fails to meet the legal safety standard. On October 23, 1986, CNI amended its petition. The petition further contends that new evidence (eye damage) shows that aspartame creates an imminent health hazard to the American consumer and that new evidence shows that aspartame is not shown to be safe. By letter dated November 21, 1986, the agency denied the petition. (This document is incorporated by reference and is on

public display at the agency's Docket Management Branch.)

In determining whether the proposed use of aspartame is safe, FDA has considered whether the estimated daily intake of the additive by the 90th percentile consumer will be less than the acceptable daily intake established by the agency. In the final regulation approving the use of aspartame in carbonated beverages (48 FR 31376; July 8, 1983) the agency established an acceptable daily intake of 50 milligrams/kilogram of body weight for aspartame. The agency determines the estimated daily intake for various age groups by making conservative projections based on data about particular food consumption levels and the amount of additive proposed for use in the particular food.

The agency commonly uses the estimated daily intake for the 90th percentile consumer of a food additive as a measure of high chronic exposure because that level of consumption is significantly above the intake of the average consumer and provides an added conservatism with respect to the acceptable daily intake for those individuals who regularly consume food containing the additive. Because of initial concerns about the potential consumer overexposure to one or a few types of products containing an artificial sweetener, the FDA Commissioner previously elected to be as cautious as possible and rely upon an even more conservative measure of potential aspartame consumption, the 99th percentile eater, in assessing the safety of aspartame for use in carbonated beverages.

However, as the number of uses of aspartame increases, the probability that a single individual will be a 99th percentile consumer for all uses diminishes significantly.

For this reason, the increased number of uses of aspartame in food has made the use of the cumulative 99th percentile estimated daily intake an unrealistic measure of chronic exposure to aspartame. Under these circumstances, the use of the cumulative 90th percentile estimated daily intake is more realistic and more in accord with the agency's customary conservative way of calculating chronic exposure to food additives. Accordingly, the agency is no longer relying upon the cumulative 99th percentile estimated daily intake in evaluating the safety of aspartame.

The agency concludes that consumption will be well below the acceptable daily intake and that the proposed new use will be safe. Therefore, the agency concludes that the regulation should be amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition (address above) by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has previously considered the environmental effects of this rule as announced in the Notice of Filing for FAP 4A3766 (May 18, 1984; 49 FR 21118). No new information or comments have been received that would affect the agency's previous determination that there is no significant impact on the human environment and that an environmental impact statement is not required.

Any person who will be adversely affected by this regulation may at any time on or before December 29, 1986, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularly the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 172

Food additives.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, Part 172 is amended as follows:

PART 172—FOOD ADDITIVES PERMITTED FOR DIRECT ADDITION TO FOOD FOR HUMAN CONSUMPTION

1. The authority citation for 21 CFR Part 172 continues to read as follows:

Authority: Secs. 201(s), 409, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 348); 21 CFR 5.10.

2. In § 172.804 by adding new paragraph (c)(10) to read as follows:

§ 172.804 Aspartame.

* * * * *

(c) * * *

(10) Breath mints.

* * * * *

Dated: November 24, 1986.

Sanford A. Miller,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 86-26860 Filed 11-25-86; 10:29 am]

BILLING CODE 4160-01-M

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21 CFR Part 172

[Docket No. 84F-0137]

Food Additives Permitted for Direct Addition to Food for Human Consumption; Aspartame

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of aspartame in noncarbonated, chilled iced tea beverages. This action responds to a petition filed by Thomas J. Lipton, Inc.

DATES: Effective November 28, 1986; objections by December 29, 1986.

ADDRESS: Written objections may be sent to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Carl L. Giannetta, Center for Food Safety and Applied Nutrition (HFF-334), Food and Drug Administration, 200 C Street SW., Washington, DC 20204, 202-426-5487.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of May 18, 1984 (49 FR 21118), FDA announced that food additive petition FAP 4A3769 had been filed by Thomas J. Lipton, Inc., 800 Sylvan Ave., Engelwood Cliffs, NJ 07632, proposing that § 172.804

Aspartame (21 CFR 172.804) be amended to provide for the safe use of aspartame (1-methyl *N-L-alpha*-aspartyl-*L*-phenylalanine) as a sweetener in noncarbonated, chilled, ready-to-drink iced tea beverages.

The agency received a citizen's petition (FAP 6CP3956) (dated July 17, 1986) from James S. Turner and Diane T. Dean, consumer attorneys, on behalf of the Community Nutrition Institute (CNI). The petition requested: administrative reconsideration and repeal of 21 CFR 172.804(c) and (d); and convening of a public hearing to receive and consider the evidence supporting these requests.

The petition alleged that current food use of aspartame presents an imminent health hazard and fails to meet the legal safety standard. On October 23, 1986, CNI amended its petition. The petition further contends that new evidence (eye damage) shows that aspartame creates an imminent health hazard to the American consumer and that new evidence shows that aspartame is not shown to be safe. By letter dated November 21, 1986, the agency denied the petition. (This document is incorporated by reference and is on public display at the agency's Dockets Management Branch.)

In determining whether the proposed use of aspartame is safe, FDA has considered whether the estimated daily intake of the additive by the 90th percentile consumer will be less than the acceptable daily intake established by the agency. In the final regulation approving the use of aspartame in carbonated beverages (48 FR 31376; July 8, 1983), the agency established an acceptable daily intake of 50 milligrams per kilogram of body weight for aspartame. The agency determines the estimated daily intake for various age groups by making conservative projections based on data about particular food consumption levels and the amount of additive proposed for use in the particular food.

The agency commonly uses the estimated daily intake for the 90th percentile consumer of a food additive as a measure of high chronic exposure because that level of consumption is significantly above the intake of the average consumer and provides an added conservatism with respect to the acceptable daily intake for those individuals who regularly consume food containing the additive. Because of initial concerns about the potential consumer overexposure to one or a few types of products containing an artificial sweetener, the FDA Commission previously elected to be as cautious as possible and rely upon an even more conservative measure of potential aspartame consumption, the 99th percentile eater, in assessing the safety of aspartame for use in carbonated beverages.

However, as the number of uses of aspartame increases, the probability that a single individual will be a 99th percentile consumer for all uses diminishes significantly. For this reason, the increased number of uses of aspartame in food has made the use of the cumulative 99th percentile estimated daily intake an unrealistic measure of chronic exposure to aspartame. Under these circumstances, the use of the cumulative 90th percentile estimated daily intake is more realistic and more in accord with the agency's customary conservative way of calculating chronic exposure to food additives. Accordingly, the agency is no longer relying upon the cumulative 99th percentile estimated daily intake in evaluating the safety of aspartame.

The agency concludes that consumption of aspartame will be well below the acceptable daily intake and that the proposed new use will be safe. In order to simplify the regulation, the agency has editorially incorporated all approved uses of aspartame in tea into one paragraph. Therefore, the agency concludes that the regulation should be amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition (address above) by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action and has concluded that the action will not have a significant impact on the human environment and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday. Under FDA's regulations implementing the National Environmental Policy Act (21 CFR Part 25), an action of this type would require an environmental assessment under 21 CFR 25.31a(a).

Any person who will be adversely affected by this regulation may at any time on or before December 29, 1986, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any paticular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 172

Food additives.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, Part 172 is amended as follows:

PART 172—FOOD ADDITIVES PERMITTED FOR DIRECT ADDITION TO FOOD FOR HUMAN CONSUMPTION

1. The authority citation for 21 CFR Part 172 continues to read as follows:

Authority: Secs. 201(s), 409, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 348); 21 CFR 5.10.

2. In § 172.804 by removing "and tea" from paragraph (c)(5)(ii) and by adding new paragraph (c)(11) to read as follows:

§ 172.804 Aspartame.

* * * * *

(c) * * *

(11) Tea beverages to include ready-to-serve, liquid concentrates, and dry bases.

* * * * *

Dated: November 24, 1986.

Sanford A. Miller,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 86-26861 Filed 11-25-86; 10:29 am]

BILLING CODE 4160-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 6631

[AA-320-06-4220-10; OR-11331(WASH)]

Washington; Withdrawal of Public Land for Split Rock Recreation Site

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order closes 24.65 acres of public land to surface entry and mining for a period of 20 years to protect the Bureau of Land Management's Split Rock Recreation Site. The land has been and remains open to mineral leasing.

EFFECTIVE DATE: November 28, 1986.

FOR FURTHER INFORMATION CONTACT: Champ Vaughan, BLM, Oregon State Office, P.O. Box 2965, Portland, Oregon 97208, 502-231-6905.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, it is ordered as follows:

1. Subject to valid existing rights, the following described public land, which is under the jurisdiction of the Secretary of the Interior, is hereby withdrawn from settlement, sale, location, and entry, under the general land laws, including the the United States mining laws (30 U.S.C. Ch. 2), but not from leasing under the mineral leasing laws, and reserved for use as a Bureau of Land Management recreation site:

Willamette Meridian

Split Rock Recreation Site

T. 39 N., R. 26 E.,
Sec. 18, lot 7.

The area described contains 24.65 acres in Okanogan County.

2. The withdrawal made by this order does not alter the applicability of those public land laws governing the use of the land under lease, license, or permit, or governing the disposal of their mineral or vegetative resources other than under the mining laws.

3. The withdrawal will expire 20 years from the effective date of this order unless, as a result of a review conducted before the expiration date pursuant to section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f), the Secretary determines that the withdrawal shall be extended.

J. Steven Griles,

Assistant Secretary of the Interior.

November 17, 1986.

[FR Doc. 86-26716 Filed 11-26-86; 8:45 am]

BILLING CODE 4310-84-M

43 CFR Public Land Order 6632

[OR-940-07-4220-10; OR-38420 (WASH)]

Washington; Withdrawal of Mineral Estate for Protection of the Department of Energy Hanford Site

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order withdraws 1,000.75 acres of mineral estate from mining for 20 years to protect the Hanford Site. The lands have been and remain open to mineral leasing. The surface estate is acquired and not subject to the public land laws.

EFFECTIVE DATE: November 28, 1986.

FOR FURTHER INFORMATION CONTACT: Champ Vaughan, BLM, Oregon State Office, P.O. Box 2965, Portland, Oregon 97208, 503-231-6905.

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, it is ordered as follows:

1. Subject to valid existing rights, the following described lands are hereby withdrawn from location under the United States mining laws (30 U.S.C. Ch. 2), but not from applications and offers under the mineral leasing laws to protect portions of the existing U.S. Department of Energy's Hanford Site:

Willamette Meridian

T. 11 N., R. 24 E.,
Sec. 14 NE¼ and NE¼SE¼.
T. 12 N., R. 24 E.,
Sec. 12, E½ and NW¼.
T. 13 N., R. 25 E.,
Sec. 20, lots 1 and 3, and E½NW¼.
T. 14 N., R. 25 E.,
Sec. 22, NE¼.

The areas described aggregate 1,000.75 in Benton and Grant Counties.

2. The lands described in paragraph 1, which are already part of the Hanford Site, are not subject to operation of the general land laws because the surface estate has been acquired by the United States.

3. This withdrawal will expire 20 years from the effective date of this order unless, as a result of a review conducted before the expiration date, pursuant to section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f), the Secretary determines that the withdrawal shall be extended.

J. Steven Griles,

Assistant Secretary of the Interior.

November 17, 1986.

[FR Doc. 86-26717 Filed 11-26-86; 8:45 am]

BILLING CODE 4310-33-M

DEPARTMENT OF TRANSPORTATION

Maritime Administration

46 CFR Part 281

[Docket No. R-100]

Subsidized Vessels and Operations; Non-Subsidized Voyages Restrictions Elimination

AGENCY: Maritime Administration, DOT.

ACTION: Final rule.

SUMMARY: The Maritime Administration (MARAD) hereby amends 46 CFR Part 281 by revoking §§ 281.11 through 281.17, "Non-Subsidized Voyages." These regulations govern procedures for approving non-subsidized voyages by a subsidized liner operator or by a related company. Revocation of these regulations will allow greater operating flexibility for the subsidized liner operator and will result in savings in subsidy costs to the government at no additional subsidy cost to the government.

EFFECTIVE DATE: December 29, 1986.

FOR FURTHER INFORMATION CONTACT: Edmond J. Fitzgerald, Director, Office of Trade Studies and Subsidy Contracts, Maritime Administration, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, Tel. (202) 366-2400.

SUPPLEMENTARY INFORMATION:

Background

On October 7, 1985, MARAD published a notice of proposed rulemaking (NPRM) in the **Federal Register** proposing to rescind §§ 281.11 through 281.17 of Title 46 of the Code of Federal Regulations, which govern procedures for approving nonsubsidized voyages by a subsidized liner operator or by a related company (50 FR 40876). The 45 day comment period was extended 15 days at the request of several commenters (50 FR 48616, Nov. 26, 1985). The existing regulations require that a subsidized operator obtain approval by MARAD before it or a related company undertakes a non-

subsidized voyage. MARAD requires a detailed application describing the service, the cargo to be carried, proposed sailing schedules and financial results.

The criteria for approval by MARAD are two-fold: service, i.e., that there is a need for the voyage and that such voyage would have no adverse impact on the applicant's regular sailings; and financial results, i.e., that there is an expectation of reasonable profit (46 CFR 281.15). If the proposed voyage is to be made on a route served by U.S.-flag berth operators on which the subsidized operator does not maintain a berth operation, the subsidized operator is required to obtain the consent of competing U.S.-flag berth operators (except as otherwise determined by the Maritime Administrator (46 CFR 281.11(d)). The term "U.S.-flag berth operator," as used in the existing regulations, refers to a subsidized or non-subsidized operator rendering on the given route an exclusively U.S.-flag service, maintaining a definite advertised schedule, and offering relatively frequent sailings in the area on which the subsidized operator has filed an application. Generally, the test as to whether competition exists between the proposed non-subsidized voyage and voyages of other U.S.-flag berth operators is whether the proposed non-subsidized voyage will provide a service of the type that would be competitive under the considerations of section 605(c) of the Merchant Marine Act, 1936, as amended (Act) (46 CFR 281.11(g)).

The existing regulations provide for a number of exceptions and differing treatment for different types of operations. Operations specifically authorized by operating-differential subsidy (ODS) contracts are altogether outside the purview of the rule. For example, United States Lines, Inc., Waterman Steamship Co., Lykes Bros. Steamship Co., Inc., and Delta Steamship Lines, Inc., have such contractual authority to conduct certain non-subsidized voyages.[1] However, only United States Lines, Inc., has taken advantage of its contractual authority. Lykes has not deployed its six new containerships (which are authorized to operate on a non-subsidized basis through its contract amendment) due to depressed market rates in the transpacific trades. Considering that Lykes is trying to sell those containerships, it is unlikely that it will conduct non-subsidized operations in those trades. Waterman conducted 20 non-subsidized voyages on trade routes 5, 7, 8, 9 from 1979–1981, ranging from 2 to 17 days in length. Delta conducted several non-subsidized voyages in 1983. United States Lines, Inc. has been conducting non-subsidized round the world (RTW) voyages since 1985 pursuant to its contractual authority, and now conducts weekly RTW sailings. The impact of this service was considered by the Maritime Subsidy Board (MSB) in MA/MSB Docket S–774 (January 31, 1986). In that Docket the MSB found that "the impact of USL's proposed services on U.S.-flag competitors will either be minimal or those competitors failed to carry their burden of proof that grant of USL's application would have a significant adverse impact." Docket S–774, p. 58.

Another exception to the existing regulations was made several years ago. On September 19, 1981, the Maritime Administrator made an exception to the requirements of the regulations, pursuant to § 281.11(d) of the regulations, determining that a subsidized operator may make a non-subsidized voyage without consent of competing U.S.-flag berth operators in two situations: (1) Where the operator is carrying a full shipload of bulk or bagged agricultural commodities or fertilizers subject to the cargo preference laws of the United States; or (2) where the operator is carrying any full cargo of other commodities on a route when there is only a single shipper (i.e., shipping company), and the vessel is not operated as a common carrier. The Maritime Administrator also determined that MARAD would continue to require prior approval (for (1) and (2) above) if a subsidized vessel is used for the voyage. If the voyage is made by a non-subsidized vessel, MARAD's approval is not needed.

Purpose of the Existing Regulations

Prior to the promulgation of the existing rule in 1957, MARAD considered applications for individual non-subsidized voyages by subsidized operators on the basis of the merits of each application. At that time, each ODS contract contained a provision (Article 11–16) requiring express approval from MARAD for subsidized operators to operate non-subsidized vessels in competition with any other service route or line. Article 11–16 of each ODS contract also specified that subsidized operators seeking to conduct non-subsidized voyages had to comply with such regulations that the agency might adopt. With the increase of Article 11–16 applications during the 1950's, MARAD was prompted to promulgate regulations to assure "uniform and equitable administration of this competition clause of the contracts."

The main statutory authority for the regulations was section 606 of the Act (46 U.S.C. 1176). Section 606 governs the review and readjustment of ODS payments. Prior to 1970, section 606(5) provided for recapture of certain profits with respect to capital investment necessarily employed in the service or route, *see, e.g., Pacific Far East Line, Inc.*, v. *United States*, 394 F.2d 990, 993 (Ct. Cl. 1963), and section 606(6) required subsidized operation to be conducted in "the most economical and efficient manner." 49 Stat. 20004. In the 1970 amendments to the Act, Pub. L. 91–469, the recapture provision was dropped, hence, rendering the recapture features of the regulations superfluous.

The intent of the regulations is reflected in § 281.15, which delineates the standards for the Maritime Administrator to apply in approving applications for non-subsidized voyages. The Administrator is authorized to approve applications demonstrating that a "definite need" exists for the non-subsidized service, that such service will not adversely affect the applicant's regular sailings, and that each voyage is expected to yield a profit. General statutory authority for this provision was in section 606(5) of the Act. Competitive impact is not established as a predominant factor. However, generally allowing competitors to oppose a subsidized operator's application to enter the competitor's route on a non-subsidized basis effectively assures that consideration of competitive impact will be a factor in the disposition of applications.

In a 1981 **Federal Register** publication, MARAD explained that the purpose of promulgating §§ 281.11 to 281.17 was "to ensure that the continuity and quality of subsidized operators will not be adversely affected, . . . to safeguard against improper competitive practices[,] and to prevent operators prejudicial to the purposes and policy of the Act," (46 FR 48198, October 1, 1981). This purpose is consistent with MARAD's general concern with the efficiency of subsidized operators. However, MARAD noted that the regulations might be changed in the future.

For several years MARAD has intended to revise its regulation on unsubsidized deviations and voyages by

[1] United States Lines, Inc. contract no. MA/MSB–483, as amended and restated; Waterman Steamship Co., contract no. MA/MSB–450, as amended and restated; Lykes Bros. Steamship Lines, contract no. MA/MSB–451, as amended and restated; Delta Steamship Lines, Inc., contract no. MA/MSB–425, as amended and restated.

subsidized operators, now set out at 46 CFR Part 281, and has so advised the public. *See* e.g., 47 48677, October 28, 1982; 50 FR 17611, 17613, April 29, 1985. The rule has given rise to administrative and judicial disputes since at least 1979. See *Sea-Land Services. Inc.* v. *Dole,* 723 F.2d 975 (D.C. Cir. 1983), *cert. denied,* 105 S. Ct. 103 (1983). More recently, a district court decision in *Farrell Lines, Inc.* v. *Dole,* 619 F. Supp. 298 (D.D.C. 1985), focused on the requirements of the rule, among other things, and remanded certain matters to the agency for entry of a new decision. The agency rendered a new decision on remand in Docket No. S–774, on January 31, 1986.

The Proposed Rule; Reasons for Rescinding the Existing Regulations

In the NPRM, MARAD cited several reasons for rescinding the existing regulations. First, MARAD noted the need for revision of the rule to account for the repeal of recapture (former section 606(5)) provisions of the Act. Second, MARAD reasoned that rescission of the regulations would give U.S.-flag subsidized operators greater operating flexibility, and consequently, encourage their competitiveness with foreign-flag operators. In addition, the government would realize budgetary savings as operators made the transition from subsidized to non-subsidized operations. Finally, MARAD stated its belief that rescission would encourage subsidized operators to make the transition completly to non-subsidized operations, once operators established themselves in the non-subsidized service.

In the NPRM and accompanying regulatory evaluation, MARAD considered the factors of competitive impact, adequacy of service, and financial soundness of subsidized operators. Since several commenters raised these issues in commenting on the NPRM, MARAD will address them more fully in the sections responding to comments below:

The Final Rule

The final rule is based on the same rationale as the NPRM (see above). A revised regulatory evaluation was prepared in response to some commenters who raised concerns about certain data in the draft regulatory evaluation.

MARAD has expanded on the main reason underlying this rulemaking given in the NPRM: that revocation will provide greater operating flexibility. The elimination of funding for construction-differential subsidy (CDS) and ban on expansion of ODS liability (see final regulatory evaluation) further supports the rationale that subsidized operators need more operating flexibility to develop their non-subsidized services and modernize their fleets.

For the reasons stated below and in the final regulatory evaluation, MARAD has decided, after consideration of all comments, to rescind the existing regulations in this final rule. Since 1970, the liner shiping environment and the U.S.-flag subsidized operators' role in that environment have changed dramatically. Rescission of the existing regulations is based on these changes, which includes:

Elimination of the recapture provisions (section 606(5)) of the Act

The recapture provisions of the Act (the statutory basis for the existing regulations) authorized MARAD to recover excess profits (greater than 10 percent of the capital employed) of subsidized services. Thus, the existing regulations required that subsidized operators show that their unsubsidized services would not dilute their profits and the consequent return to the government. Despite elimination of section 606(5) in 1970, the existing regulations have been retained to protect U.S.-flag operators from potential improper competitive impacts of non-subsidized services by subsidized operators, to protect applicants' subsidized operations, and to prevent operations prejudicial to the Act (*see* discussion of existing regulations, above, and 46 FR 48198, October 1, 1981). However, the above reason for retaining the regulations no longer exist. Existing enforcement provisions in operators' ODS contracts, as well as Title XI documents, operate to assure the quality of subsidized services. The issues of improper competitive impact and operations prejudicial to the Act are addressed in the responses to comments below:

Decline in U.S.-flag share of U.S. liner trade

The U.S.-flag share of U.S. liner trade fell sharply from 27 percent in 1981 to 20.6 percent in 1985, reflecting primarily a decline in subsidized services. Total U.S.-flag subsidized sailing dropped from 731 in 1982 to 575 in 1985. Rescission of the existing regulations would allow U.S.-flag subsidized operators the opportunity to further expand their non-subsidized participation in U.S. foreign trade which could place them on equal terms with foreign-flag competitors who have the freedom to deploy and redeploy vessels in response to changing trade patterns.

Containerization of major U.S. liner trades

The containerization revolution has had far-reaching effects on U.S. shipping patterns. A containership can move the cargo of four to ten breakbulk ships of similar size. Consequently, containerships require larger cargo volumes at each port call than breakbulk ships, and this has led to the rapid growth in line-haul/feeder (hub-spoke) deployments, particularly in the east-west trades. Furthermore, the fact that containers can also be used in rail and truck transportation and are easily loaded/unloaded from ships has led to the concentration of cargoes at hub ports (e.g., New York, Baltimore, Savannah, Seattle, and Rotterdam). Since additional hub ports are likely to develop, even where cargo volumes have been low (e.g., San Juan, Puerto Rico, and Colombo, Sri Lanka), subsidized operators should be allowed to expand and adjust non-subsidized services accordingly. With the revocation of the existing regulations, U.S.-flag subsidized operators would have greater opportunities to deploy and redeploy vessels on a non-subsidized basis in the changing linehaul/feeder services.

Restrictions on funding for CDS and new ODS contracts

Given the current restrictions on funding for CDS and new ODS contracts, subsidized operators under existing contracts must have the flexibility, through revocation of the existing regulations, to structure non-subsidized services and modernize their fleets to reverse the growing foreign-flag presence in U.S. foreign trades. Indeed, the existing regulations discourage U.S.-flag operators and private investors from taking the risks required to meet foreign-flag competion.

The policy reasons for rescinding the existing regulations further include the following:

Greater Operating Flexibility

MARAD seeks to allow greater operating flexibility of subsidized operators in an effort to encourage them to become more competitive with foreign-flag operators. Ultimately, such flexibility should lead to a stronger, more competitive U.S. merchant marine.

Deregulation

Removing existing regulatory restrictions on the operations of subsidized operators is consistent with encouraging greater competition in the market place and removing unnecessary governmental interference. The

government's role in approving non-subsidized voyages by subsidized liner companies will be eliminated, allowing such companies more flexibility to plan their operations for both the long and short-term in response to the changing market environment. Further, provisions in ODS contracts and Title XI agreements ensure the quality and continuity of subsidized services.

Reduced Reliance on Subsidy

Considering current budget constraints, MARAD is seeking ways to encourage operators to reduce their reliance on subsidy. Most ODS contracts will expire in the 1990's (the United States Lines, Inc. ODS contract expires next year; see final regulatory evaluation). By encouraging subsidized operators to make the transition to non-subsidized operations now, MARAD believes that they will be better able to compete without subsidy by the time their contacts expire.

Discussion of Comments Received

MARAD received comments on the NPRM from ten interested parties. Three commenters, all subsidized U.S.-flag liner companies, supported the elimination of the regulations on the basis that it would allow them to compete more effectively with foreign-flag operators. Seven commenters, including five U.S.-flag liner companies, one maritime trade union, and one association representing companies engaged in U.S.-flag marine transportation, opposed the NPRM.

The commenters supporting rescission of the regulations, United States Lines, Inc., Lykes Bros. Steamship Co., Inc., and American President Lines, Inc., stressed that subsidized operators would benefit from additional operating flexibility, which would allow them to compete more effectively with foreign-flag operators. Proponents of rescission also argued that the original statutory policy justifications for the regulations no longer exist.

The commenters opposing rescission were the Seafarers International Union, Transportation Institute, Farrell Lines, Inc., Central Gulf, Inc., Prudential Lines Inc., Waterman Steamship Corporation and Sea-Land Service, Inc. These commenters contended that elimination of the regulations would result in negative competitive impacts on the U.S.-flag liner industry, and that MARAD has an obligation to oversee non-subsidized voyages by subsidized liner companies. Specific comments are addressed below:

1. Policy of the Merchant Marine Act (46 U.S.C. 1101)

Several commenters argued that MARAD has an obligation under section 101 of the Act to prevent non-contract operations that are prejudicial to the Act. Other operators argued that the existing regulations are contrary to section 101 of the Act in that they discourage competition and do not reflect the present industry environment.

Section 101 of the Act (46 App. U.S.C. 1101) declares it to be "the policy of the United States to foster the development and encourage the maintenance of such a merchant marine." The existing restrictions on non-subsidized operations restrain the development of the U.S. merchant marine and restrict competition with foreign-flag operators.

Allowing subsidized U.S.-flag operators to conduct non-subsidized voyages without the disincentive of the application and approval process required by the regulations should encourage subsidized operators to modernize their vessels. Modernized vessels would be better able to operate on a non-subsidized basis than old, unmodernized inefficient vessels. Certainly, the promotion of a U.S.-flag fleet comprised of the most efficient vessels in the national interest. A more specific discussion of how revocation of these regulations would benefit the U.S. merchant marine fleet is set forth below.

2. Section 605(c) Implications—Competitive Impact and Adequacy of Service

A commenter opposed rescission of sections 281.11 through 281.17 on the grounds that MARAD has a statutory obligation to consider evidence of competitive impact and adequacy of service under section 605(c) of the Act (46 U.S.C. 1175).

The United States Court of Appeals for the District of Columbia has held that section 605(c) of the Act itself is not applicable to non-subsidized operations. *Sea-Land Service, Inc.*, v. *Dole, supra.* The Court of Appeals held in that case that section 605(c) of the Act does not impose a hearing or fact-finding requirement on requests for authority to conduct non-subsidized operations. *Id.* at 979. While dicta in *Sea-Land* did note that an equivalent or lesser standard might be inferred from the totality of the Act, the court did not decide what, if any, that standard might be. The court also refused to decide "whether the Secretary can permit non-subsidized operations of contract vessel without considering the impact upon essential services thereby affected." *Id.* at 978.

Although MARAD has no statutory obligation to consider evidence of competitive impact or adequacy of service under 605(c) in considering non-subsidized services, it has evaluated these factors in this final rule (see below) and in the regulatory evaluation accompanying this rule. MARAD recognizes the need to address these considerations in response to concerned commenters. On the basis of past experience with non-subsidized operation in different trade routes allowed by contract amendments, no harmful competitive impacts have been proven. While several subsidized operators have contractual authority to conduct certain non-subsidized operations (see pp. 3–4), two of those operators (Waterman and Lykes) have not taken advantage of their ability to conduct non-subsidized operations in recent years. In addition, MARAD has already addressed the issues of competitive impact and adequacy of service in relation to the United States Lines, Inc. non-subsidized operations in MSB Docket S–774. In that docket, the MSB concluded that competitors did not carry their burden of proof that grant of USL application for non-subsidized services would have significant adverse impact on the subsidized operators. Of the U.S.-flag subsidized operators, USL currently provides the most non-subsidized competition.

However, MARAD recognizes that rescinding the existing regulations will allow for more non-subsidized operations than existing contract amendments allow. Further, MARAD cannot accurately predict what, if any, non-subsidized operations will take place. For these reasons, MARAD will assess the actual impact of this final rule after one year following its effective date, and invites interested parties to comment on the actual impact on their operations at that time.

3. Regulatory Authority of MARAD

Some commenters opposing revocation argued that MARAD lacks the regulatory authority to revoke the rule. They contended that MARAD did not show in its NPRM why existing restrictions on non-subsidized operations by subsidized companies are no longer necessary, and cited MARAD's long history of controlling such operations. Other commenters contended that revocation of the regulations is long overdue to allow subsidized operators flexibility to meet foreign-flag competition. One commenter argued that with the revocation of the recapture provisions (former section 606(5)) of the Act, the

regulations have no close tie with a specific statutory mandate.

MARAD has the authority to alter its regulations as long as it resorts to the appropriate administrative procedures. *See Motor Vehicle Manufacturers Association* v. *State Farm Mutual Automobile Insurance Co.*, 463 U.S. 29, 42 (1983). The Supreme Court has recognized that "[r]egulatory agencies do not establish rules of conduct to last forever . . . and that an agency must be given ample latitude to adopt their rules and policies to the demands of changed circumstances." *Permian Basin Area Rate Cases*, 390 U.S. 747, 784 (1968); *see also Motor Vehicle Manufacturers, supra.*

The existing rules were promulgated in 1957, and the history of controlling non-subsidized operations by subsidized operators through their ODS contracts dates back prior to 1957. Since then, and especially since 1970, radical changes have occurred in the liner shipping environment faced by U.S.-flag subsidized operators. These changes are further elaborated above and in the regulatory evaluation.

The NRPM noted that "one of the main reasons for rescinding these regulations is to encourage subsidized operators to meet foreign-flag competition more effectively" (50 FR 40879 (Oct. 7, 1985)). The radical changes in the liner industry, including the sharp decline in the U.S.-flag share of U.S. liner trade from 27 percent in 1981 to 20.6 percent in 1985 (reflecting primarily a decline in subsidized services), require a reassessment of U.S. maritime policy in order to fulfill the mandate of section 101 of the Act. Restricting a subsidized operator from competing freely on a non-subsidized basis hinders operating flexibility, and the ability to compete with foreign-flag operators. With most ODS contracts due to expire in the 1990's (see page four of regulatory evaluation), subsidized operators need the flexibility to compete on a non-subsidized basis to begin to make the transition to non-subsidized operations. While MARAD is aware that an increase in competition among U.S.-flag operators may possibly result in displacement of less efficient services, and downward pressure on freight rates, the *overall* efficiency of the U.S.-flag liner industry should increase, and U.S.-flag participation in the U.S. liner trades should expand.

4. Economic Impact on Industry

Commenters' opposing the NPRM-made several arguments to the effect that rescinding the rule would result in negative competitive impacts on the liner industry:

(a) Some commenters noted that liner trades are already depressed, and eliminating existing restrictions on non-subsidized voyages by subsidized liner companies would further depress the trades. One operator (See-Land Service, Inc.) supported this contention with two studies by Manalytics, Inc. purporting to analyze the impact of United States Lines, Inc.'s non-subsidized vessel deployment on U.S.-flag liner capacity in the east-west trades. That operator concluded that existing U.S.-flag service in the east-west trade was adequate and United States Lines, Inc.'s deployment would overtonnage these trades.

MARAD noted in the NPRM that a major reason for revoking the existing restrictions was to encourage competition with foreign-flag operators. The argument that liner trades are already depressed is more reason to revoke the existing restrictions on subsidized liner operators, to allow them to compete with foreign-flag operators in areas where cargoes are available, without the concern of requesting a prior approval. In addition, experience in the liner trades does not support the alleged negative impact. For example, Lykes Bros. Steamship Lines, Inc., redeployed four of its containerships from the U.S. Pacific/Far East trade to the U.S. Gulf/Europe trade in June 1986 due to the dramatic decrease in freight rates in the Pacific-Far East trade. Lykes is also seeking a buyer for six new foreign-built containerships that it had planned to operate on a non-subsidized basis in the Pacific-Far East trade. If a trade is depressed and offers little prospect for profitable operations, an operator is not likely to deploy/redeploy its vessels on a non-subsidized basis (see final regulatory evaluation, p. 6). In response to the Manalytics studies analyzing the east-west trades, MARAD believes that the analyses are unsupported and overstated.

Sea-Land used Manalytics' estimates of U.S.-flag liner capacity as a measure of adequacy of U.S.-flag service on east-west trade routes. These estimates did not consider efficiency or operating costs relative to foreign-flag vessels. While deployment of an inefficient, high-cost U.S.-flag vessel adds to overall U.S.-flag capacity, it may not be able to compete effectively against foreign-flag vessels for U.S. cargoes. The Maritime Subsidy Board, in contrast, considers actual U.S.-flag participation in the respective liner trades as a measure of adequacy of U.S.-flag service with 50 percent U.S.-flag participation as the minimum standard for adequacy.[2]

Manalytics assumed that U.S.-flag liner capacity in 1987 would simply be U.S.-flag liner capacity in 1985 plus anticipated U.S.-flag newbuilding (liner) deployments for 1986–87. The analyses did not consider deletions from the operating fleet or the impact of rates and relative costs on U.S.-flag vessel deployments over time. For instance, 50 of 68 U.S.-flag liner vessels deployed in 1985 were older than 10 years, steam-powered and had 30–42 man crews. In contrast, modern foreign-flag containerships have 10–21 man crews and are diesel-powered (more fuel-efficient than steam). Thus, many of these U.S.-flag ships have already been removed from service. The impact of low freight rates and foreign cost reductions on deployments of old inefficient U.S.-flag tonnage is reflected in the sharp decline in U.S.-flag subsidized sailings from 1982 to 1985 as well as the decline in U.S.-flag participation in U.S. liner trade over the same period.

Finally, Manalytics did not consider cross trade activities by U.S.-flag operators in the aforementioned affidavits despite a 1983 Manalytics study which showed that 21 percent of U.S.-flag liner utilization in 1982 was for cross trades and predicted that these trades would become increasingly important for U.S. liner operators.[3]

(b) Several commenters argued that if the regulations were rescinded, operators would use subsidy payments to finance non-subsidized as well as subsidized services, driving other U.S.-flag liner services out of business.

MARAD believes that it is unlikely that subsidy monies will be used to finance non-subsidized voyages. ODS payments do not compensate operators for all their cost disadvantages vis-a-vis foreign-flag and U.S. unsubsidized operators (e.g., crew size, fuel consumption, cargo handling and maintenance and repair). While MARAD makes ODS payments based on an operator's *accrued* costs, operators must eventually pay for these incurred costs for which they received subsidy. Thus, MARAD believes that subsidy monies could not be used as a viable source of financing for non-subsidized voyages. However, to assure that ODS monies are being used to pay

[2] See Maritime Subsidy Board decision, Docket S-774, U.S. Lines, Inc. Application for Round-The-World Service, p. 28–30.

[3] See Manalytics, Inc "J.S.-flag Crosstrading. U.S.-flag Crosstrading Operations and U.S. Policy Options, Vol. 2, 1984, p. 3–4.

for ODS accruals and to respond to the commenters' concerns about use of subsidy payments to finance non-subsidized operations, MARAD will require that once a year operators sign and submit a document, prepared by MARAD, certifying and affirming that ODS payments are being used to pay for ODS accrued expenses.

(c) Two commenters contended that if the regulations were rescinded, new U.S.-flag, foreign-built vessels would likely be deployed on a non-subsidized basis in the over-tonnaged east-west trades because these trades involve large volumes of high-valued, containerized cargoes.

The claim that revocation will result in the concentration of unsubsidized services on high volume (east-west) routes and the abandonment of services on other routes is also unfounded (see 4(a) above). Assuming U.S.-flag modernized or newbuilding capacity is deployed on higher-volume routes, rates in these trades would fall relative to lower-volume routes, creating an incentive for U.S.-flag operators to serve the lower-volume routes. In addition, by maintaining services on several routes, an operator would minimize the adverse impacts of volume or rate declines in specific trades.

(d) Several commenters contended that U.S.-flag service on the major east-west line-haul routes is adequate, and thus rescission of the regulations would not increase U.S.-flag participation in these trades, but instead, would negatively affect the U.S.-flag liner industry, contrary to the purposes and policies of the Act. These commenters further argued that MARAD should make adequacy/inadequacy determinations, not rescind the regulations.

MARAD does not believe that it must make adequacy/inadequacy determinations regarding non-subsidized voyages (see *section 605(c)* arguments, *supra;* and *Sea-Land* v. *Dole, supra*). However, MARAD has considered overall adequacy of U.S.-flag service in relation to this final rule. United States-flag participation in the east-west trades has traditionally been inadequate by any standard (*see Sea-Land Service, Inc.* v. *Kreps,* 566 F.2d 763, 767 (D.C. Cir. 1977)). Overall U.S.-flag participation in U.S. liner trade has steadily declined to 20.6 percent in 1985. According to MARAD's *United States Oceanborne Foreign Trade Routes,* June 1985, (pp. 283–298), only in one year on one trade route from 1971–1983 has U.S.-flag participation in the two-way trades equalled or exceeded the "adequacy" goal of 50 percent U.S.-flag participation. In 1984, no essential trade route had U.S.-flag participation above 50 percent. *Id.* in view of such consistent overall inadequate U.S.-flag service, MARAD believes that greater U.S.-flag participation in the foreign trades should be encouraged by allowing greater operating flexibility through this final rule.

(e) *Preference Cargoes.* One commenter commented that repealing the regulations would allow an expansion of non-subsidized services by subsidized operators into the preference cargo trade, thus reducing the preference cargoes available to those U.S.-flag operators already in the trade.

The Act provides no protection against non-subsidized U.S.-flag competition for the U.S. share of preference cargoes. MARAD believes that it is in the best interest of the government to encourage competition, especially on a non-subsidized basis, for preference cargoes, to prevent rates from becoming artificially high. U.S.-flag operators already benefit from the absence of direct foreign-flag competition for preference cargos. In addition, most preference cargoes are exempted from application of the existing regulations due to the 1981 amendments to the regulations (see p. 5, *supra*).

5. Budgetary Savings

Some commenters criticized MARAD's claim in the NPRM that the government could save $8.6 million in ODS savings if the regulations were repealed.

MARAD agrees that it is impossible to quantify actual ODS savings. MARAD cannot accurately predict what operators' redeployment and investment plans will be after revocation. In addition, ODS accrued expenses are expected to decline with or without revocation due to expiration of ODS contracts and scrapping of subsidized vessels, making an accurate prediction based on anticipated annual ODS accruals impossible. In the NPRM, MARAD stated that the savings in ODS should be $8.6 million. The $8.6 million figure was not intended to be an absolute figure, nor was it intended to be the main reason for revocation. MARAD simply listed it as one of the possible benefits that would accrue, and gave an estimated quantification based on three percent of subsidized operations operating on a non-subsidized basis. While some commenters criticized this figure, no commenter offered an alternative figure. Since MARAD acknowledges that absolute quantification of ODS savings is not possible, it is not using this figure in the final rule as support for its position. However, MARAD still believes ODS savings will be realized as subsidized operators make the transition to non-subsidized operations.

6. Rebuttal Comments

One commenter requested the opportunity to respond to comments it anticipated from subsidized operators predicting their proposed non-subsidized voyages in their comments to the NPRM.

Subsidized operators did not choose to predict their proposed non-subsidized voyages in their comments on the NPRM. MARAD believes that interested parties have had more than sufficient time to express their views on the NPRM.

MARAD's response to arguments regarding competitive impact and other economic consequences of revocation are more fully addressed in the final regulatory evaluation.

E.O. 12291, Statutory and DOT Requirements

The Maritime Administrator has determined that this final rule is non-major under E.O. 12291, and thus a regulatory impact analysis is unnecessary. The rule is considered to be significant under the DOT regulatory policies and procedures (44 FR 11034; February 26, 1979). A final regulatory evaluation has been prepared on the rule and will be placed in the public docket. The Maritime Administrator certifies that this rulemaking will not exert a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act of 1980 (5 U.S.C. 501 et seq.). This rulemaking would affect only U.S.-flag liner operators in the foreign trade, none of which is a small entity under the applicable criteria. The rulemaking includes no reporting requirements for the collection of information within the scope of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). Certification documents requiring provision of names only are not considered "information" for purposes of the Paperwork Reduction Act and its implementing regulations (5 CFR 1320.7(k)((1)).

List of Subjects in 46 CFR Part 281

Administrative practice and procedure, Grant programs—transportation, Maritime carriers, Reporting requirements.

PART 281—INFORMATION AND PROCEDURE REQUIRED UNDER LINER OPERATING-DIFFERENTIAL SUBSIDY AGREEMENTS

1. The authority citation for Part 281 continues to read as follows:

Authority: Sec. 204, 49 Stat. 1987, as amended; 46 U.S.C. 1114. Interpret or apply sec. 606, 49 Stat. 2004, as amended; 46 U.S.C. 1176.

§§ 281.11 through 281.17 [Removed]

46 CFR Part 281 is amended by removing §§ 281.11 through 281.17 and their undesignated heading "Non-Subsidized Voyages."

Dated: November 24, 1986.

By Order of the Maritime Administrator:

James E. Saari,

Secretary, Maritime Administration.

[FR Doc. 86-26764 Filed 11-26-86; 8:45 am]

BILLING CODE 4910-81-M

Proposed Rules

Federal Register
Vol. 51, No. 229
Friday, November 28, 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 TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 86-NM-202-AD]

Airworthiness Directives; Airbus Model A310 Series Airplanes.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt an airworthiness directive (AD) that would require test, inspection, and rework, if necessary, of the ram air turbine (RAT) uplock and roller on certain Airbus Model A310 airplanes. This action is prompted by reports of failure of the RAT to deploy during ground test because the uplock hook was dented and the roller seized. This action is necessary to ensure that the RAT will deploy if needed to provide emergency standby hydraulic power to the flight controls.

DATE: Comments must be received no later than January 20, 1987.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel (Attention: ANM-103), Attention: Airworthiness Rules Docket No. 86-NM-202-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from Airbus Industrie, Airbus Support Division, Avenue Didier Daurat, 31700 Blagnac, France. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Ms. Judy Golder, Standardization Branch, ANM-113; telephone (206) 431-1967. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel (Attention: ANM-103), Attention: Airworthiness Rules Docket No. 86-NM-202-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion: The Direction Générale de L'Aviation Civile (DGAC) has, in accordance with existing provisions of a bilateral airworthiness agreement, notified the FAA of an unsafe condition which may exist on certain Airbus Model A310 series airplanes. During a ground test of the ram air turbine (RAT) extension system, the RAT failed to deploy when commanded to do so from the flight deck. Subsequent investigation revealed that the uplock hook had developed a dent where it contacted the roller in the extension system. In addition, the effect of the dent was aggravated by RAT roller seizure. This condition, if not corrected, could lead to the failure of the RAT to deploy when needed to supply emergency standby hydraulic power to the flight controls.

Airbus Industrie Service has issued Bulletin A310-29-2010, Revision 3, dated August 21, 1985, which describes procedures for test, inspection, and rework, if needed, of the RAT mechanism. The DGAC has classified this service bulletin as mandatory.

This airplane model is manufactured in France and type certificated in the United States under the provisions of Section 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since these conditions are likely to exist or develop on airplanes of this model registered in the United States, an AD is proposed that would require test, inspection, and rework, if necessary, in accordance with the previously mentioned service bulletin. Incorporation of Modification AI 5958, described in Airbus Industrie Service Bulletin A310-29-2012, Revision 1, dated September 2, 1986, would constitute terminating action for the repetitive inspection requirements of the proposed AD; this modification deals with the replacement of the RAT uplock box.

It is estimated that 52 airplanes of U.S. registry would be affected by this AD, that it would take approximately 10 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be $20,800.

For the reasons discussed above, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities because of the minimal cost of compliance per airplane ($400). A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of

the Federal Aviation Regulations as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

2. By adding the following new airworthiness directive:

Airbus Industrie: Applies to Model A310 series airplanes with serial numbers listed in Airbus Service Bulletin A310-29-2010, Revision 3, dated August 21, 1985, certificated in any category. Compliance is required within 700 hours time in service after the effective date of this AD.

To prevent failure of the ram air turbine (RAT) extension system and ensure deployment of the RAT when required, accomplish the following, unless previously accomplished:

A. Test, inspect, and rework, if necessary, the RAT uplock hook and roller in accordance with Airbus Industrie Service Bulletin A310-29-2010, Revision 3, dated August 21, 1985.

B. Repeat the tests, inspections, and necessary rework required by paragraph A., above, at intervals not to exceed 1,400 hours time in service.

C. Incorporation of Modification AI 5958, as described in Airbus Industrie Service Bulletin A310-29-2012, Revision 1, dated September 2, 1986, constitutes terminating action for the repetitive inspection requirements of this AD.

D. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

E. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections and/or modifications required by this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Airbus Industrie, Airbus Support Division, Avenue Didier Daurat, 31700 Blagnac, France. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on November 20, 1986.

Leroy A. Keith,

Acting Director, Northwest Mountain Region.

[FR Doc. 86-26710 Filed 11-26-86; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 86-AGL-20]

Proposed Alteration of Federal Airway V-493

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to realign Federal Airway V-493 between the Appleton, OH, (APE) very high frequency omni-directional radio range and tactical air navigational aid (VORTAC) and the York, KY, (YRK) VORTAC. This realignment will facilitate movement eastward of special use airspace and thereby enhance high density traffic volume which is north/south oriented on the western boundary of the special use airspace.

DATE: Comments must be received on or before December 29, 1986.

ADDRESSES: Send comments on the proposal in triplicate to: Director, FAA, Great Lakes Region, Attention: Manager, Air Traffic Division, Docket No. 86-AGL-20, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, IL 60018.

The offficial docket may be examined in the Ruels Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue, SW., Washington, DC.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Laser, Airspace and Air Traffic Rules Branch (ATO-230), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-9248.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 86-AGL-20." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments reeived. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA-230, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267-3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to realign VOR Federal Airway V-493 between Appleton, OH, VORTAC and York, KY, VORTAC. This realignment is predicated upon moving R-5503 eastward to facilitate north/south air carrier traffic flow between Columbus and Cincinnati, OH. A separate docket action, 86-AGL-25, proposes to subdivide and relocate R-5503 Wilmington, OH. Section 71.123 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6B dated January 2, 1986.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034;

February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects In 14 CFR Part 71

Aviation Safety, VOR Federal Airways.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

1. The authority citation for Part 71 continues to read as follows:

Authority. 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.123 [Amended]

2. § 71.123 is amended as follows:

V-493 [Amended]

By removing the words "York, KY; Appleton, OH;" and substituting the words "York, KY; INT York 030 °T(032°M) and Appleton, OH, 183°T(185°M) radials; Appleton;"

Issued in Washington, DC, on November 20, 1986.

Daniel J. Peterson,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 86-26712 Filed 11-26-86; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 73

[Airspace Docket No. 86-AWP-22]

Proposed Alteration of Restricted Area R-2519 Point Mugu, CA, and Revocation of Restricted Area R-2520 Point Mugu, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to alter the lateral boundaries of Restricted Area R-2519 and revoke Restricted Area R-2520 located at Point Mugu, CA. The Department of Navy (DON) has requested that R-2519 be slightly expanded to ensure that all hazardous activity is contained within restricted airspace. The DON also requested that R-2520 be revoked since the usage of the airspace no longer justifies permanent designation.

DATE: Comments must be received on or before December 29, 1986.

ADDRESSES: Send comments on the proposal in triplicate to: Director, FAA, Western-Pacific Region, Attention: Manager, Air Traffic Division, Docket No. 86-AWP-22, Federal Aviation Administration, P.O. Box 92007, Worldway Postal Center, Los Angeles, CA 90009.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue, SW., Washington, DC.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division, 15000 Aviation Boulevard, Hawthorne, California.

FOR FURTHER INFORMATION CONTACT: Andrew B. Oltmanns, Airspace and Aeronautical Information Requirements Branch (ATO-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-9245.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 86-AWP-22." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA-230, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267-3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of advisory Circular No. 11-2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to Part 73 of the Federal Aviation Regulations (12 FR Part 73) to alter the lateral boundaries of R-2519 and revoke R-2520 at Point Mugu, CA. The DON has requested that a slight expansion of R-2519 is necessary to ensure that all conducted hazardous activities are contained within restricted airspace. The DON also requested that R-2520 be revoked since the airspace is no longer used and no longer justifies permanent designation. Although R-2519 will be slightly expanded, with the revocation of R-2520 the net effect of this proposed action will be to return additional airspace to the flying public. Section 73.25 of Part 73 of the Federal Aviation Regulations was republished in Handbook 7400.6B dated January 2, 1986.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a "major rule" under executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 73

Aviation safety, Restricted areas.

The Proposed Amendment

PART 73—[AMENDED]

Accordingly, pursuant to the authority delegated to me, the Federal Aviation administration proposes to amend Part 73 of the Federal Aviation Regulations (14 CFR Part 73) as follows:

1. The authority citation for Part 73 continues to read as follows:

Authority. 49 U.S.C. 1348(a), 1354(a), 1510, 1522; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

2. § 73. 25 is amended as follows:

R–2520 Point Mugu, CA [Remove].

R–2519 Point Mugu, CA [Amended].

Remove the present boundaries and substitute the following:

Boundaries. Beginning at lat. 34°07'15" N., long. 119°07'40" W.; to lat. 34°06'55" N., long. 119°06'00" W.; to lat. 34°04'15" N., long. 119°03'40" W.; to lat. 34°02'15" N., long. 119°04'20" W.; thence 3 nautical miles from and parallel to the shoreline to lat. 34°05'30" N., long. 119°13'00" W.; to lat. 34°05'55" N., long. 119°11'15" W.; to lat. 34°07'08" N., long. 119°09'32" W.; to the point of beginning.

Issued in Washington, DC on November 21, 1986.

Daniel J. Peterson,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 86–26711 Filed 11–26–86; 8:45 am]

BILLING CODE 4910–3–M

FEDERAL TRADE COMMISSION

16 CFR Part 13

[File No. 852 3235]

Aquanautics Corp.; Proposed Consent Agreement With Analysis To Aid Public Comment; Agreement Containing Consent Order to Cease and Desist

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would require, among other things, a San Francisco manufacturer of marine survival suits to notify owners and users of its suits of a safety defect that is potentially life-threatening and send a repair kit to all users and purchasers it can identify to correct the product defect.

DATE: Comments will be received until January 27, 1987.

ADDRESS: Comments should be addressed to: FTC/Office of the Secretary, Room 136, 6th St. and Pennsylvania Avenue., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: FTC/B–411, Theodore H. Hoppock, Washington, DC 20580; (202) 376–8648.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(14) of the Commission's Rules of Practice (16 CFR 4.9(b)(14)).

List of Subjects in 16 CFR Part 13

Marine survival suits, Trade practices.

United States of America Before Federal Trade Commission

The Federal Trade Commission having initiated an investigation of certain acts and practices of Aquanautics Corporation, hereinafter sometimes referred to as proposed respondent, and it now appearing that the proposed respondent is willing to enter into an agreement containing an order to cease and desist from the use of the acts and practices being investigated,

It is hereby agreed by and between Aquanautics Corporation by its duly authorized officers, and its attorneys, and counsel for the Federal Trade Commission that:

1. Proposed respondent Aquanautics Corporation, is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at One Maritime Plaza, Suite 1750, San Francisco, CA 94111.

2. Proposed respondent admits all the jurisdictional facts set forth in the draft of the complaint attached hereto.

3. Proposed respondent waives:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

(d) Any claim under the Equal Access to Justice Act, 5 U.S.C. 504.

4. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the proposed complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the proposed respondent, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondent that the law has been violated as alleged in the proposed complaint attached hereto.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondent, (1) issue its complaint corresponding in form and substance with the proposed complaint attached hereto and its decision containing the following order to cease and desist in disposition of the proceeding and (2) make information public in respect hereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to order to proposed respondent's address as stated in this agreement shall constitute service. Proposed respondent waives any right it may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondent has read the proposed complaint and order contemplated hereby. It understands that once the order has been issued, it will be required to file one or more

compliance reports showing that it has fully complied with the order. Proposed respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

For the purpose of this Order, the following definitions shall apply:

1. "The Imperial exposure suit" means an exposure suit manufactured by Imperial Manufacturing Corporation before April 1980 for sale in the United States or for use on vessels documented or numbered pursuant to 46 U.S.C. 12101–12122 or on mobile offshore drilling units subject to Coast Guard regulation pursuant to 43 U.S.C. 1333, equipped with an inflatable bladder, called a high rider ring, which includes an inflator tube which is glued, but not clamped, to the elbow of the high rider ring.

2. "Imperial Manufacturing" means the company which manufactured and sold the Imperial exposure suit.

3. "Person" means any individual, partnership, corporation, firm, trust, estate, cooperative, association, or other entity.

4. "Distributor" means any person who purchased or received on consignment the Imperial exposure suit for resale.

5. "Retailer" means any person, other than a distributor, who sold the Imperial exposure suit to the public.

6. "Owner" means any person who purchased the Imperial exposure suit from Imperial Manufacturing, a distributor, or a retailer.

7. "User" means any person who uses or has available for use the Imperial exposure suit irrespective of the ownership of that suit.

8. "Panduit strap" means the plastic strap of the type used to secure the inflator tube to the high rider rings used on exposure suits manufactured by Imperial Manufacturing after April 1980.

9. "The modification contemplated by this Order" means the installation of two Panduit straps to reinforce the attachment of the inflator tube to the elbow of the high rider ring and installation of two additional Panduit straps to reinforce the attachment of the inflator nozzle to the inflator tube.

10. "United States" means the fifty states, the District of Columbia, and all commonwealths, territories and possessions.

I.

It Is Ordered That respondent Aquanautics Corporation, a corporation, its successors and assigns, and its officers, and respondent's agents, representatives, and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, sale or distribution of the Imperial exposure suit or any other exposure suit in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing directly or by implication, that any such exposure suit provides the necessary flotation and head and shoulder support for the user to float safely in cold or rough water or diminishes the likelihood of drowning, unless such is the case.

II.

It Is Further Ordered that respondent do forthwith cease and desist from failing to:

A. Not later than twenty (20) days after the date of service of this Order, send, by first-class mail in an envelope clearly marked on the front with the words "Contains Exposure Suit Safety Information And New Safety Straps", to each owner or user of the Imperial exposure suit for whom respondent possesses, controls, or has access to a mailing address the following:

1. A copy of Attachment A(1) to this Order. The "Customer Response Card" depicted in Attachment A(1) shall be provided with prepaid postage sufficient to allow it to be mailed first class to the address contained thereon without the need of any additional postage;

2. A sufficient number of Panduit straps to effect the modification contemplated by this Order on each of the Imperial exposure suits respondent's records show that the owner or user has;

3. A copy of Attachment B to this Order.

B. Respondent shall not be obliged to send the materials listed in subparagraphs 1 through 3 of Paragraph A herein to the owner or user of the Imperial exposure suit if respondent has records which show that:

1. The owner or user of the Imperial exposure suit previously has received the modification contemplated by this Order; or

2. The Imperial exposure suit was purchased for use on vessels or structures on which the United States Coast Guard requires the carriage of Coast Guard approved exposure suits pursuant to the following regulations:

a. 46 CFR 33.37;
b. 46 CFR 94.41;
c. 46 CFR 108.513; or
d. 46 CFR 192.41.

C. Not later than twenty (20) days after the service of this Order, place and cause to be disseminated the advertisements attached as Attachments E(1) and E(2) to this Order in two consecutive issues of the following publications beginning in the earliest possible issue of each such publication:

1. National Fisherman;
2. The Fisherman's News;
3. The Fisherman;
4. Alaska Fisherman's Journal;
5. The Fish Boat;
6. Pacific Fishing; and
7. Commercial Fisheries News.

The first such advertisement in each publication shall be full page in size and be in the form of Attachment E(1); the second shall be one-half page in size and be in the form of Attachment E(1) or Attachment E(2).

D. Not later than thirty (30) days after the service of this Order, send, by first-class mail, to each of the approximately 8,000 current holders of "Fisheries Entry Permits" issued by the State of Alaska, at the address shown on the list of holders of such permits available from the State of Alaska, a copy of Attachments A(2) and B to this Order and a sufficient number of Panduit straps to effect the modification contemplated by this Order on one (1) Imperial exposure suit.

III.

It Is Further Ordered that:

A. Not later than fifteen (15) days after the date of service of this Order, respondent shall contact the following distributors of the Imperial exposure suit and obtain from each distributor, or from the distributor's available records, the names and addresses of all persons, including retailers, to whom the Imperial exposure suit was sold by such distributors to the extent that the distributors have such information:

1. Atlantic Survival Company;
2. King Neptune Company;
3. Nordby Company;
4. Seattle Marine and Fishing Supply Co.;
5. Shelikoff Net Company;
6. Eagle Enterprises, Inc.;
7. Englund Marine Supply Company, Inc.; and
8. Harry's Plumbing and Heating.

B. Not later than fifteen (15) days after the date of service of this Order, respondent shall send, by first-class mail, to all retailers (a) known to it to have sold the Imperial exposure suit or (b) which become known to it to have sold the Imperial exposure suit as a consequence of the efforts described in Paragraph III A, above, the following:

1. A letter in the form of Attachment C(1) to this Order;

2. A copy of a display poster, at least 24 inches by 36 inches, with the form and content of Attachment D to this Order; and

3. A minimum of sixty (60) Panduit straps which the retailer shall be requested to distribute free of charge to any person who requests them to effect the modification contemplated by this Order. Thereafter, respondent shall furnish additional Panduit straps free of charge to any distributor or retailer who requests them for application to the Imperial exposure suit to effect the modification contemplated by this Order.

Respondent shall, within forty-five (45) days after the date of service of this Order, obtain from each such retailer, or from the available records of each such retailer, the names and addresses of all persons known or reasonably believed to be owners or users of the Imperial exposure suit to the extent that: (a) The retailers have such information and (b) the retailers are willing or able to make such information available to respondents.

C. Not later than thirty (30) days after the service of this Order, respondent shall send to each distributor of the Imperial exposure suit from which respondent obtained, pursuant to Paragraph III A above, (a) the names and addresses of all persons to whom the Imperial exposure suit was sold by that distributor or (b) the response that the distributor had no records of the names and addresses of any owners or users of the Imperial exposure suit, the following:

1. A letter in the form of Attachment C(2) to this Order;

2. A copy of a display poster, at least 24 inches by 36 inches, with the form and content of Attachment D to this Order; and

3. A minimum of sixty (60) Panduit straps which the distributor shall be requested to distribute free of charge to any person who requests them to effect the modification contemplated by this Order. Thereafter, respondent shall furnish additional Panduit straps free of charge to any distributor who requests them for application to the Imperial exposure suit to effect the modification contemplated by this Order.

D. Not later than forty-five (45) days after service of this Order, respondent shall send, by first-class mail, to all distributors and retailers of the Imperial exposure suit, except for those distributors and retailers from which respondent obtained, (a) the names and addresses of all persons known or reasonably believed to be owners or users of the Imperial exposure suit or (b) the response that the distributor or retailer had no records of the names and addresses of any owners or users of the Imperial exposure suit, the following:

1. A letter in the form of Attachment C(3) to this Order;

2. A copy of a display poster, at least 24 inches by 36 inches, with the form and content of Attachment D to this Order; and

3. A minimum of sixty (60) Panduit straps which the distributor or retailer shall be requested to distribute free of charge to any person who requests them to effect the modification contemplated by this Order. Thereafter, respondent shall furnish additional Panduit straps free of charge to any distributor or retailer who requests them for application to the Imperial exposure suit to effect the modification contemplated by this Order.

E. Respondent shall pay, to each retailer or distributor to whom it is required to send Attachment C(3), the sum of ten (10) dollars for each name and address of an owner or user of the Imperial exposure suit such retailer or distributor provides to respondent. Respondent shall pay the ten (10) dollars even if the address provided is not a current address. Said payment must be made within thirty (30) days of respondent's receipt of such names and addresses.

Provided, however, that respondent shall not be required to pay for any name and address provided to it pursuant to this provision if:

1. Respondent determines and documents that the named person(s) never owned or used the Imperial exposure suit; or

2. Respondent previously had obtained the name and address from any retailer or distributor prior to the date Attachment C(3) was sent to such retailer or distributor; or

3. The name and address is not contained or reflected in the regularly kept business records of such distributor or retailer.

IV.

It Is Further Ordered that:

A. Respondent shall send, by first-class mail, to each person reported to respondent to be or who claims to respondent to be an owner or user of the Imperial exposure suit, within twenty (20) days of respondent's receipt of said report or claim, Attachments A(1) and B and four (4) Panduit straps for each of the Imperial exposure suits reported or claimed to be owned or used by that person.

B. Respondent shall within ten (10) days of the return of any mailing made pursuant to section II A, sections III B, C, or D, or section IV A of this Order marked by the Post Office as undeliverable, make a reasonable search for the current address of the addressee of each returned mailing. For mailings made pursuant to Sections II A or IV A, this search shall include the use of the pertinent telephone directory, contacting the relevant ship registries and listings and contacting fishermen's unions.

C. Respondent shall, within ten (10) days of locating a new address through the search required by section IV B, send, by first-class mail, the same Attachment(s) and number of Panduit straps sent to the original address to each person for whom a new address is found.

V.

It Is Further Ordered that:

A. Respondent keep and maintain for three years from the date of service of this Order the following records:

1. The names, addresses and dates of mailing of all notices or Panduit straps required by this Order;

2. For each contact respondent makes pursuant to the requirements of section III A, the name and address of each distributor contacted; the name of the representative or employee of respondent who made the contact; and a record of the response the distributor made to the contact, including, but not limited to, the following information: (a) Did the distributor state that it had records of the names and addresses of owners or users of the Imperial exposure suit which it agreed to provide to respondent, (b) did the distributor state that it had records of the names and addresses of owners or users of the Imperial exposure suit which, for any reason, it would not agree to provide to respondent, (c) did the distributor state that it had no records of the names and addresses of owners or users of the Imperial exposure suit and (d) any other response the distributor made regarding respondent's efforts to obtain from it the names and addresses of owners or users of the Imperial exposure suit;

3. Each response page attached to Attachment C(1) and C(2) of this Order returned to respondent by a distributor or retailer of the Imperial exposure suit;

4. The names, addresses, date of receipt and source of the report of all persons reported to respondent to be owners or users of the Imperial exposure suit;

5. The amount of payment, the date of payment and the name and address of the recipient of all payments made pursuant to section III E of this Order; and

6. The total number of Panduit straps disseminated by respondent pursuant to the provisions of this Order.

B. Respondent shall, upon request, make the records specified in section V A available to the Federal Trade Commission for inspection and copying.

VI.

It Is Further Ordered that respondent shall notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondent such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change in the corporation which may affect compliance obligations arising out of the Order.

VII.

It Is Further Ordered that respondent shall, within one hundred twenty (120) days after service upon it of this Order, file with the Commission a report, in writing, setting forth in detail, the manner and form in which it has complied with this Order.

Attachment A(1)

[Company Letterhead]

Urgent Notice Re: Your Personal Safety

Dear Imperial Survival Suit Owner:

This letter is to inform you of the need to make *immediate modifications* on your Imperial Model 1409 exposure suit equipped with a high rider ring because you may be in danger during an emergency if you use it without modifying it.

The National Transportation Safety Board has concluded that a *serious safety hazard* may exist in Imperial Model 1409 exposure suits equipped with high rider rings manufactured before April 1980.

According to our records, you have purchased an Imperial Model 1409 exposure suit equipped with a high rider ring made between 1975 and April 1980. As part of an agreement we have reached with the Federal Trade Commission, we are sending you this important safety warning and modification kit for your Imperial exposure suit.

We have received reports that the inflator tube assembly, which is used to inflate the high rider ring in these suits, has separated when individuals have attempted to inflate the high rider ring in emergency situations. This separation prevents inflation of the high rider ring, which, when inflated, helps keep the head and shoulders above water.

If the high rider ring cannot be inflated, the exposure suit does not provide you with the added head and shoulder support ("freeboard") intended, and your chance of survival in an emergency situation may be reduced.

We have developed a *free*, simple modification kit to fix this problem and eliminate the safety hazard. We have enclosed this modification kit and the instructions for its use in this mailing. You can complete the modification in just a few minutes time. Once modified, your Imperial exposure suit will afford you all of the protection intended when it was manufactured. The modification kit meets Coast Guard Standards.

If you should have any additional Model 1409 Imperial exposure suits manufactured prior to April 1980, or know of anyone else who has one, please be sure to fill out and mail the enclosed card. We will send anyone mailing us this card additional *free*, easy-to-use kits for modifying the inflator tube.

Sincerely,

Aquanautics Corporation.

Enclosures.

Customer Response Card

Please send me additional free modification kit(s) for my Imperial Model 1409 exposure suit(s) to the address below.

Name _____

Address _____

_____

# of Kits needed _____

_____

Postage Paid

Aquanautics Corporation
FTC Compliance
One Maritime Plaza
Suite No. 1750
San Francisco, CA 94111-9852

Attachment A(2)

[Company Letterhead]

Urgent Notice Re: Your Personal Safety

Dear Fisheries Entry Permit Holder:

This letter is to inform you of the need to make *immediate modifications* on any Imperial Model 1409 exposure suit equipped with a high rider ring in your possession because you may be in danger during an emergency if you use it without modifying it.

The National Transportation Safety Board has concluded that a *serious safety hazard* may exist in Imperial Model 1409 exposure suits equipped with high rider rings manufactured before April 1980. You can determine if an Imperial Model 1409 exposure suit was manufactured before April 1980 by checking the high rider ring. If there are no plastic tie-down straps on the inflator tube, it was manufactured before April 1980 and needs modification.

Because of your occupation, you may have purchased an Imperial Model 1409 exposure suit equipped with a high rider ring made between 1975 and April 1980. As part of an agreement we have reached with the Federal Trade Commission, we are sending you this important safety warning and modification kit for such an Imperial exposure suit.

We have received reports that the inflator tube assembly, which is used to inflate the high rider ring in these suits, has separated when individuals have attempted to inflate the high rider ring in emergency situations. This separation prevents inflation of the high rider ring, which, when inflated, helps keep the head and shoulders above water.

If the high rider ring cannot be inflated, the exposure suit does not provide you with the added head and shoulder support ("freeboard") intended, and your chance of survival in an emergency situation may be reduced.

We have developed a *free*, simple modification kit to fix this problem and eliminate the safety hazard. We have enclosed this modification kit and the instructions for its use in this mailing. You can complete the modification in just a few minutes time. Once modified, the Imperial exposure suit will afford you all the protection intended when it was manufactured. The modification kit meets Coast Guard standards.

If you should have any additional Model 1409 Imperial exposure suits manufactured prior to April 1980, or know of anyone else who has one, please be sure to fill out and mail the enclosed card. We will send anyone mailing us this card additional *free*, easy-to-use kits for modifying the inflator tube.

Sincerely,

Aquanautics Corporation.

Enclosures

Customer Response Card

Please send me additional free modification kit(s) for my Imperial Model 1409 exposure suit(s) to the address below.

Name _____

Address _____

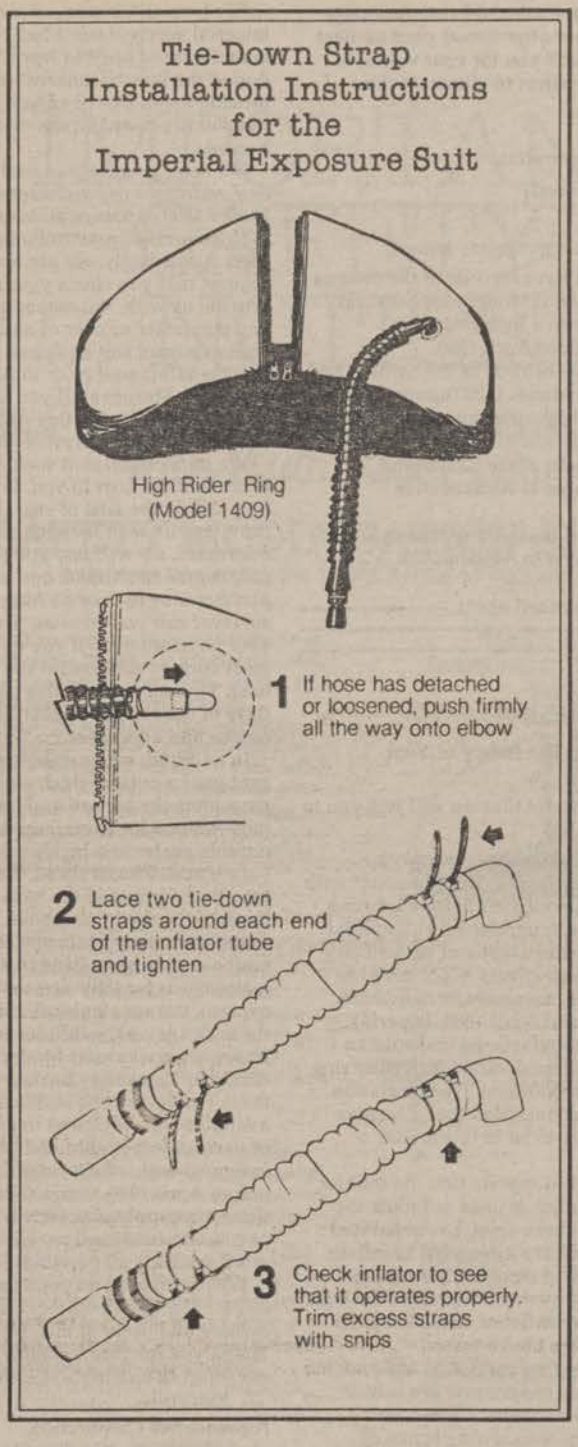
_____

# of Kits needed _____

_____

Postage Paid

Aquanautics Corporation
FTC Compliance
One Maritime Plaza
Suite No. 1750
San Francisco, CA 94111-9852



Attachment C(1)

[Company Letterhead]

Urgent Notice Re: The Safety of Your *Customers*

Dear (Name of retailer):

Imperial Manufacturing manufactured and sold an exposure suit equipped with a high rider ring (Model 1409) between 1975 and April 1980. The National Transportation Safety Board has concluded that a *serious safety hazard* may exist in this model exposure suit.

We have received reports that the inflator tube assembly, which is used to inflate the high rider ring in these suits, has separated when individuals have attempted to inflate the high rider ring in emergency situations. This separation prevents inflation of the high rider, which, when inflated, helps keep the head and shoulders above water.

If the high rider ring cannot be inflated, the exposure suit does not provide the added head and shoulder support ("freeboard") intended and may reduce the chance of survival.

We have reached an agreement with the Federal Trade Commission to attempt to 1) notify by mail as many owners and users of Imperial survival suit Model 1409 as we can find of the hazard inherent in their suit and 2) provide them, free of charge, the necessary Panduit (tie-down) straps to eliminate the hazard.

We need your help in locating the names and addresses of purchasers or users of Model 1409 exposure suits equipped with a high rider ring manufactured prior to April 1980. Accordingly, we are making an urgent request that you check your records for, and provide us with, the names and addresses of any purchaser or user of an Imperial Model 1409 exposure suit equipped with a high rider ring manufactured prior to April 1980 sold by your firm. Moreover, if you know the name and address of any other owner or user of these suits, please provide them to us also.

We [have enclosed] or [will be sending] a poster which explains to your customers the hazard and how to get a free modification kit to remedy the hazard. Please put this poster in a highly visible location in your place of business so that your customers may be informed of the hazard and spread the word to their colleagues.

We [have also enclosed] or [will also send] a supply of 60 Panduit straps and instructions for their use. As the instructions explain, the simple installation of four of these straps on the inflator tube assembly of Imperial survival suit Model 1409 will eliminate this safety hazard. Please make these Panduit straps and instructions available free of charge to anyone who owns or uses a Model 1409 exposure suit. If you should need more of these straps, please call Nik Salmela collect at 206–698–0245, and we will rush more to you as quickly as possible.

Please fill out the attached response page and return it to our attention at your earliest convenience. Thank you for your valuable assistance in our effort to eliminate this safety hazard.

Sincerely,

Aquanautics Corporation.

[COMPANY LETTERHEAD]

[Addressee]

Please check the appropriate boxes:

[ ] We do not have records of the owners and users of Imperial Model 1409 Survival Suits equipped with a high rider ring manufactured before April 1980.

[ ] We do have records of the owners and users of Imperial Model 1409 Survival Suits equipped with a high rider ring manufactured before April 1980.

[ ] We will make these names and addressed available to Aquanautics Corporation.

[ ] We will not make these names and addresses available to Aquanautics Corporation.

Signature of authorized agent _____

Title _____

Date _____

Attachment C(2)

[Company Letterhead]

Urgent Notice Re: The Safety of Your *Customers*

Dear (*Name of distributor*):

[Optional introductory phrase: As explained in his earlier contact with you], Imperial Manufacturing manufactured and sold an exposure suit equipped with a high rider ring (Model 1409) between 1975 and April 1980. The National Transportation Safety Board has concluded that a *serious safety hazard* may exist in this model exposure suit.

We have received reports that the inflator tube assembly, which is used to inflate the high rider ring in these suits, has separated when individuals have attempted to inflate the high rider ring in emergency situations. This separation prevents inflation of the high rider, which, when inflated, helps keep the head and shoulders above water.

If the high rider ring cannot be inflated, the exposure suit does not provide the added head and shoulder support ("freeboard") intended and may reduce the chance of survival.

We have reached an agreement with the Federal Trade Commission to attempt to 1) notify by mail as many owners and users of Imperial survival suit Model 1409 as we can find of the hazard inherent in their suit and 2) provide them, free of charge, the necessary Panduit (tie-down) straps to eliminate the hazard. You already have assisted us in this effort by providing us with any names and addresses of owners and users of this Imperial Survival suit which you have.

We [have enclosed] or [will be sending] a poster which explains to your customers the hazard and how to get a free modification kit to remedy the hazard. Please put this poster in a highly visible location in your place of business so that your customers may be informed of the hazard and spread the word to their colleagues.

We [have also enclosed] or [will also send] a supply of 60 Panduit straps and instructions for their use. As the instructions explain, the simple installation of four of these straps on the inflator tube assembly of Imperial survival suit Model 1409 will eliminate this safety hazard. Please make these Panduit straps and instructions available free of charge to anyone who owns or uses a Model 1409 exposure suit. If you should need more of these straps, please call Nik Salmela collect at 206–698–0245, and we will rush more to you as quickly as possible.

Please fill out the attached response page and return it to our attention at your earliest convenience. Thank you for your valuable assistance in our effort to eliminate this safety hazard.

Sincerely,

Aquanautics Corporation.

[Company Letterhead]

[Addressee]

Please check the appropriate boxes:

[ ] We do not have records of the owners and users of Imperial Model 1409 Survival Suits equipped with a high rider ring manufactured before April 1980.

[ ] We do have records of the owners and users of Imperial Model 1409 Survival Suits equipped with a high rider ring manufactured before April 1980.

[ ] We will make these names and addressed available to Aquanautics Corporation.

[ ] We will not make these names and addresses available to Aquanautics Corporation.

Signature of authorized agent _____

Title _____

Date _____

Attachment C(3)

[Company Letterhead]

Urgent Notice Re: The Safety of Your *Customers*

This is so important that we will *pay* you to help us.

Dear (*Name of distributor or retailer*):

As we explained in our earlier contact with you, we urgently need your help in locating your customers who purchased an Imperial exposure suit (Model 1409) and we will pay you to help us. *Your efforts might save the life of one of your customers or neighbors.*

Between 1975 and April 1980, Imperial Manufacturing manufactured and sold an exposure suit equipped with a high rider ring (Model 1409). The National Transportation Safety Board has concluded that a *serious safety hazard* may exist in this model exposure suit.

We have received reports that the inflator tube assembly, which is used to inflate the high rider ring in these suits, has separated when individuals have attempted to inflate the high rider ring in emergency situations. This separation prevents inflation of the high rider, which, when inflated, helps keep the head and shoulders above water.

If the high rider ring cannot be inflated, the exposure suit does not provide the added head and shoulder support ("freeboard") intended and may reduce the chance of survival.

We have reached an agreement with the Federal Trade Commission to attempt to 1) notify by mail as many owners and users of Imperial survival suit Model 1409 manufactured prior to April 1980 as we can find of the hazard inherent in their suit and 2) provide them, free of charge, the necessary Panduit (tiedown) straps to eliminate the hazard.

We need your help in locating the names and addresses of purchasers or users of Model 1409 exposure suits equipped with a high rider ring manufactured prior to April 1980. Accordingly, we are making an urgent request that you check your records for, and provide us with, the names and addresses of any purchaser or user of an Imperial Model 1409 exposure suit equipped with a high rider ring manufactured prior to April 1980 sold by your firm. Moreover, if you know the name and address of any other owner or user of these suits, please provide them to us also.

We understand that such a records check is not without cost to you. In an attempt to help defray the cost of searching for and providing us with the requested names and addresses, *we will pay you ten dollars ($10.00) for each name and address of a purchaser or user of an Imperial Model 1409 survival suit you send us.* You will receive your payment even if you do not have the most current address for the purchaser or user. You will receive this payment within 30 days of our receipt of your bona fide list of names and addresses.

In addition, we have [enclosed] or [already sent you] a poster which explains to your customers the hazard and how to get a free modification kit to remedy the hazard. Please put this poster in a highly visible location in your place of business so that your customers may be informed of the hazard and spread the word to their colleagues.

We have also [enclosed] or [already sent you] a supply of 60 Panduit straps and instructions for their use. As the instructions explain, the simple installation of four of these straps on the inflator tube assembly of Imperial survival suit Model 1409 will eliminate this safety hazard. Please make these Panduit straps and instructions available free of charge to anyone who owns or uses an Imperial Model 1409 exposure suit equipped with a high rider ring manufactured before April 1980. If you should need more of these straps, please call Nik Salmela collect at 206–698–0245, and we will rush more to you as quickly as possible.

We're counting on you to make your best effort to locate the names and addresses of owners and users of this exposure suit. Thank you for your valuable assistance in our effort to eliminate this safety hazard.

Sincerely,

Aquanautics Corporation.

BILLING CODE 6750-01-M

IMPORTANT SAFETY NOTICE

For Imperial Exposure Suit users with High Rider Ring

SAFETY MODIFICATION NEEDED

Ask your Dealer for the FREE Safety Modification Kit

WHO: If you own an Imperial Survival Suit equipped with a High Rider Ring (Model 1409) manufactured before April 1980 - contact your nearest Imperial Dealer immediately.

To determine when your suit was made, look for the manufacturing date stamp inside the back of the neck of the suit. If there is NO date stamp, the suit was manufactured prior to 1981. Then check your High Rider Ring. If there are no plastic tie-down straps on the inflator tube, it was manufactured before April 1980 & needs modification.

WHY: A defect may exist causing the inflator assembly on the High Rider Ring to separate, preventing its proper inflation. Proper inflation of this ring is important because it holds the body in a more upright position - increasing your chance of survival.

The only modification needed is to the High Rider Ring accessory. The suit itself is in no other way affected.

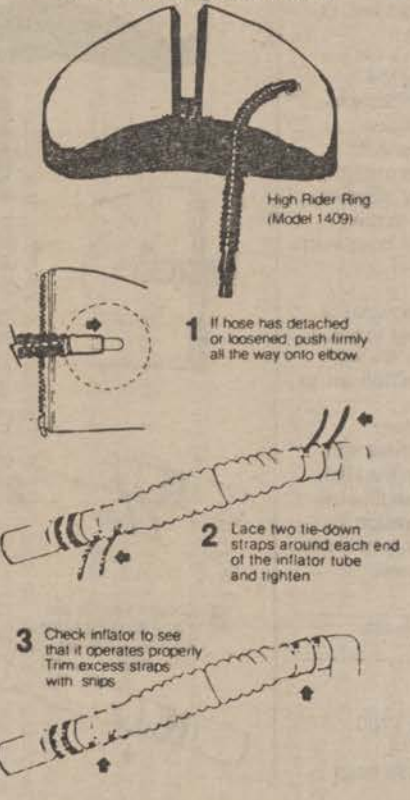
FREE FIX: The modification required is easy and quick. And there's no need to bring in the suit for this modification. Just ask your dealer for the FREE Safety Modification Kit.

This do-it-yourself kit contains four simple-to-install tie-down straps. These will ensure a secure connection to keep the High Rider Ring inflated when in use (see illustrations at right). Though this modification is quick and easy, it's important that it be made for your assured safety. The kit meets Coast Guard standards. If your dealer is out of the kit simply write us for a free kit at:

AQUANAUTICS CORPORATION

One Maritime Plaza, Suite 1750
San Francisco, CA 94111

Tie-Down Strap Installation Instructions for the Imperial Exposure Suit



IMPORTANT SAFETY NOTICE

For Imperial Exposure Suit users with High Rider Ring

SAFETY MODIFICATION NEEDED

Send or call for a FREE Safety Modification Kit

WHO: If you own an Imperial Survival Suit equipped with a High Rider Ring (Model 1409) manufactured before April 1980-contact Aquanautics Corporation for a FREE safety modification kit.

To determine when your suit was made, look for the manufacturing date stamp inside the back of the neck of the suit. If there is NO date stamp, the suit was manufactured prior to 1981. Then check your High Rider Ring. If there are no plastic tie-down straps on the inflator tube, it was manufactured before April 1980 & needs modification.

WHY: A defect may exist causing the inflator assembly on the High Rider Ring to separate, preventing its proper inflation. Proper inflation of this ring is important because it holds the body in a more upright position - increasing your chance of survival.

The only modification needed is to the High Rider Ring accessory. The suit itself is in no other way affected.

FREE FIX: The modification required is easy and quick. And there's no need to bring in the suit for this modification. We will send you a FREE safety modification kit to correct this problem.

This do-it-yourself kit contains four simple-to-install tie-down straps. These will ensure a secure connection to keep the High Rider Ring inflated when in use (see illustrations at right). Though this modification is quick and easy, it's important that it be made for your assured safety. The kit meets Coast Guard standards.

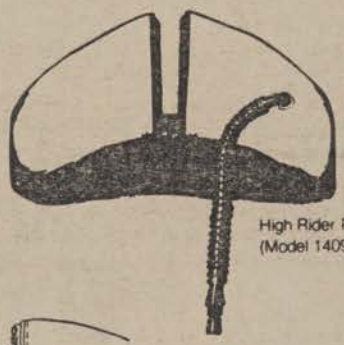
For your FREE modification kit, simply write to:

AQUANAUTICS CORPORATION

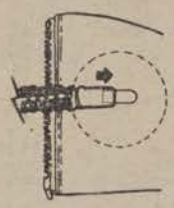
One Maritime Plaza, Suite 1750
San Francisco, CA 94111

or call us collect at (415) 658-6629

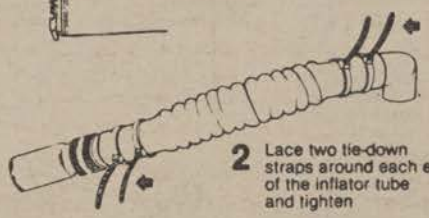
Tie-Down Strap Installation Instructions for the Imperial Exposure Suit



High Rider Ring (Model 1409)

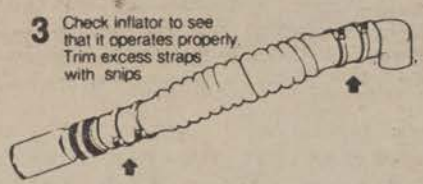


1 If hose has detached or loosened, push firmly all the way onto elbow



2 Lace two tie-down straps around each end of the inflator tube and tighten

3 Check inflator to see that it operates properly. Trim excess straps with snips



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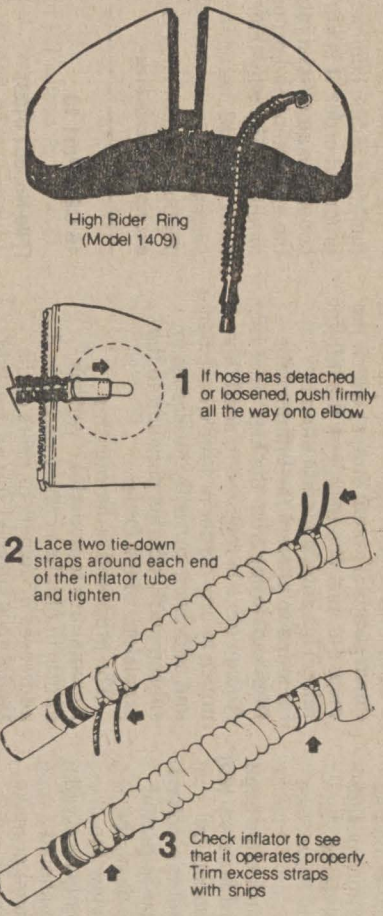

BILLING CODE 6750-01-C

Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission has accepted an agreement to a proposed consent order from Aquanautics Corporation, One Maritime Plaza, San Francisco, CA 94111.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After 60 days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

The complaint alleges that Imperial Manufacturing Corporation, a company previously owned by Aquanautics, made false and misleading representations regarding the flotation safety capabilities of the Imperial Model 1409 survival suit. Model 1409 survival suits are one-piece, hooded jump suit-like garments made of a flexible, buoyant material (neoprene) which, when donned, completely enclose the body, except for the nose and eyes. They are designed to protect the wearer from the effects of hypothermia and to provide flotation in emergency situations, such as the sinking of a boat or the collapse of an offshore oil drilling rig. Model 1409 survival suits are equipped with an inflatable flotation bladder—called a high rider ring—which is intended to allow the wearer to keep his or her head and shoulders more upright in the water. The wearer must blow up the high rider ring by the use of a flexible hose called the inflator tube. The inflator tubes on Model 1409 survival suits were inadequately affixed to the high rider ring and have pulled off in use. The result is that the ring cannot be inflated or will not remain inflated. The complaint alleges that, contrary to Imperial's representations, the Model 1409 survival suit will not consistently and safely provide the necessary flotation and head and shoulder support for the user to float safely in cold water for lengthy periods of time because of the failure of the inflator tube consistently to inflate the high rider ring.

The proposed consent order prohibits Aquanautics from representing that any survival suit it sells provides the necessary head and shoulder support for the user to float safely in cold or rough water or will diminish the likelihood of drowning unless such is the case.

The proposed consent order also requires Aquanautics to send, by first class mail to owners and users of the Model 1409 survival suit, a notice which both warns of the possible failure of the high rider ring inflator tube and contains a simple kit consisting of four plastic tie-down straps (Panduit straps) which the owner or user can install on the inflator tube. This simple modification is intended to prevent the inflator tube from separating from the high rider ring. Aquanautics is required to send this notice to any owner or user whose name and address it currently possesses or subsequently obtains pursuant to the provisions of the Order.

The proposed order requires Aquanautics to undertake various efforts to obtain as many names and addresses of owners or users of the Model 1409 survival suit as possible. Aquanautics must ask all of its retailers and distributors who sold Model 1409 survival suits to provide it with the names and addresses of any purchasers or users in their files. If the retailer or distributor has such information but is unable or unwilling to provide it, the proposed order requires Aquanautics to offer such retailers or distributors $10.00 per name and address to compensate them for the cost of searching for and providing such information. In addition, the proposed order requires Aquanautics to place a full page advertisement followed by a half page advertisement in two consecutive issues of seven periodicals targeted to the fishing and boating industry. These advertisements warn owners or users of the Model 1409 survival suit of the possible failure of the inflator tube and inform them how to contact Aquanautics to obtain a free repair kit to prevent this hazard. The proposed order also requires Aquanautics to provide its distributors and retailers with a display poster which warns their customers of the hazard. Aquanautics must also provide retrofit kits to each of its distributors and retailers so that any owner or user of the Model 1409 survival suit who sees this poster can obtain a free retrofit kit on the spot.

Additionally, because of the high concentration of commercial fishermen in Alaska, some of whom live relatively isolated lives, the proposed order requires Aquanautics to send warning notices regarding the inflator tube problem to the registered owners of the approximately 8000 Alaska commercial fishing boats to whom "Fisheries Entry Permits" have been issued by the state of Alaska.

Finally, the proposed order contains standard provisions that require Aquanautics to maintain records of compliance for 3 years; to provide the Commission with 30 days notice of corporate changes; and to file a compliance report within 120 days after service of the complaint and order.

The purpose of this analysis is to facilitate public comment on the proposed order; it is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

Emily H. Rock,

Secretary.

[FR Doc. 86-26501 Filed 11-26-86; 8:45 am]

BILLING CODE 6750-01-M

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16 CFR Part 13

[File No. 851 0126]

J. Thomas Arno, M.D., et al.; Proposed Consent Agreement With Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would prohibit, among other things, 62 doctors in Meadville, Pennsylvania from entering into any agreement to refuse to deal with any physician, group of physicians, or hospital, or from refusing to refer patients, for the purpose of restricting or lessening competition.[1]

DATE: Comments will be received until January 27, 1987.

ADDRESS: Comments should be addressed to: FTC/Office of the Secretary, Room 136, 6th St. and Pa. Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: FTC/B-823, M. Elizabeth Gee, Washington, DC 20580 (202) 724-1341.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be

[1] Three of the respondents named in Attachment A to this order have separate proposed consent agreements identical to this entered against them. The proposed consent agreements with respondents J. Henry Burkholder, M.D., Danilo L. Guanzon, M.D., and Lucia Pagniello, M.D. are available at the FTC's Public Reference Branch, Room H-130, 6th St. and Pa. Ave., NW., Washington, DC 20580.

considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(14) of the Commission's Rules of Practice (16 CFR 4.9(b)(14)).

List of Subjects in 16 CFR Part 13

Physicians, Trade practices.

United States of America, Before Federal Trade Commission

[File No. 851-0126]

Agreement Containing Consent Order To Cease and Desist

In the matter of J. Thomas Arno, M.D., Azhar Aslam, M.D., Barry B. Bittman, M.D., Raymond J. Bridge, M.D., Gerald M. Brooks, M.D., J. Henry Burkholder, M.D., Kwang Y. Choi, M.D., Candido T. Cortes, Jr., M.D., Aiman N. Daghestani, M.D., Arthur G. Deininger, M.D., Timothy Downing, M.D., M. Bruce Dratler, M.D., Robert A. Driscoll, M.D., David W. Dunn, M.D., Victor B. Farrah, D.O., Nicholas J. Fedorka, D.M.D., Edward M. Fine, M.D., Mark R. Foster, M.D., Luis C. Gomez, M.D., Danilo L. Guanzon, M.D., Mary B. Hagamen, M.D., Alanson O. Hibbard, M.D., William T. Holland, Jr., M.D., Ronald A. Kellogg, M.D., Lucille Kirchner, M.D., David D. Kirkpatrick, Jr., M.D., Robert L. Kirkpatrick, M.D., George Kwitka, M.D., James H. Larson, M.D., Curtis H. Laub, M.D., Donald E. LaVay, M.D., Ovunda A. Lawson, D.O., Seung C. Lee, M.D., Brian F. McIntosh, M.D., James R. McLamb, M.D., Mohamed Moakeh, M.D. Rebecca F. Morris, M.D., William J. Morris, M.D., Spero E. Moutsos, M.D., Robert N. Moyers, M.D., John B. Nesbitt, M.D., Vincente R. Ordinario, Jr., M.D., Edward J. Owens, D.O., Lucia Pagniello, M.D., William K. Petrella, D.O., Joseph G. Piroch, M.D., Paul T. Poux, M.D., Tariq Qureshi, M.D., Renato P. Ramirez, M.D., Stacey A. Robertson, D.O., Diogenes A. Saavedra, M.D., Robert A. Santora, M.D., Lawson C. Smart, M.D., Fred W. Strickland, Jr., M.D., William D. Sullivan, M.D., John O. Taylor, M.D., Christopher W. Thomas, M.D., Ronald M. Vrablik, M.D., Thomas M. Watson, M.D., Randy S. Zelen, M.D., and John B. Zinnamosca, M.D.

The Federal Trade Commission having initiated an investigation of certain acts and practices of respondents and it now appearing that respondents are willing to enter into an agreement containing an Order to cease and desist from engaging in the acts and practices being investigated,

It Is Hereby Agreed by and between respondents and their duly authorized attorneys and counsel for the Federal Trade Commission that:

1. Respondents are physicians licensed and doing business under and by virtue of the laws of the Commonwealth of Pennsylvania. Their mailing addresses are listed in the Appendix attached hereto.

2. Respondents admit all of the jurisdictional facts set forth in the draft of complaint here attached.

3. Respondents waive:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the Order entered pursuant to this agreement; and

(d) Any claim under the Equal Access to Justice Act.

4. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify respondents, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by respondents that the law has been violated as alleged in the draft of complaint here attached.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules of Practice, the Commission may, without further notice to respondents, (1) issue its complaint corresponding in form and substance with the draft of complaint here attached and its decision containing the following Order to cease and desist in disposition of the proceeding, and (2) make information public in respect thereto. When so entered, the Order to cease and desist shall have the same force and effect and may be altered, modified, or set aside in the same manner and within the same time provided by statute for other orders. The Order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to Order to respondents' addresses stated in this agreement shall constitute service. Respondents waive any right they may have to any other manner of service. The complaint attached hereto may be used in construing the terms of the Order, and no agreement, understanding, representation, or interpretation not contained in the Order or the agreement may be used to vary or contradict the terms of the Order.

7. Respondents have read the proposed complaint and Order contemplated hereby. They understand that once the Order has been issued, they will be required to file one or more compliance reports showing that they have fully complied with the Order. Respondents further understand that they may be liable for civil penalties in the amount provided by law for each violation of the Order after the Order becomes final.

Order

I.

It is ordered, that each respondent, directly or indirectly or through any device, shall cease and desist from entering into, maintaining or continuing, or attempting to enter into, maintain or continue, any agreement or understanding, either express or implied, to refuse to deal with or to withhold patient referrals from any physician, group of physicians, or other health care provider, or to refuse to deal with or to withhold patient admissions from any hospital.

Provided, however, that this section shall not be construed to prohibit any respondent from participating in hospital medical staff credentialling recommendations, hospital medical staff credentialling decisions in his or her capacity as a hospital board member, hospital utilization review, hospital peer review, hospital quality assurance, or hospital policy making, where such conduct by the respondent neither constitutes nor is part of any agreement, combination or conspiracy whose purpose, effect or likely effect is to impede competition unreasonably.

II.

It is further ordered, that each respondent shall cease and desist from directly or indirectly, or through any device:

A.[1] Making any threat, express or implied, including but not limited to any

[1] *See* Analysis of Proposed Consent Order to Aid Public Comment regarding addition of five-year time limit to Part II.A. of the Order.

threat to refuse to deal with or to withhold patient referrals from any physician, group of physicians, or other health care provider, or to refuse to deal with or to withhold patient admissions from any hospital, for the purpose of restricting or lessening competition; or

B. Inducing or attempting to induce any person to refuse to deal with or to withhold patient referrals from any physician, group of physicians, or other health care provider, or to refuse to deal with or to withhold patient admissions from any hospital, for the purpose of restricting or lessening competition.

III.

A. It is further ordered, that within thirty (30) days after service of this Order, the respondents shall mail a copy of this Order and the accompanying complaint to the Administrator, Board of Corporators, and each member of the medical staff of St. Vincent Health Center, Erie, Pennsylvania, and to the President of the Erie County Medical Society.

B. It is further ordered, that each respondent shall, within sixty (60) days after service of this Order, and at any time the Commission, by written notice, may require, file with the Commission a report, in writing, setting forth in detail the manner and form in which the respondent has complied with this Order.

C. It Is Further Ordered, that each respondent shall promptly notify the Commission of any change in respondent's business address set forth in the Appendix to this Order.

Appendix

J. Thomas Arno, M.D.: 149 North Main Street, Meadville, Pennsylvania 16335;
Azhar Aslam, M.D.: 764 Kennedy Street, Meadville, Pennsylvania 16335;
Barry B. Bittman, M.D.: 149 North Main Street, Meadville, Pennsylvania 16335;
Raymond J. Bridge, M.D.: R.D. #2, Box 96, Conneaut Lake, Pennsylvania 16316;
Gerald M. Brooks, M.D.: 403 Euclid Avenue, Saegertown, Pennsylvania 16433;
J. Henry Burkholder, M.D.: 764 Kennedy Street, Meadville, Pennsylvania 16335;
Kwang Y. Choi, M.D.: 505 Poplar Street, Meadville, Pennsylvania 16335;
Candido T. Cortes, Jr., M.D.: 505 Poplar Street, Meadville, Pennsylvania 16335;
Aiman N. Daghestani, M.D.: 773 North Main Street, Meadville, Pennsylvania 16335;
Arthur G. Deininger, M.D.: 390 Park Avenue, Meadville, Pennsylvania 16335;
Timothy Downing, M.D.: 764 Kennedy Street, Meadville, Pennsylvania 16335;
M. Bruce Dratler, M.D.: 505 Poplar Street, Meadville, Pennsylvania 16335;
Robert A. Driscoll, M.D.: Meadville City Hospital, 751 Liberty Street, Meadville, Pennsylvania 16335;
David W. Dunn, M.D.: 764 Kennedy Street, Meadville, Pennsylvania 16335;
Victor B. Farrah, D.O.: 505 Poplar Street, Meadville, Pennsylvania 16335;
Nicholas J. Fedorka, D.M.D.: 226 Park Avenue, Meadville, Pennsylvania 16335;
Edward M. Fine, M.D.: 764 Kennedy Street, Meadville, Pennsylvania 16335;
Mark R. Foster, M.D.: 766 Liberty Street, Meadville, Pennsylvania 16335;
Luis C. Gomez, M.D.: 505 Poplar Street, Meadville, Pennsylvania 16335;
Danilo L. Guanzon, M.D.: 764 Kennedy Street, Meadville, Pennsylvania 16335;
Mary B. Hagamen, M.D.: 432 Main Street, Saegertown, Pennsylvania 16433;
Alanson O. Hibbard, M.D.: 838 Park Avenue, Meadville, Pennsylvania 16335;
William T. Holland, Jr., M.D.: 899 Grove Street, Meadville, Pennsylvania 16335;
Ronald A. Kellogg, M.D.: 764 Kennedy Street, Meadville, Pennsylvania 16335;
Lucille Kirchner, M.D.: Meadville City Hospital, 751 Liberty Street, Meadville, Pennsylvania 16335;
David D. Kirkpatrick, Jr., M.D.: 279 Walnut Street, Meadville, Pennsylvania 16335;
Robert L. Kirkpatrick, M.D.: 1058 South Main Street, Meadville, Pennsylvania 16335;
George Kwitka, M.D.: Meadville City Hospital, 751 Liberty Street, Meadville, Pennsylvania 16335;
James H. Larson, M.D.: 491 Jackson Park Drive, Meadville, Pennsylvania 16335;
Curtis H. Laub, M.D.: 766 Liberty Street, Meadville, Pennsylvania 16335;
Donald E. LaVay, M.D.: Spencer Hospital, 1034 Grove Street, Meadville, Pennsylvania 16335;
Ovunda A. Lawson, D.O.: 217 North Street, Meadville, Pennsylvania 16335;
Seung C. Lee, M.D.: Spencer Hospital, 1034 Grove Street, Meadville, Pennsylvania 16335;
Brian F. McIntosh, M.D.: Meadville City Hospital, 751 Liberty Street, Meadville, Pennsylvania 16335;
James R. McLamb, M.D.: 766 Liberty Street, Meadville, Pennsylvania 16335;
Mohamed Moakeh, M.D.: 773 North Main Street, Meadville, Pennsylvania 16335;
Rebecca F. Morris, M.D.: 764 Kennedy Street, Meadville, Pennsylvania 16335;
William J. Morris, M.D.: 764 Kennedy Street, Meadville, Pennsylvania 16335;
Spero E. Moutsos, M.D.: 370 Chestnut Street, Meadville, Pennsylvania 16335;
Robert N. Moyers, M.D.: 764 Kennedy Street, Meadville, Pennsylvania 16335;
John B. Nesbitt, M.D.: 279 Walnut Street, Meadville, Pennsylvania 16335;
Vincente R. Ordinario, Jr., M.D.: Third Street, Conneaut Lake, Pennsylvania 16316;
Edward J. Owens, D.O.: 118 Railroad Street, Cambridge Springs, Pennsylvania 16403;
Lucia Pagniello, M.D.: 508 North Main Street Ext., Meadville, Pennsylvania 16335;
William K. Petrella, D.O.: 823 Chestnut Street, Meadville, Pennsylvania 16335;
Joseph G. Piroch, M.D.: 7 Lakeside Square, Conneaut Lake, Pennsylvania 16316;
Paul T. Poux, M.D.: P.O. Box 127, Guys Mills, Pennsylvania 16327;
Tariq Qureshi, M.D.: Meadville City Hospital, 751 Liberty Street, Meadville, Pennsylvania 16335;
Renato P. Ramirez, M.D.: Linesville Medical Center, West Erie Street, Linesville, Pennsylvania 16424;
Stacey A. Robertson, D.O.: 402 Main Street, Saegertown, Pennsylvania 16433;
Diogenes A. Saavedra, M.D.: 664 Highland Avenue, Meadville, Pennsylvania 16335;
Robert A. Santora, M.D.: 505 Poplar Street, Meadville, Pennsylvania 16335;
Lawson C. Smart, M.D.: 766 Liberty Street, Meadville, Pennsylvania 16335;
Fred W. Strickland, Jr., M.D.: 495 Pine Street, Meadville, Pennsylvania 16335;
William D. Sullivan, M.D.: Meadville City Hospital, 751 Liberty Street, Meadville, Pennsylvania 16335;
John 0. Taylor, M.D.: 843 Park Avenue, Meadville, Pennsylvania 16335;
Christopher W. Thomas, M.D.: 764 Kennedy Street, Meadville, Pennsylvania 16335;
Ronald M. Vrablik, M.D.: 764 Kennedy Street, Meadville, Pennsylvania 16335;
Thomas M. Watson, M.D.: 505 Poplar Street, Meadville, Pennsylvania 16335;
Randy S. Zelen, M.D.: 149 North Main Street, Meadville, Pennsylvania 16335; and
John B. Zinnamosca, M.D.: 505 Poplar Street, Meadville, Pennsylvania 16335.

Arno, et al.—Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted an agreement to a proposed consent order from sixty-two physicians practicing in the Meadville, Pennsylvania, area. The agreement would settle charges by the Commission that the proposed respondents violated Section 5 of the Federal Trade Commission Act by concertedly threatening to cease referring patients to physician specialists associated with a hospital in Erie, Pennsylvania, if the specialists associated with that hospital opened up a competing office in the Meadville area.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

The Complaint

A complaint has been prepared for issuance by the Commission along with the proposed order. It alleges that sixty-two physicians practicing in Crawford County, Pennsylvania, in or near the city of Meadville, participated in a combination or conspiracy to restrict competition by threatening not to refer patients to physician specialists from St. Vincent Medical Center in Erie, Pennsylvania, if a group of specialists from that hospital ("Erie Group") opened a competing office in the Meadville area. The proposed

respondents communicated this threat by a letter which was sent to the Erie County Medical Society and to the administrator, Board of Corporators, and the entire medical staff of St. Vincent.

The complaint alleges that, as a result of the threat, the Erie Group suspended its plans to establish a medical office in the Meadville area.

The complaint further alleges that the purpose or effects of the combination or conspiracy have been to restrain trade unreasonably, hinder competition in the provision of health care services in the Meadville area, and deprive consumers of the benefits of competition, in the following ways, among others:

A. The Erie Group has been deterred from providing health care services in the Meadville, Pennsylvania, area, thereby limiting competition among physicians for patients on the basis of price, service, and quality;

B. Other health care providers and provider groups from outside the Meadville area are or may be deterred from establishing offices or facilities that compete with Meadville area physicians;

C. Patients' options in selecting a physician may be limited; and

D. Some patients may be required to travel greater distances, at additional expense and inconvenience, to obtain their preferred health care services.

The Proposed Consent Order

Parts I and II of the order describe the conduct prohibited by the order. The first paragraph of Part I would prevent the proposed respondents from conspiring to refuse to deal with, or to withhold patient referrals or admissions from, any health care provider. The second paragraph of Part I, however, contains a proviso that permits respondents to participate in hospital medical staff credentialling decisions, hospital utilization review, hospital peer review, hospital quality assurance, or hospital policymaking, where such conduct neither constitutes nor is part of any agreement, combination or conspiracy whose purpose, effect or likely effect is to impede competition unreasonably.

In contrast to Part I, which would only prohibit concerted conduct, Part II would prohibit certain unilateral conduct. II.A would prohibit respondents from unilaterally making any threat to refuse to deal with, or withhold patient referrals or admissions from, any health care provider if made for the purpose of restricting or lessening competition. The Commission intends to add a time limit to Part II.A of its Decision and Order, limiting the effective time of this prohibition to a period of five years. This will be accomplished by adding the words "For a period of five years following the effective date of this Order," at the beginning of Part II.A of the Decision and Order.

Part II.B would prohibit respondents from unilaterally inducing or attempting to induce any person to refuse to deal with, or withhold patient referrals or admissions from, any health care provider if done for the purpose of restricting or lessening competition.

Parts II.A and II.B apply only to conduct that is undertaken "for the purpose of restricting or lessening competition." They do not prohibit conduct simply on the ground its foreseeable or actual effect will be to injure a competitor. Therefore, a respondent would be free to act unilaterally to advocate restrictions on other practitioners or to oppose hospital privileges for other practitioners, so long as the respondent's purpose was not to restrict or limit competition.

The purpose of this analysis is to facilitate public comment on the proposed order, and is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

Benjamin I. Berman,

Acting Secretary.

[FR Doc. 86-26755 Filed 11-26-86; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1308

Schedules of Controlled Substances; Proposed Placement of Acetyl-alpha-methylfentanyl, Alpha-methylthiofentanyl, Beta-hydroxyfentanyl, Beta-hydroxy-3-methylfentanyl, 3-Methylthiofentanyl and Thiofentanyl Into Schedule I

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice of proposed rulemaking is issued by the Administrator of the Drug Enforcement Administration (DEA) to place the narcotic substances, acetyl-alpha-methylfentanyl, alpha-methylthiofentanyl, beta-hydroxyfentanyl, beta-hydroxy-3-methylfentanyl, 3-methylthiofentanyl and thiofentanyl into Schedule I of the Controlled Substances Act (CSA) (21 U.S.C. 801 et seq.). This proposed action by the DEA Administrator is based on data gathered and reviewed by DEA. If finalized, this proposed action would impose the regulatory control mechanisms and criminal sanctions of Schedule I on the manufacture, distribution and possession of the six referenced analogs of fentanyl.

DATE: Comments must be submitted on or before January 27, 1987.

ADDRESS: Comments and objections should be submitted in quintuplicate to the Administrator, Drug Enforcement Administration, 1405 I Street, NW., Washington, DC 20537, Attention: DEA Federal Register Representative.

FOR FURTHER INFORMATION CONTACT: Howard McClain, Jr., Chief, Drug Control Section, Drug Enforcement Administration, 1405 I Street, NW., Washington, DC 20537, Telephone: (202) 633-1366.

SUPPLEMENTARY INFORMATION: On October 29, 1985, the Administrator of the Drug Enforcement Administration issued a final rule in the **Federal Register** (50 FR 43698-702) temporarily placing several analogs of fentanyl, a Schedule II narcotic analgesic into Schedule I of the Controlled Substances Act. Six of the fentanyl analogs controlled under the emergency scheduling provisions of the CSA (21 U.S.C. 811(h)) are:

(1) acetyl-alpha-methylfentanyl (*N*-[1-(1-methyl-2-phenethyl)-4-piperidinyl]-*N*-phenylacetamide)
(2) alpha-methylthiofentanyl (*N*-[1-methyl-2-(2-thienyl)ethyl-4-piperidinyl]-*N*-phenylpropanamide)
(3) beta-hydroxyfentanyl (*N*-[1-(2-hydroxy-2-phenethyl)-4-piperidinyl]-*N*-phenylpropanamide)
(4) beta-hydroxy-3-methylfentanyl (*N*-[1-(2-hydroxy-2-phenethyl)-3-methyl-4-piperidinyl]-*N*-phenylpropanamide)
(5) 3-methylthiofentanyl (*N*-[3-methyl-1-(2-thienyl)ethyl-4-piperidinyl]-*N*-phenylpropanamide)
(6) thiofentanyl (*N*-phenyl-*N*-[1-(2-thienyl)ethyl-4-piperidinyl]-propanamide)

The final rule which became effective on November 29, 1985 was based on a finding by the Administrator that the emergency scheduling of the above referenced fentanyl analogs was necessary to avoid an imminent hazard to the public safety. Section 201(h)(2) of the CSA (21 U.S.C. 811(h)(2)) requires that the emergency scheduling of a substance expires at the end of one year from the effective date of the order. However, if proceedings to schedule a substance pursuant to 21 U.S.C. 811(a)(1) have been initiated and are pending, the temporary scheduling of a substance

may be extended for up to 6 months. Under this provision, the temporary scheduling of acetyl-alpha-methylfentanyl, alpha-methylthiofentanyl, beta-hydroxyfentanyl, beta-hydroxy-3-methylfentanyl, 3-methylthiofentanyl and thiofentanyl which would expire on November 29, 1986, may be extended to May 29, 1987. This extension is being ordered by the DEA Administrator in a separate action.

DEA has gathered and reviewed the available information regarding the actual abuse and relative potential for abuse of the six fentanyl analogs. DEA, in conjunction with the National Institute on Drug Abuse (NIDA), has provided for the synthesis and biological testing of each of the fentanyl analogs. By letter dated October 27, 1986, the DEA Administrator submitted the data which DEA has gathered regarding the six fentanyl analogs to the Assistant Secretary for Health, Department of Health and Human Services. In accordance with 21 U.S.C. 811(b), the DEA Administrator also requested a scientific and medical evaluation of the relevant information and a scheduling recommendation for the six fentanyl analogs from the Assistant Secretary for Health.

The following is a brief summary of the available information submitted to the Assistant Secretary for Health regarding the above six fentanyl analogs: *N*-[1-(1-methyl-2-phenethyl)-4-piperidinyl]-*N*-phenylacetamide or acetyl-alpha methylfentanyl behaves as a typical morphine-like compound in rodent antinociceptive tests. It has a rapid onset but a shorter duration of action than morphine. In rats, acetyl-alpha-methylfentanyl is approximately 10 times more potent as an analgesic than morphine. Acetyl-alpha-methylfentanyl substitutes completely for morphine when administered to morphine-dependent withdrawn monkeys. DEA laboratories have identified acetyl-alpha-methylfentanyl in 20 exhibits of drug evidence seized or purchased in California since 1983. Approximately four ounces of acetyl-alpha-methylfentanyl were seized at a clandestine laboratory site in June 1985.

N-[1-methyl-2-(2-thienyl)ethyl-4-piperidinyl]-*N*-phenylpropanamide or alpha-methylthiofentanyl has been identified in drug evidence submissions from California, Louisiana and Florida since 1984. Over three kilograms of material containing alpha-methylthiofentanyl were confiscated from a clandestine laboratory in California. Alpha-methylthiofentanyl is not yet available for biological testing. Based on the known morphine-like activity of alpha-methylfentanyl, thiofentanyl and other alpha-methyl- or thio-substituted fentanyl analogs, it can be predicted that alpha-methylthiofentanyl is a morphinomimetic compound, at least as potent as fentanyl as an analgesic and with a longer duration of action.

N-[1-(2-hydroxy-2-phenethyl)-4-piperidinyl]-*N*-phenylpropanamide, or betahydroxyfentanyl produces typical morphine-like effects in rats. Its analgesic potency is approximately 150 times that of morphine. DEA laboratories have identified beta-hydroxyfentanyl in four exhibits of drug evidence obtained in California since 1984. Two of the exhibits which consisted of over four kilograms of material contained beta-hydroxyfentanyl and were confiscated from a clandestine laboratory.

N-[1-(2-hydrooxy-2-phenethyl)-3-methyl-4-piperidinyl]-*N*-phenylpropanamide or beta-hydroxy-3-methylfentanyl has been studied extensively in China. Beta-hydroxy-3-methylfentanyl behaves as a typical morphine-like compound in several rodent antinociceptive tests. In its (+)-cis form, beta-hydroxy-3-methylfentanyl is over 7800 times more potent than morphine in mice as an analgesic. Binding studies show it to have a high affinity for the mu-opiate receptor. Nalorphine and naloxone effectively antagonize the opiate effects of beta-hydroxy-3-methylfentanyl. DEA laboratories have identified betahydroxy-3-methylfentanyl in drug evidence submissions from California and Florida since 1985. Beta-hydroxy-3-methylfentanyl has been identified as a combination of its cis and trans diastereomers. Over four kilograms of a powder containing beta-hydroxy-3-methylfentanyl were confiscated at a clandestine laboratory site.

N-phenyl-*N*-[1-(2-thienyl)ethyl-4-piperidinyl]-propanamide or thiofentanyl produces typical morphine-like effects in rodent antinociceptive tests. It is approximately 175 times more potent than morphine as an analgesic. DEA laboratories have identified thiofentanyl in five evidence samples from California and Louisiana since 1985. Two of the exhibits were obtained at a clandestine laboratory site in June 1985 in California.

Fentanyl-like substances have been associated with at least 60 narcotic overdose deaths since January 1984. Although the specific fentanyl analogs involved were not identified it is likely that at least some of the deaths were associated with the use of the six fentanyl analogs described above. The deaths occurred during the time period and in those areas where the six fentanyl analogs were identified. Two of the deaths occurred in Oregon and the remainder in California. Deaths were typical narcotic overdoses with the cause of death usually reported as pulmonary congestion due to intravenous "fentanyl" toxicity.

DEA has identified each of the six fentanyl analogs at a clandestine laboratory. There are no commercial manufacturers or suppliers of any of the six analogs nor are they used therapeutically. The Assistant Secretary for Health, when notified of DEA's intention to emergency schedule the six fentanyl analogs, did not object to this action. The Assistant Secretary's concurrence meant that no Investigational New Drug exemption (IND's) or approved New Drug Applications (NDA's) were in effect for any of the six fentanyl analogs. Neither the Assistant Secretary for Health nor the Food and Drug Administration has notified DEA of any change in the marketing status of any of the six fentanyl analogs. If a substance cannot lawfully be marketed under the Food, Drug and Cosmetic Act, that substance, under the CSA, has no currently accepted medical use in treatment in the United States and is not accepted as safe for use under medical supervision.

The DEA Administrator, based on the information gathered and reviewed by his staff and after consideration of the factors in 21 U.S.C. 811(c), believes that sufficient data exists to propose that acetyl-alpha-methylfentanyl, alpha-methylthiofentanyl, beta-hydroxyfentanyl, beta-hydroxy-3-methylfentanyl, 3-methylthiofentanyl and thiofentanyl be placed into Schedule I of the CSA pursuant to 21 U.S.C. 811(a). The specific findings required pursuant to 21 U.S.C. 811 and 812 for a substance to be placed into Schedule I are as follows:

(1) The drug or other substance has a high potential for abuse.

(2) The drug or other substance has no currently accepted medical use in treatment in the United States.

(3) There is a lack of accepted safety for use of the drug or other substance under medical supervision.

The DEA Administrator contends that there is adequate data to support each of the findings for the Schedule I placement of acetyl-alpha-methylfentanyl, alpha-methylthiofentanyl, beta-hydroxyfentanyl, beta-hydroxy-3-methylfentanyl, 3-methylthiofentanyl

and thiofentanyl. The DEA Administrator further contends that adequate data exists to classify acetyl-alpha-methylfentanyl, alpha-methylthiofentanyl, beta-hydroxyfentanyl, beta-hydroxy-3-methylthiofentanyl, 3-methylthiofentanyl and thiofentanyl as opiates as defined in 21 U.S.C. 802(18) and hence as narcotics as defined in 21 U.S.C. 802(17).

Before issuing a final rule in this matter, the DEA Administrator will take into consideration the scientific and medical evaluations and scheduling recommendations of the Secretary of the Department of Health and Human Services in accordance with 21 U.S.C. 811(b). The recommendations of the Secretary regarding scientific and medical matters are binding on the Administrator and if the Secretary recommends that a substance should not be controlled, the DEA Administrator will not control it. The Administrator will also consider relevant comments from other concerned parties.

Interested persons are invited to submit their comments, objections or requests for hearing in writing with regard to this proposal. Requests for a hearing should state with particularity the issues concerning which the person desires to be heard. All correspondence regarding this matter should be submitted to the Administrator, Drug Enforcement Administration, 1405 I Street, NW., Washington, DC 20537, Attention: DEA Federal Register Representative.

In the event that comments, objections or requests for a hearing raise one or more issues which the Administrator finds warrant a hearing, the Administrator shall order a public hearing by notice in the **Federal Register**, summarizing the issues to be heard and setting the time for the hearing which will not be less than 30 days after the date of the notice.

Pursuant to Title 5, United States Code, section 605(b), the Administrator certifies that the proposed placement of acetyl-alpha-methylfentanyl, alpha-methylthiofentanyl, beta-hydroxyfentanyl, beta-hydroxy-3-methylfentanyl, 3-methylthiofentanyl and thiofentanyl into Schedule I of the CSA will have no impact upon small businesses or other entities whose interests must be considered under the Regulatory Flexibility Act (Pub. L. 96-354). The substances proposed for control in this notice have no legitimate use or manufacturer in the United States. In accordance with the provisions of Title 21 United States Code, section 811(a), this proposal to place acetyl-alpha-methylfentanyl, alpha-methylthiofentanyl, beta-hydroxyfentanyl, beta-hydroxy-3-methylfentanyl, 3-methylthiofentanyl and thiofentanyl into Schedule I is a formal rulemaking "on the record after opportunity for a hearing." Such proceedings are conducted pursuant to the provisions of 5 U.S.C. 556 and 557 and, as such, have been exempted from the consultation requirements of Executive Order 12291 (46 FR 13193).

List of Subjects in 21 CFR Part 1308

Administrative practice and procedure, Drug traffic control, Narcotics, Prescription drugs.

Under the authority vested in the Attorney General by section 201(a) of the CSA (21 U.S.C. 811(a)), and delegated to the Administrator of DEA by Department of Justice Regulations (28 CFR 0.100), the Administrator hereby proposes that 21 CFR 1308 be amended as follows:

PART 1308—[AMENDED]

1. The authority citation for 21 CFR Part 1308 continues to read as follows:

Authority: 21 U.S.C. 811, 812, 871(b).

2. In § 1308.11, the introductory text of paragraph (b) is revised to read as follows:

* * * * *

§ 1308.11 Schedule I.

* * * * *

(b) *Opiates.* Unless specifically excepted or unless listed in another schedule, any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters and ethers, whenever the existence of such isomers, esters, ethers and salts is possible within the specific chemical designation (for purposes of paragraphs (b)(13) and (b)(36) only, the term isomer includes the optical and geometric isomers):

* * * * *

3. Section 1308.11 is further amended by redesignating paragraphs (b)(1) through (b)(7) as (b)(2) through (b)(8), paragraphs (b)(8) and (b)(9) as (b)(10) and (b)(11), paragraphs (b)(10) through (b)(31) as (b)(14) through (b)(35), paragraphs (b)(32) through (b)(45) as (b)(37) through (b)(50) and paragraphs (b)(46) and (b)(47) as (b)(52) and (b)(53) and by adding new paragraphs (b)(1), (b)(9), (b)(12), (b)(13), (b)(36) and (b)(51) to read as follows:

§ 1308.11 Schedule I

* * * * *

(b) * * *

(1) Acetyl-alpha-methylfentanyl (*N*-[1-(1-methyl-2-phenethyl)-4-piperidinyl]-*N*-phenylacetamide) . . . 9815

* * * * *

(9) Alpha-methylthiofentanyl (*N*-[1-methyl-2-(2-thienyl)ethyl-4-piperidinyl]-*N*-phenylpropanamide) . . . 9832

* * * * *

(12) Beta-hydroxyfentanyl (*N*-[1-(2-hydroxy-2-phenethyl)-4-piperidinyl]-*N*-phenylpropanamide) . . . 9830

* * * * *

(13) Beta-hydroxy-3-methylfentanyl (*N*- [1-(2-hydroxy-2-phenethyl)-3-methyl-4-piperidinyl]-*N*-phenylpropanamide . . . 9831

* * * * *

(36) 3-methylthiofentanyl (*N*-[3-methyl-1-(2-thienyl)ethyl-4-piperidinyl]-*N*-phenylpropanamide . . . 9833

* * * * *

(51)Thiofentanyl (*N*-phenyl-*N* [1-(2-thienyl)ethyl-4-piperidinyl]-propanamide . . . 9835

* * * * *

§ 1308.11 [Amended]

4. Section 1308.11 is amended by removing paragraphs (g)(3), (g)(4), (g)(6) through (g)(8) and (g)(10) and redesignating existing paragraph (g)(5) as (g)(3), existing paragraph (g)(9) as (g)(4) and existing paragraph (g)(11) as (g)(5).

Dated: November 21, 1986.

John C. Lawn,

Administrator, Drug Enforcement Administration.

[FR Doc. 86-26644 Filed 11-26-86; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF THE TREASURY

Fiscal Service

31 CFR Part 357

[Department of the Treasury Circular, Public Debt Series No. 2-86]

Regulations Governing Book-Entry Treasury Bonds, Notes, and Bills

AGENCY: Bureau of the Public Debt, Fiscal Service, Department of the Treasury.

ACTION: Proposed rulemaking.

SUMMARY: On March 14, 1986, the Department published a portion of a proposed rule (the "March Rule") that will govern securities held in the commercial book-entry system, now referred to as the Treasury/Reserve Automated Debt Entry System ("TRADES"). 51 FR 8846. A separate book-entry system, known as the

TREASURY DIRECT Book-Entry Securities System ("TREASURY DIRECT"), was implemented in mid-1986, and final regulations applicable to securities held in TREASURY DIRECT were published on May 16, 1986. 51 FR 18260.Upon final adoption, the TRADES regulations, together with the final TREASURY DIRECT regulations, will form Part 357 of Title 31 of the Code of Federal Regulations, which will govern all book-entry marketable Treasury securities.

The section-by-section analysis for the March Rule contained a detailed discussion that raised a number of complex issues and requested specific comments and proposed solutions. Several of the comment letters received contained detailed analyses of the proposed rule that responded to the issues raised and identified additional technical issues that required clarification or refinement of the proposed rule. Given the complexity of the issues raised, several commenters requested that the Department, after revision and incorporation of the comments received, republish the rule in proposed form to provide a second opportunity for public comment. The Department responded with a notice published in August 1986 advising those interested that a revised rule would be published again in proposed form with provision for a thirty-day comment period. 51 FR 29559 (August 19, 1986). The revised proposed rule for securities held in TRADES is set forth below, preceded by a section-by-section discussion of the specific comments received, changes made in response to those comments, and, where appropriate, reasons for not adopting suggested changes.

Certain of the provisions set forth below in Subpart A and Subpart D were published in final form as part of the final rule for TREASURY DIRECT. They are reprinted here for clarity and completeness. Where revisions are proposed, they are explained below in the section-by-section discussion.

DATE: Comments must be received on or before December 29, 1986.

ADDRESS: Send comments to the Office of the Chief Counsel, Bureau of the Public Debt, E Street Building, Washington, DC 20239–0001.

FOR FURTHER INFORMATION CONTACT: Virginia Rutledge, Attorney-Advisor, (202) 535–4890, or Cynthia Reese, Senior Attorney and Special Assistant, (202) 376–4320.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this rulemaking by submitting written comments and suggestions. Those received before the expiration of the comment period will be considered in the preparation of the final rule. At the option of the Department, those received after the expiration of the comment period may be considered in the preparation of the final rule. No public hearing is contemplated, but if written requests for a hearing are received, and if it is determined that the rulemaking process will be clearly enhanced by oral presentation, a hearing will be scheduled.

Discussion of the Comments Received

Summary

The Department received 28 comment letters on the proposed rule, as published on March 14, 1986. The comments ranged from brief letters simply supporting the project of replacing the existing book-entry regulations (Subpart O of 31 CFR Part 306 and 31 CFR Part 350, hereinafter collectively referred to as "Subpart O") to very detailed letters that included discussions of numerous issues and proposed specific regulatory language to resolve them. The Department thanks all of those who submitted comments and is especially appreciative of the time and effort that went into the more detailed letters.

The majority of comments were favorable, either explicitly or implicitly. Ten comment letters expressly supported the proposed rule, although most suggested modifications of varying degrees. Fifteen other commenters proposed modifications or expressed concerns about specific provisions of the proposed rule but did not oppose its adoption. One bank that submitted a comment letter suggested that the proposed rule was unnecessary but specifically expressed concern only about the requirement of the March Rule to send written confirmation of transfers. Two commenters in a joint letter expressed opposition to the proposed rule and suggested retention of Subpart O with only a single modification.[1] The Department believes that most if not all of the concerns raised by these commenters have been addressed by the revision set forth below, which includes a number of the suggested modifications.

Not surprisingly, several of the comment letters, including all of the most detailed ones, dealt at some length with the issue of resolution of competing claims that was discussed in detail in the section-by-section analysis of the March Rule. Most of the letters mentioning the issue favored a uniform Federal rule. The more detailed comments, almost without exception, favored adoption of some form of a bona fide purchaser rule and some form of priority for clearing liens. In the revised proposed rule printed below, the Department has adopted this approach.

In addition, several commenters focused on the warranties and duties of book-entry custodians set forth in the March Rule. Some commenters suggested broadening the warranties and including warranties of transferors other than book-entry custodians. In contrast, several banks suggested that, given the rather stringent banking regulations governing custody of customer securities, banks should not be required to make any warranties under the Treasury regulations. The bank commenters also pointed out certain differences between the banking regulations, which set out specific rules governing the provision of confirmations of securities transactions to bank customers, and the requirements set out in the proposed rule.

A third area focused on by commenters was the mechanics of the transfer rules themselves. Several commenters proposed eliminating the distinction between rules governing transfers of ownership of whole securities and transfers of security interests. Various reformulations were proposed, although all still would focus on book-marking as the relevant act of transfer. Related comments questioned the need for the additional rules governing attachment and perfection of security interests that were included in the March Rule.

One final area of comment involved the interaction of the regulations with other law. Three commenters specifically suggested that book-entry custodians subject to foreign law be exempt from the Department's regulations. Other comments focused on the interaction between the regulations and State law in a number of specific areas.

Two commenters submitting a joint comment letter questioned the Department's authority to promulgate rules such as those set forth below. Section 3121 of Title 31 of the United States Code grants the Secretary broad authority to establish the terms and conditions on which Treasury securities

[1] In a joint letter, four commenters, including the two referred to above, opposed the adoption of the March Rule, as proposed, but differed in their suggested modifications and submitted individual letters setting out their proposals. As a result, the joint letter has not been counted separately here, although it is included in the total of 28 comment letters mentioned above.

are issued. The Supreme Court recognized the breadth of this authority in *Free* v. *Bland*, 369 U.S. 663 (1962), in which the Court concluded that Treasury regulations governing ownership of savings bonds validly preempted community property rights in the bonds that might otherwise have existed under State law. The Secretary's authority also supports establishing rules such as those set forth below describing how to transfer interests in book-entry Treasury securities.

A primary concern of these two commenters was that the proposed rule would require significant changes in the current structure of clearing arrangements for Treasury securities. This was not the intention of the Department, and the Department believes that the concerns underlying this comment have been eliminated for the most part by the revisions to the March Rule that are set forth below.

Section-by-Section Discussion

Section 357.1.[2] This section provides that the new rule will apply to securities transactions occurring on or after a specified date, which is anticipated to be 60 days after the date of publication of the rule in final form.

Two commenters requested clarification as to how the rule describing the date of applicability of the proposed rule would be applied to a repurchase agreement that is initiated before the effective date but completed after that date. To clarify this point, one of the commenters suggested changing the word "transactions" in § 357.1(a) to the word "transfers." This would make clear that, for repurchase agreements initiated before the effective date but completed afterward, Subpart O would be applicable to the first step in the repurchase transaction while the proposed rule would be applicable to the second step.

Aside from the issue of how the section should be applied to repurchase agreements, the suggested drafting change would not be consistent with the basic structure of the proposed rule. As used in the March Rule, the term "transactions" was intended to include more than transfers of interests in securities. Both payments of interest and payments of principal on redemption constitute transactions that are to be expressly covered by the proposed rule and for which the effective date of § 357.1 would be relevant.

Nevertheless, for transactions involving two or more transfers of a security or a limited interest in a security, the Department believes that the result described above will be the appropriate one as a general rule: each transfer should be viewed separately for purposes of determining the applicability of these regulations. At the same time, the Department recognizes that having a single transaction subject to different rules depending upon the timing of each step in the transaction in some cases may cause unnecessary complexity. Furthermore, for transactions such as secured loans that will be initiated before but will continue beyond the effective date of this rule, the Department recognizes that the parties to such a transaction may wish to have the entire transaction governed by this rule.

To provide flexibility for such transactions, the Department has added a new sentence to § 357.1(b) that permits selection of either the existing regulations or the new Part 357. The provision requires an agreement in writing and applies only to transactions that will bridge the effective date specified in § 3.57.1(a).

The March Rule provided that a transaction involving a transfer would be deemed to have occurred for purposes of this section on the date on which occurs the act that constitutes a transfer as described in this Part. One commenter suggested that if § 357.1(b) were intended to describe when a transaction occurs for all purposes of the proposed rules, then § 357.1(b) should state that a transaction occurs "at the time" of transfer rather than on the date of transfer, since several transfers of a security can occur on a single day. The Department has not adopted this change since § 357.1(b) was intended to have the limited purpose of describing when a transaction occurs for purposes of the effective date set forth in § 357.1(a). The Department has added wording to § 357.1(b) to clarify this point.

Section 357.2. This section is the basic governing law provision. The March Rule provided that the rights and obligations of the United States would be governed by applicable Federal law. The rights and obligations of others would be governed by applicable Federal law, and to the extent not inconsistent with Federal law, by State and local law.

As noted above, questions as to the interaction of these rules with State law arose in connection with several comments. For example, one commenter suggested that, in proposing a rule on the transfer and pledge of Treasury securities, the Department should be cautious about creating rules resulting in different consequences for holding Treasury securities than would be the case for other uncertificated securities governed solely by State law. In particular, this commenter suggested that it would be unwise to ignore existing State law on secured transactions which represent the working out of relative rights of parties to a transaction.

The Department agrees that, as a general proposition, caution should be exercised in varying or preempting State law. However, the Department notes that the existing regulations of Subpart O already preempt State law to some extent. Furthermore, even with the minimalist approach of Subpart O, which leaves many issues completely to State law, a variety of interpretative questions have arisen concerning the appropriate application of the existing regulations, although not all of these questions have become the subject of litigation. As a result, with respect to book entry securities, there is not an accepted body of principles that operates to provide predictable results. Matters are further complicated because not all states have adopted the rules found in the i978 revision to Article 8 of the Uniform Commercial Code (the "UCC"). Furthermore, even where such rules have been adopted, some of the litigation arising from recent failures of government securities dealers suggests that important legal issues are yet to be resolved that stem from some of the concepts and relationships that arise where interests in securities are transferred without the transfer of a certificate. Finally, the Department notes that the law of secured lending generally has continued to change as new types of property that may be the subject of secured transactions have developed, and the balance of rights among the various parties is reexamined and reevaluated. Recent litigation concerning transactions in government securities reflects just such a process.

Given the foregoing, the Department continues to believe that the Federal interest in uniformity and certainty for participants in the government securities market warrants supplanting State law with a Federal rule governing transactions in Treasury book-entry securities. In drafting the proposed rule, the Department has not attempted to

[2] Because of the addition of some new sections, certain of the sections contained in the March Rule have been renumbered. Unless otherwise indicated, section numbers in this discussion refer to the sections as numbered below. Where appropriate for clarity, the section number preceding the discussion of comments and changes to any given section is followed by a bracketed number indicating the section number or numbers of the same provision as published in the March Rule.

vary arbitrarily the State law rules governing transactions in investment securities. Instead, the Department's goal is to also provide a rational set of rules that balances the interests of all participants in the market and provides a framework for giving effect to investor expectations while preserving the efficiency and liquidity of the market. The comments received have been very useful in identifying those areas where the March Rule failed to achieve these goals, most notably in the area of competing claims. The Department believes the revisions to the rule published below resolve those deficiencies.

Another commenter suggested an approach that would view the Federal Reserve Banks as clearing corporations, as defined in section 8–102(3) of the UCC. This approach would also deem all book-entry securities either to be held in bearer definitive form at the Federal Reserve Bank of New York or to be in uncertificated form registered in the name of the Federal Reserve Bank of New York, so that the UCC as adopted by New York would govern all transfers and pledges of securities. This approach has the advantage of providing uniformity and perhaps a reasonable level of certainty throughout the market. However, the Department does not believe that it is appropriate for the entire market in Treasury securities to be subject to the laws of a single State's jurisdiction.

Instead, the Department continues to believe that it is appropriate to provide in its rule the basic framework for transactions in government securities. Under the March Rule, the conceptual approach of the governing law provision was that of a partial preemption of State law: issues not explicitly dealt with in the proposed rules would be governed by State law. After further consideration, the Department has concluded that the difficulty in describing with any precision the line between preempted and nonpreempted State law under such a partial preemption would unnecessarily focus attention on drawing that line. To emphasize the Federal interest motivating the rule, and given the broad authority of the Department to promulgate regulations relating to Treasury securities, the Department has concluded that a better approach is to preempt State law completely. The Department anticipates that, in accordance with the approach taken by the Supreme Court decision in *U.S.* v. *Kimbell Foods,* 440 U.S. 715 (1979), principles derived from State law will be incorporated into applicable Federal law as the rule for decision, whenever appropriate, for issues not explicitly dealt with in the regulations. The Department believes that this approach will, on balance, cause less confusion because it focuses on inclusion rather than exclusion, as would be the case with a partial preemption.

One comment noted certain specific areas in existing law that had not been covered in the March Rule. They are the warranties, if any, of issuers of instructions (section 8–306 of the UCC); the effect, if any, of unauthorized instructions (section 8–311 of the UCC); a purchaser's rights, if any, to proof of a transferor's authority (section 8–316 of the UCC); and the formal requisites, if any, of transfers (section 8–319 of the UCC).

Two of these would appear to be generally inapplicable in the context of TRADES. Under section 8–308(4) of the UCC, an "instruction" is defined as an order to the issuer of an uncertificated security, requesting the registration of a transfer, pledge, or release from pledge. The warranties of an originator of an instruction under section 8–306 of the UCC run to the issuer, to any person guaranteeing the instruction or specially guaranteeing the originator's signature, to a purchaser for value, and to a debtor or third person under certain circumstances. Under section 8–311 of the UCC, an owner may assert the ineffectiveness of an unauthorized instruction against the issuer and certain purchasers, and an issuer who registers a transfer, pledge, or release of an uncertificated security upon an unauthorized instruction is subject to liability for improper registration.

In TRADES, book-entry securities are transferred electronically on the books of Federal Reserve Banks and in many cases on the books of the book-entry custodians that comprise the system. Transfers on TRADES do not constitute registration for purposes of Article 8 of the UCC, and an "instruction," as that term is used in the UCC, does not correspond to any procedure now used in TRADES. It is more comparable to a "transaction request" used to request a transfer of a security in TREASURY DIRECT (see § 357.28). Thus, the Department believes that provisions relating to an "instruction" are inapplicable to securities held in TRADES. To the extent the general principles underlying these sections are relevant, the Department anticipates that they would be applied as the rule for decision by a court, in accordance with *Kimbell Foods.*

Section 8–316 of the UCC provides that the transferor of a security must supply the purchaser with proof of the transferor's authority to sell. Failure to comply gives the purchaser the right to reject or rescind the transfer. Section 8–319 of the UCC provides that a contract for the sale of securities is not enforceable unless there is some writing signed by the party against whom enforcement is sought, or unless other specified criteria are met. The Department believes that it is inappropriate to promulgate a specific Federal rule in these regulations, since neither of these provisions is suited to the speed with which transactions frequently occur in the government securities market.

Interaction of the proposed rule with foreign law was another issue addressed by commenters. Two commenters suggested that, to avoid subjecting them to potentially conflicting legal requirements, overseas book-entry custodians should be exempt from the proposed rule unless the book-entry custodian and its customer have made a valid choice of United States law or the law of any state. Their proposed solution would have added language of exemption to § 357.2 as proposed in the March Rule and would have added a definition of "overseas book-entry custodian" to § 357.3.

Although the Department agrees with the basic concept, a different solution was chosen that does not require defining a new category of book entry custodian. Instead, a new § 357.2(c) simply provides that rights and obligations, other than rights and obligations of the United States, arising out of interests in securities maintained on the books of a book-entry custodian at a place outside the United States are governed by the foreign law applicable to the business of the book-entry custodian, unless the book-entry custodian and its customer have made a valid choice of United States law.

The Department believes this formulation reaches the same results as those intended by the proposals of the two commenters on this issue, but avoids some of the issues that might arise unnecessarily by defining a separate category of book-entry custodians. For example, under the language proposed by one commenter a book-entry custodian that qualified as an overseas book-entry custodian and operated a custodial business in the United States arguably could have claimed exemption from the regulations even with respect to the U.S. custodial business by virtue of qualification as an overseas book-entry custodian.

In addition, one commenter suggested adding specific language providing that

a branch of a domestic corporation may qualify as an overseas book-entry custodian, although technically a branch is not a legal entity separate from the U.S. corporation. Under the Department's formulation, a single entity may conduct custodial business both within and without the United States. Whether or not these rules apply with respect to any specific security would depend upon where the records are maintained and what law is applicable to the custodial arrangement in question.

Finally, one commenter proposed adding language permitting an overseas book-entry custodian to maintain back-up records or computing facilities in the United States provided that the custodial activities of the book-entry custodian generally fell within the description of activities that would qualify an entity as an overseas book-entry custodian. The Department agrees that, standing alone, maintenance of back-up records in the United States should not affect the exemption for securities maintained outside the United States, but does not believe it necessary to add specific language to § 357.2. In the individual case, whether the level of activity conducted in the United States or the degree of reliance on facilities or records maintained in the United States is sufficient to defeat the exemption, will be a question of fact that may be determined by whether the specific arrangement in question was reasonable under the circumstances and whether it had the appearance of simply intending to circumvent the applicability of the regulations.

Another commenter suggested the addition of a sentence to § 357.2 that would have expressly permitted parties to a transaction in a security to make a choice of the law of any State or nation which bears a reasonable relation to the transaction. The ability to make a choice of foreign law bearing a reasonable relationship to a transaction is implicit in the proposed rule for securities maintained outside the United States. However, the Department does not believe that an entity conducting its custodial business in the United States should be able to select foreign law in lieu of the proposed rule. The question of making a choice of applicable State law is no longer relevant because of the preemption of State law described above. The Department does anticipate that the parties to a transaction may select the State law that may be incorporated into applicable Federal law as the rule for decision.

Section 357.3. This section includes all of the defined terms for purposes of Part 357, including definitions already published in final form in the final TREASURY DIRECT rule. 51 FR 18260. Certain new definitions have been added, and certain definitions previously published have been revised. The additions and revisions are described below.

The definitions of "clearing bank," "clearing lien," and "clearing services" are new and are explained in the discussion of § 357.15, a new provision dealing with clearing liens. The definition of "depository institution" previously included in the TREASURY DIRECT rule has also been included below because of its applicability in the context of the new § 357.15.

The term "issue" is defined to mean securities identified by a single CUSIP number. A CUSIP number is the number assigned to identify securities of the same issue by the Committee on Uniform Securities Identification Practices. The term "issue" is used in two new provisions, §§ 357.12(c) and 357.14(e).

This manner of defining an issue applies to securities of the same interest rate and maturity that generally are issued on a single day, as well as the principal and interest components separated under the Department's STRIPS program. Whether or not a security is eligible for STRIPS is determined by the offering circular for that security. If a security is stripped, each component is given a different CUSIP number. Interest payments stripped from securities of different maturities but which are due on the same day will bear the same CUSIP number and are indistinguishable from one another. Therefore, once stripped, the interest payments due on the same date are treated, for purposes of this rule, as a single issue.

The definition of "person" has been revised to include governmental entities.

The definition of "security" has been expanded to provide specifically that a book-entry Treasury security is a security for purposes of State and local law. This clarification was made in response to comments that indicated that a book-entry security might otherwise be considered an "intangible" for some purposes, which could create unpredictable legal consequences. The clarification also is important for purposes of the incorporation of State law principles discussed under § 357.2 above. The provision is not intended, however, to subject the United States or the Federal Reserve Banks, when acting as fiscal agents of the United States, to the obligations of an issuer under Article 8 of the UCC as adopted by the various states.

The March Rule defined a "book-entry custodian" as a person other than the Department or a Federal Reserve Bank that in the the ordinary course of its business maintains book-entry securities accounts for others. The definition also specifically provided that a book-entry custodian could have a security interest in securities held for another person and also could hold securities for its own account.

A comment was made proposing that the definition of "book-entry custodian" be expanded to state specifically that the book-entry custodian may be the transferor of the security or security interest, because the usual meaning of the term "custodian" is an independent third party. This proposal may have also been prompted by the discussion of § 357.13(d) in the section-by-section analysis of the March Rule, which suggested in another context that an effective transfer of a security interest would require the involvement of a third party having no interest in the transaction giving rise to the security interest.

The Department does not believe that an amendment of the definition of "book-entry custodian" is necessary. However, it should be emphasized that, notwithstanding any statement to the contrary in the discussion of the March Rule, under the proposed rule an entity may be both the book-entry custodian and the transferor of a security or a limited interest. The Department recognizes that many repurchase agreements are structured in precisely this way. Although a greater degree of protection may be gained by using a third-party custodian for such transactions, the parties are not required to do so under these regulations.

In response to a suggestion in the comments, the Department considered adding definitions of the terms "transferor" and "transferee," but concluded that the meaning of these terms is sufficiently clear in the context of the rule.

Several commenters proposed additional defined terms in connection with new regulatory language they had proposed. Exclusion of these proposed definitions for the most part depended upon the Department's response to the underlying issue, as discussed elsewhere in this section-by-section analysis.

Section 357.10. This section describes the procedure by which interest and principal are paid and provides that the obligation of the United States is discharged at the time

payment is credited to an account at a Federal Reserve Bank. It also provides that a book-entry custodian, upon receipt of a payment for a customer, must make the payment available to the customer on the date of receipt.

One Federal Reserve Bank noted that the time frame specified for making payments available might be difficult to comply with because the mechanics of crediting such payments may involve end-of-day batch processing. It is the Department's understanding, however, that depository institutions consider the funds available at the beginning of the day even where the actual paperwork regarding the credit may not be completed until the end of the day. The Department believes this is the correct view and notes that no depository institutions or other entities that might be affected by the rule made a similar comment. No change to the rule was made.

Section 357.10(d) has been modified to make the duty of a book-entry custodian to make principal and interest payments available to a customer subject to any rights the book-entry custodian may have as a secured party under a written security agreement. The original provision was not intended to override any claim that the book-entry custodian might have to such payments arising from an express agreement with a customer.

Section 357.11. Section 357.11 is modeled after the shelter rule of section 8–301 of Article 8. It describes the rights of a transferee upon acquisition of a security or a limited interest in a security. One commenter suggested that this rule be amended to make clear that the reference to "transferor" includes both the prior interest holder and the book-entry custodian effecting the transfer. The rationale is that a transferee should succeed to the rights that its own book-entry oustodian has against any upper-tier custodian. This would appear to be internally inconsistent. In our view, there are two mutually exclusive alternatives: Either the book-entry custodian is acting as a principal in the transaction and, therefore, is the prior interest holder, or the book-entry custodian is acting as an agent, in which case it has no rights in the security independent of the rights of its customer.

Another commenter suggested a substantial revision of § 357.11 as part of its approach to reintroduction of the concept of a bona fide purchaser. A major feature of this commenter's proposal was to rely on State law to determine the consequences of a transfer. This commenter felt that the "shelter rule" as stated in proposed § 357.11, absent a bona fide purchaser rule, would have the substantive effect of creating a set of Federal rights, and proposed changing the language to provide that a transfer would be an effective transfer for purposes of State law. The Department has not adopted this change since it follows from the discussion of § 357.2 that these rules are, in fact, the basis for a set of Federal rights.

One commenter also suggested that it would be useful to clarify that, upon default of the debtor, a disposition of collateral by a secured party conveys to the purchaser all of the debtor's rights in the collateral, as is provided in section 9–504(4) of the UCC. The commenter was concerned that the interaction of § 357.2 of the March Rule, which provided that State law would be not applicable where it would be inconsistent with these regulations, with the ideas expressed in § 357.11 might be viewed as precluding the result dictated by section 9–504(4) of the UCC. The question of inconsistency has been eliminated by the changes to § 357.2 discussed above. Furthermore, were the question to arise in litigation it is for just such an issue that the Department anticipates a court would look to State law to supply the rule for decision.

Section 357.12 [Sections 357.12 and 357.13]. The March Rule covered transfers of securities in § 357.12 and transfers of security interests in § 357.13. A transfer of a security was deemed to occur at the time an entry is made on the books of a Federal Reserve Bank or a book-entry custodian. Transfer of a security interest was deemed to occur (i) at the time an entry is made on the books of a Federal Reserve Bank or a book-entry custodian; (ii) at the time written notification is received by a book-entry custodian; or (iii) where the secured party is to be the book-entry custodian, when the security is received in an account for the transferor of the security interest and a written agreement is executed.

Several commenters indicated that they believed the proposed rule made an unnecessary distinction between transfers of ownership and transfers of security interests, and that the correct characterization of a transaction should be left to other law. It was pointed out that a single transaction may be subject to different characterizations for different purposes. This is especially true for repurchase agreements and reverse repurchase agreements, which constitute a substantial portion of the daily activity in the government securities market. One commenter also suggested that the transfer provisions in the March Rule might require modification of the back office procedures to give full recognition in account titles and records to pledges of securities. The proposed solution suggested by some commenters was to combine into a single provision the rules for transfers of securities and transfers of limited interests in securities.

In drafting the proposed rule, the Department did not intend to require new procedures on the part of book-entry custodians. Instead, the Department drafted provisions that conformed to existing practices in various parts of the market. By providing alternative methods of transfer, the Department believes it provided sufficient flexibility so that no single entity would be required to significantly restructure its operations. In addition, the Department recognized the importance of variable characterization described above and intended to permit parties to accomplish a repurchase transaction without necessarily characterizing it as either an outright sale and repurchase or as a secured transaction. The flexibility to do this was preserved by explicitly recognizing in the proposed rule that a transfer that may appear on the books of a book-entry custodian to be a transfer of outright ownership may also serve as merely a transfer of a security interest. Since repurchase agreements customarily contain language that constitutes a sale and repurchase as well as alternative language describing the grant of a security interest, it would have been possible under the proposed rule to take the position either that the transaction was a sale and repurchase or that it was the grant of a perfected security interest.

Given the number of comments on the point that the Department received, the Department decided to make certain changes that will more clearly preserve flexibility. However, the Department was reluctant to go quite as far as the drafting solutions proposed by two of the commenters that would have completely combined within a single descriptive phrase transfers of ownership of securities and transfers of limited interests. The Department felt that although a certain flexibility should be preserved, the rule should not encourage intentional ambiguity. Therefore, instead of using a single descriptive phrase, the Department chose to combine §§ 357.12 and 357.13 as originally proposed into a single new § 357.12 that is structured in a manner similar to section 8–313 of the UCC. In addition, the Department has substituted the term "limited interest" for the term "security interest" in

recognizing that there are a whole range of limited interests in property other than security interests. Under the new § 357.12, certain of the transfer methods may apply to both transfers of securities and transfers of limited interests while others, by their terms, are confined to transfers of limited interests. The Department felt that although a certain flexibility should be preserved, the rule should not encourage intentional ambiguity.

Two commenters also suggested that what constitutes a transfer should not be limited to the single act of crediting a securities account. The commenters suggested that any entry that permits identification of an interest in favor of the transferee should be sufficient to constitute a transfer. The Department agrees with this approach and has adopted language similar to that suggested in the comment letters.

Another commenter also suggested changing the word "books" to "records" in the proposed rule to avoid an implication that a transfer cannot occur until end-of-the-day reconciliation of a book-entry custodian's books. The Department believes that any such implication is eliminated by the change discussed in the preceding paragraph.

Two commenters also recommended that the use of subaccounts be specifically authorized as a means of accomplishing a transfer since the computer programs of several clearing banks are structured to permit their use. We understand that what happens operationally is that a dealer may effect a transfer to its customer by directing the dealer's clearing bank to move designated securities into a subaccount of the dealer's account on the books of the clearing bank that specifically identifies the dealer's customer as the transferee. The Department believes that it is not necessary to add specific language referring to subaccounts since the transaction as described falls within the terms of the general transfer rule. However, the Department notes that the use of subaccounts raises an interpretative issue with potentially significant consequences for the dealer and its clearing bank that would not be resolved by adding proposed language explicitly authorizing the use of subaccounts. The basic question is who is acting as the book-entry custodian for the customer? Since the entry reflecting the transfer may be made on clearing bank's books rather than on internal records of the dealer, arguably the clearing bank may be the book-entry custodian for the dealer's customer and would therefore be subject to the provisions setting forth book-entry custodian warranties and other duties with respect to the transfer to that customer. However, it is unlikely that this reflects the expectations of either the clearing bank, the customer, or the dealer.

An implicit assumption of the transfer rules and the rules describing the duties and warranties of book-entry custodians has been that a transfer is recorded on the books of the entity with whom the transferee deals and that will maintain the security for the transferee, whether or not, between the transferee and that entity, their dealings are expressly characterized as involving a custodial arrangement. Under this view, if a dealer engages in a repurchase transaction with another entity where the dealer retains control of the security, then the dealer would constitute a book-entry custodian for purposes of these rules.

To take into account the assumption just described and to avoid a result that would view the clearing bank in the hypothetical described above as the book-entry custodian for the dealer's customer, the proper view is that subaccounts within a dealer's account on the books of the clearing bank should be viewed as constituting part of the dealer's records as well as a part of the records of the clearing bank. Under this view, the use of a subaccount clearly falls within the general description of a transfer, and it is the dealer that must carry out the duties and warranties of a book-entry custodian with respect to that transfer. It should also be noted that a subaccount transfer may constitute a segregation of customer securities that, in accordance with new § 357.15(c), prevents assertion of a clearing lien unless expressly agreed to by the dealer's customer.

One commenter pointed out that in some circumstances a book-entry custodian taking a security interest from its customer might agree that the security interest would not arise until fulfillment of some condition in addition to the requirements set forth in § 357.12(a)(5). To provide for such situations, the Department has added new language as § 357.12(b) which permits delayed effectiveness of a limited interest by agreement between the parties.

Several commenters expressed concern in a variety of ways that the March Rule suggested that a book-entry custodian could make an effective transfer simply by marking its books and without regard to whether that custodian actually maintained any of the appropriate securities itself either directly on the books of a Federal Reserve Bank or through another book-entry custodian. The March Rule had been structured as it was in part to express the idea that at all times after a book-entry custodian marks its books in favor of a customer, that customer has rights as against its book-entry custodian to the amount of securities so transferred to the customer regardless of the specific time at which the book-entry custodian itself may have acquired such securities. However, in light of the comments received, the Department has reconsidered this issue and concluded that, although the underlying assumption is correct, the March Rule may have appeared to have an impact different from that intended. Therefore, the Department decided to include regulatory language expressing the need for a link between ownership reflected on the books of a book-entry custodian and maintenance of securities at a Federal Reserve Bank. This required link is what was described in the March Rule as a "chain of accounts." 51 FR 8849, March 14, 1986, footnote 2.

Two commenters proposed similar definitions of "written" that describe what means of recording data will constitute an entry for purposes of the transfer rules. The Department has incorporated the definitional language into § 357.12(d) as a means of describing when an entry is made. The Department concluded that the concept of a writing was unnecessary so long as guidance is provided as to what may constitute an entry. However, the Department did not include the phrases suggested by these commenters that would have required that the data not only be displayable at some point in time, but that it be expected to be stored. This requirement seemed to incorporate into the rules what would more appropriately be simply an evidentiary issue in the event of litigation.

Section 357.12(e) is a new provision describing cross-system transfers between TREASURY DIRECT and TRADES.

Several commenters suggested that the notice-type security interest provided in § 357.13(c) of the March Rule be eliminated, primarily because of the uncertainties as to the rights and obligations that would exist between the book-entry custodian and the secured party that were described in the discussion of the March Rule. It was also pointed out that retaining § 357.13(c) would have the effect of transforming TRADES into a paper system. Some of these commenters proposed in the alternative that the rule explicitly provide that a book-entry custodian may reject any such notice of

a security interest. Since no commenter suggested that the notice-type security interest would constitute a particularly useful alternative to the other methods of transferring security interests, the Department decided simply to eliminate the notice-type security interest.

Section 357.13 [Section 357.14]. This section sets out the rules for enforceability of a security interest between the grantor and the secured party and the enforceability of a security interest against third parties. It also covers the termination of a security interest.

As noted above, several commenters recommended minimizing the distinction between transfers of securities and transfers of security interests and other limited interests in securities. As a corollary to this suggestion, some of these commenters also recommended eliminating virtually all distinctions between attachment, perfection, and transfer of a security interest. In addition, some commenters noted that the terms "grant", "creation" and "validity" of a security interest are also used in other provisions of the proposed rule, and suggested that these terms created unnecessary confusion.

Although admittedly there is some overlap in some of the terms referred to above, in drafting the proposed rule the term was used that seemed best suited to the context. It was felt that since all of them have been terms used in the area of secured lending, their meaning would be relatively clear.

One commenter also noted a source of confusion in that § 357.1(b) of the March Rule appeared to make the transfer of a security interest the pivotal event. As already explained in the discussion of another comment on § 357.1(b), that provision is significant only for purposes of determining the applicability of these rules to a transaction in a security that was outstanding prior to the adoption of this rule in final form.

Two of the commenters suggested alternative approaches to § 357.14 of the March Rule that would eliminate the concept of attachment. The Department included attachment as a separate concept in the March Rule for two reasons. First, the Department felt that the three requirements of attachment, none of which is extraordinary, should not be eliminated as basic prerequisites for carving out a security interest from the bundle of rights and interests belonging to an owner of property. The Department believes that it is precisely in the case of secured transactions that many of the uncertainties under Subpart O have arisen. In drafting the proposed rule, one of the Department's primary goals was to eliminate that uncertainty. It seemed advisable, whenever possible, to cast the proposed rule in terms of concepts, such as both attachment and perfection, that have well-established significance in secured transactions.

The second reason for adoption of the concept of attachment is that the Department wanted to establish that if automatic perfection of a security interest lapsed, the security interest itself would not lapse but would merely become unenforceable against third parties. Although it may be the rare case in which such a question should arise, making no provision for it seemed to leave an unnecessary gap.

Because of the criticism of its incorporation in the March Rule, the Department has eliminated use of the term "attachment" but has not eliminated the three basic requirements associated with attachment of a security interest. In doing so, it was noted that one of the commenters recommending elimination of the concept also would have retained two of the requirements of attachment—that the debtor have rights in the collateral and that the secured party give value.

Two comments agreed, in principle, with the requirement of a written security agreement as an element of perfection of a security interest. Two other comments objected to this requirement, however, stating that a written agreement is unnecessary except in certain cases, *i.e.*, in the case of temporary perfection and in the case of any clearing lien.

The Department agrees that a written agreement should be a requirement for automatic perfection and a requirement for according priority to a clearing lien. The clearing lien requirements are discussed in the analysis of § 357.15. In the case of automatic perfection, it is appropriate to require a written agreement because perfection does not depend on book-marking or some other act of a book-entry custodian. In other types of perfection, the interests in a security can be discerned from the records of the book-entry custodian and confirmed upon request. As a result, the requirement of a written agreement has been eliminated from these rules in the case of these other methods of perfection. In those cases, transfer of the security or security interest will be sufficient to perfect the security interest, assuming the basic requirements set forth in § 357.13(a) have been complied with.

The March Rule provided for "automatic" or "temporary" perfection of a security interest for a period of 7 calendar days. Thereafter, the security interest would continue to be perfected only if there were a transfer of the security or the security interest and the security agreement were reduced to writing.

Several comments urged that a security interest perfected by the automatic method should be subordinated to all other interests in the same security. These comments were concerned about innocent third parties or purchasers taking a security subject to such an interest, without having any means to determine whether the interest exists. As pointed out in one comment, however, this risk would be mitigated by a bona fide purchaser concept.

The revised rule retains the concept of automatic perfection. The rules also contain a modified bona fide purchaser provision in § 357.14 under which an innocent third party could prevail over parties having perfected security interests, especially those perfected only by means of automatic perfection and not reflected on the books of a book-entry custodian.

Although one comment endorsed lengthening the automatic perfection period to the 21 days provided in existing law, other comments lent support to the view that the 7-day period was adequate. This rule retains the 7-day period.

Several commenters expressed concern about § 357.14(d) of the March Rule which described the methods of terminating a security interest. Section 357.14(d) had provided, among other things, that a security interest could be terminated by a transfer of the interest to a designee or successor in interest of the grantor of the security interest. The concern expressed was that this could be interpreted to mean that a dealer that had granted a security interest to its clearing bank could unilaterally terminate the security interest by transferring securities subject to the security interest to a customer.

The Department did not intend this section to permit unilateral termination of a security interest by the debtor. The term "successor in interest" was added simply to provide for the situation where the debtor had been merged into or acquired by another entity. The term "designee" was included simply to provide flexibility and not require transfer solely to the debtor as the means for terminating a security interest. For example, under this provision, a clearing lien would terminate if a clearing bank on the instruction of its dealer-customer, transfers a security from the dealer's clearing account to another account at the clearing bank or to another book-entry custodian maintaining a securities account at a Federal Reserve Bank.

Because of the comments described above, the Department has added the phrase "by or with the agreement of the secured party" to § 357.13(e) to clarify that termination of a security interest requires the agreement of both the debtor and the secured party. However, it should be noted that this provision is not intended to suggest that a valid rehypothecation of securities, such as a dealer might do with customer securities purchased on margin, would terminate the initial security interest on which the rehypothecation was based.

One commenter also would have added a definition of "value" to § 357.3 to make it clear that value includes antecedent debt. The Department believes that this is the result that would be reached by looking to State law as described above in § 357.2.

The same commenter also suggested that it be clarified that the concept of "value" does not require a one-for-one identification with the security that is the subject of the security interest. Presumably, the comment is made with a view toward the clearing lien granted by a dealer to its clearing bank where credit may be extended by a clearing bank during the day but it is not possible to pinpoint the specific security purchased by the dealer that requires the extension of credit. The Department does not believe that the regulations imply any requirement that the credit extension be tied to a specific security. It appears that uncertainty on this point would more appropriately be handled in the clearing agreement itself. It is the Department's understanding that a clearing agreement generally is drafted to provide that the clearing bank has a security interest in all unsegregated securities in the dealer's clearing account. Because of this structure, the clearing lien is in effect a floating lien that attaches to securities while they are in that account.

Section 357.14. This is one of two sections dealing with the issue of resolution of competing claims that was discussed in detail in the March Rule. *See* 51 FR 8848–50. Although several alternative approaches were considered prior to the March publication, the Department ultimately decided to leave resolution of competing claims to State law. However, the Department also specifically invited comments on the issues discussed and suggestions of specific provisions dealing with competing claims.

One of the specific alternatives considered by the Department was the incorporation in this rule of a traditional bona fide purchaser ("BFP") rule. In the March Rule, the Department expressed three concerns with adoption of such a rule. The first was a theoretical concern about structuring such a rule for the book-entry environment. The second was a more practical concern that the concept of a BFP may be of limited use in a tiered book-entry system where transactions affecting a transferee's rights in a security can occur at any time after the transferee acquires BFP status. The third concern expressed by the Department was that a BFP provision could affect the efficiency and liquidity of the government securities market if it impaired the ability of clearing banks that extend daily credit to government securities dealers to collateralize their dealer loans.

The Department received eight comments that were addressed to this issue. Three commenters provided specific proposals for dealing with competing claims to securities that would include incorporation of a bona fide purchaser rule and a provision expressly providing priority for clearing liens. In addition, three commenters suggested other alternatives for resolving the issue of competing claims, and four other commenters favored a Federal rule on priorities of competing claims, although they did not suggest specific regulatory language.

After careful consideration, the Department has adopted an approach to competing claims similar to the approach suggested by the three commenters first referred to above. The Department has added a modified BFP rule in § 357.14 and a new priority provision for clearing liens in § 357.15.

The three commenters suggesting this approach include a major clearing bank, an association of government securities dealers, and an ad hoc group of attorneys from the Section on Corporations, Banking and Business law of the American Bar Association. These three commenters, as well as a number of other commenters on the issue of competing claims, all emphasized the importance of the role played by clearing banks in the government securities market. For example, one commenter stated:

> As currently structured, the government securities market could not operate efficiently without daily extensions of credit by clearing banks because clearing banks routinely permit transfers of securities from their accounts with a Federal Reserve Bank even though the funds to pay for such transfers may not be available to the clearing bank until several hours after the transfer of such securities.

As the Department recognized in the discussion of the competing claims issue in the March Rule, such extensions of credit must be fully collateralized to satisfy the safety and soundness requirements of the bank regulators.

Adoption of an unlimited BFP rule would create a significant risk to clearing banks since their security interest in securities in a dealer's clearing account could be cut off if the dealer, on its own books, transfers those securities to customers who would qualify as BFPs. To balance the interests of lower-tier investors against the need for the clearing banks to fully collateralize their extensions of credit to dealers, the Department decided to adopt the approach suggested by the three commenters referred to above that would incorporate a BFP rule but expressly provide that a qualifying clearing lien will have priority over all other claims to the same securities including those of a BFP. The Department views this approach, which provides priority only for qualifying clearing liens, as preferable to an approach that would provide a more general rule favoring the claim of all upper tier book-entry custodians over the lower tiers.

Section 357.14 expressly provides that a transferee may qualify as a good faith transferee if it acquired its interest for value, in good faith and without notice of adverse claims. To qualify as a transferee for purposes of this section, one must acquire a security under § 357.12(a) (1), (3), or (5). This is to parallel somewhat the common law requirement that to qualify as a BFP one must take delivery of the property. As with the traditional BFP concept, a good faith transferee takes a security free of all adverse claims. In effect, the rule eliminates the possibility of tracing securities beyond what one's book-entry custodian itself maintains. The Department considers this to be an appropriate result given that book-entry securities of the same issue are fungible and generally not subject to tracing.

One commenter suggested that the BFP rule also should provide that for transfers of securities from TRADES to an account in TREASURY DIRECT or for transfers on the books of a clearing corporation, the transferee could qualify as a BFP. The Department believes that for transfers from TRADES to TREASURY DIRECT, such a provision is unneeded. Section 357.21 of the TREASURY DIRECT rules provides that the form of registration of a security in TREASURY DIRECT is conclusive evidence of ownership. Such a rule is intended to preclude any assertion of adverse claims to a security held in TREASURY DIRECT. The Department has decided not to include transfers on the books of a clearing corporation at

this time for the same reasons described below that the Department has not included a clearing lien priority for clearing corporations.

The same commenter also suggested a provision that would permit explicitly the transfers of limited interests in securities to TREASURY DIRECT accounts. The commenter stated that, but for language in § 357.25 of the TREASURY DIRECT rules stating that the Department will not recognize any claims of security interests, many secured parties, including public bond trustees, would use TREASURY DIRECT for secured transactions. The Department is considering the possibility of allowing TREASURY DIRECT to be used for trust indentures but believes any revision would require a change to the TREASURY DIRECT provision rather than the provisions set forth below.

In drafting its modified BFP rule, as suggested by one commenter, the Department chose the phrase "good faith transferee" rather than "bona fide purchaser" to highlight the fact that, as described below, under these proposed rules the rights of a purchaser who acquired a security in good faith, for value and without notice of adverse claims are somewhat less broad than the rights of the traditional bona fide purchaser. Although as a matter of semantics the phrases are virtually synonymous, the Department believes it is appropriate to use a phrase that is somewhat less recognized as a legal term of art than is the phrase "bona fide purchaser."

Under § 357.14, the interest in a security of a transferee who qualifies as a good faith transferee would be subject to two categories of potential adverse claims. First, § 357.15 provides generally that a qualifying clearing lien will have priority over all other interests in a security including that of a good faith transferee. In effect, the rule provides that any transferee acquiring a security through a dealer or other entity that acquires securities through a clearing arrangement is deemed to have constructive notice of any clearing lien attaching to the transferee's security. The details of the clearing lien priority are set forth in the discussion of § 357.15 below.

In addition to the provision for a priority of a clearing lien, a good faith transferee's interest may be limited by the claims of other good faith transferees claiming the same security through the same book-entry custodian. Three of the commenters offering specific proposals to deal with competing claims recommended adoption of a similar rule. As one commenter noted, "in those cases in which the adverse claimants are customers of the same book-entry custodian," the application of a strict "last in time" priority rule produces an arbitrary result. All customers of the same book-entry custodian will generally have precisely the same relationship with the book-entry custodian and all should share pro rata the risk that the book-entry custodian will not have enough securities of the appropriate issue to satisfy all of the claimants. The rule would provide that such customers are good faith transferees but only to the extent of their pro rata share of the appropriate securities. This provision is not intended to preempt other federal law, such as the Bankruptcy Code or the Securities Investor Protection Act, on the distribution of assets in an insolvency.

A fourth comment letter that addressed the issue of competing claims also would have specified that transferees may qualify as bona fide purchasers under certain circumstances. However, instead of a specific provision dealing with clearing liens this commenter would have provided more generally that the rights of any lower-tier transferee would always be subject to the rights of higher-tier transferees. To mitigate generally favoring the upper-tiers over the lower tiers, this commenter also suggested a provision whereby a lower-tier transferee could protect its interests by requesting segregation of its securities. However, the Department is reluctant to adopt the remainder of this proposal which essentially would rely on segregation of securities. Our primary concern is that segregation is not currently a regulatory requirement that is enforced by periodic inspection of books and records. Furthermore, recent litigation suggests that even where segregation is used, it is not always maintained so as to protect properly all fully-paid securities held for customers. Legislation has been enacted that would provide for regulation of brokers and dealers in government securities and that would grant both the rulemaking and enforcement authority necessary to establish a reliable system of segregation of customer securities. However, until such a system is in place, the Department is reluctant to promulgate a rule that relies so heavily on segregation as a means of protecting an investor's interests.

An added concern is that to provide effective protection of the lowest tier under this proposal, segregation must occur at every level in the chain of accounts. Given that each tier generally only has knowledge of those with whom it deals directly, such a requirement would leave too much to chance and generally would make protected status of a customer at a lower tier depend upon too many events beyond that customer's control and upon facts it could not verify.

Two other commenters, in a joint letter, favored retaining Subpart O with one modification to correct what the commenters identified as the sole interpretative issue that has arisen under the existing regulations. The issue arose in *Wichita Federal Savings & Loan Association* v. *Comark*, 610 F. Supp. 406 (S.D.N.Y.), *vacated*, 610 F. Supp. 418 (1985). The commenters' concern with the court's decision in that case is that it would have allowed a secured party, such as a clearing bank, to be ousted of its security interest by the unilateral act of its dealer-customer. Although the court's decision was vacated, the commenters suggest that, in order to prevent any similar decision in subsequent litigation, the existing regulations be amended to state explicitly that entities holding securities directly on the books of a Federal Reserve Bank shall be deemed to be in the sole and exclusive possession of the securities. Although the proposal certainly would resolve the one interpretative issue raised by Comark and eliminate any uncertainty for entities holding securities on the books of a Federal Reserve Bank, we believe it does not adequately take into account other interpretative questions that have been raised under Subpart O. Furthermore, the proposal does not take into account the multiple interrelationships that exist in the government securities market.

In addition to the comments discussed above, one other commenter appeared to favor adoption of the State law concept of a bona fide purchaser, but felt that the proposed rule would provide only interim benefit in light of the then-pending legislation that would establish regulation of brokers and dealers in government securities. (Such legislation was enacted by Congress on October 6, 1986.) The Department believes this comment is based on a misperception about the types of regulations that Treasury may promulgate pursuant to the legislation. Although such regulations may include requirements concerning safekeeping of customer securities, it is unlikely that such regulations would become the sole basis for establishing substantive rights in securities or that they would be the basis for resolving all competing claims to securities.

Section 357.15 Under this new section, a qualifying clearing lien is one

which arises under a written agreement between a book-entry custodian and an entity providing clearing services. Clearing services are defined as delivering and receiving securities and payments for securities on behalf of other persons. A qualifying clearing lien may be asserted only by a depository institution maintaining a book-entry securities account at a Federal Reserve Bank through which the entity provides clearing services.

The Department considered providing clearing lien priority for entities not having direct access to a Federal Reserve Bank. However, given that a qualifying clearing lien may defeat the interests of a dealer's customers, it seemed advisable to limit the category of entities that could assert clearing lien priority. Furthermore, the Department believes that the level of clearing services engaged in by institutions not having accounts directly with a Federal Reserve Bank is so small that it would not justify opening up the availability of the clearing lien priority to a whole new range of institutions.

The Department intends for the provision as drafted to permit clearing lien priority for all entities currently performing clearing services for a significant number of government securities dealers. The Department recognizes that, in some cases, a portion of the clearing services performed by a depository institution through a securities account at a Federal Reserve Bank may be carried out by an operating subsidiary or an affiliate under common control with such depository institution. However, the Department has assumed that the actual extension of credit which requires the clearing lien is extended by the depository institution rather than the subsidiary or the affiliate.

The clearing lien priority is further limited by requiring that the clearing bank acquire it in good faith. This requirement is intended to exclude the availability of the priority only in cases where an institution has engaged in egregious practices. It is not intended to suggest that a clearing bank is under an obligation, as a general proposition, to investigate whether or not a dealer's customers may have a claim to the same securities that are subject to the clearing lien. For example, the majority of book-entry securities transfers are completed without human intervention through computer links between Federal Reserve Banks and depository institutions. The electronic transmissions usually contain information about parties involved in the underlying transaction. That information is ordinarily reviewed only by the book-entry custodian which is doing business with the ultimate transferee. The mere presence of that type of information should not affect the good faith of other book-entry custodians involved in a transfer. A clearing bank must be able to rely on its dealer-customer in identifying securities that are available to use as collateral for credit extended by the clearing bank.

There are three other limitations to the clearing lien priority in addition to the requirement of good faith. First, the priority is available only to the extent of credit actually extended in providing clearing services. This limitation serves to preclude assertion of the priority for other extensions of credit by a bank to its dealer customer. For those credit extensions, the Department believes that the entity extending credit outside a clearing arrangement whereby the entity finances the purchase of the securities used as collateral should bear any risk that the customer is using as collateral securities to which others might have legitimate claims.

As another limitation, the proposed rule specifically provides that a clearing lien may not be asserted against securities segregated as fully paid customer securities on the clearing bank's books. Although, as was discussed above, the Department chose not to link protection of lower tiers to segregation of securities, since segregation is not a currently required practice, the Department nevertheless believes that where segregation is maintained, it should be given its intended effect.

Two of the commenters favoring a clearing lien priority and adoption of a BFP rule would have given similar effect to segregation on the books of a clearing bank. However, these proposals would have gone further and precluded assertion of a clearing lien once the clearing bank received a notice to segregate from its dealer customer. Such a rule would appear to create a problem similar to that discussed above in connection with the *Comark* case: a clearing lien could be effectively terminated by the unilateral action of someone other than the entity that is a secured party. Although in many cases the rule may not present a problem because there will be more than enough collateral in the account subject to the clearing lien, it would appear to create an unacceptable level of uncertainty given the amount of credit extended by clearing banks on a regular basis.

As a final limitation, the clearing lien priority is effective only against claims of third parties. It may not be asserted to defeat an interest granted by the clearing bank itself.

Two commenters proposed that provisions be added to the proposed rule to permit a clearing corporation to qualify for the proposed clearing lien priority. A clearing corporation would be defined using the definition of clearing corporation set forth in Article 8 of the UCC, with certain changes intended to permit inclusion of existing registered clearing agencies.

The Department believes that there currently are no entities involved in the Treasury securities market that would fall within the definition of a clearing corporation. However, it has been brought to the Department's attention that more than one proposal is being considered by entities in the private sector, including one of the commenters referred to above, that would establish a clearing corporation for Treasury securities. The proposals are aimed at establishing a system for netting daily transactions among major participants to cut down on the number of actual transfers of securities that take place and to diminish the amount of funds that will actually move over fedwire. The Department believes that such an arrangement, properly structured, could enhance the efficiency of the market and has no wish to discourage full exploration of the possible approaches to netting and resolution of the various legal issues that would arise in structuring a netting arrangement. However, given the preferred position of a clearing lien under the proposed rule, the Department is reluctant to include provisions at this time that would allow assertion of the clearing lien by an entity of yet undetermined character. The Department believes that as the proposals become more concrete it will be easier to evaluate the appropriate way in which the arrangement may be taken into account in the regulations. A clearing lien priority may well be appropriate and the Department believes that such amendments to the rule as may be necessary would not require significant restructuring of the rules and would be relatively easy to accomplish. For these reasons, the Department decided not to include provisions dealing with clearing corporations at this time.

Section 357.16 [Section 357.15]. This section describes the duties of a book-entry custodian to provide confirmations and acknowledgments. The March Rule combined the duties and warranties of a book-entry custodian in a single section numbered § 357.15. In these rules, the warranty provisions are in a new § 357.17 discussed below.

The March Rule stated that a book-entry custodian must send confirmation

of a transfer of a security to the transferee no later than the close of business on its next business day after the day on which the transfer entry is made. The rule also provided that a book-entry custodian must send an acknowledgment of (i) the entry of a security interest on its books, or (ii) the receipt of notice of a security interest, by the close of business on its next business day after the day on which the entry is made or the notice is received, respectively.

Several comments were received relating to the use of the terms "confirmation" and "acknowledgment." It was suggested that the term "transaction statement" or "acknowledgment" be used in place of "confirmation" because of the potential confusion over the existing usage of the term "confirmation" and a possible implication that compliance with rules on confirmations promulgated by the Securities and Exchange Commission or other regulatory authorities might be required. On the other hand, another comment urged the elimination of the term "acknowledgment" in favor of the term "confirmation" because of the latter term's accepted meaning in the securities industry.

This rule retains the term "confirmation" in connection with security transfers and the term "acknowledgment" in connection with transfers of limited interests. The term "confirmation" is used in a general sense and is intended to refer to the existing practice of the issuance of a memorandum setting out the relevant details of a trade. It is not intended to imply that compliance with other regulatory requirements would automatically be required. The term "acknowledgment" is also used in a general sense. A term other than "confirmation" was chosen in connection with transfers of limited interests (including security interests), because it did not appear that the procedure set forth in the rule would necessarily correspond to existing terminology.

With respect to acknowledgments of limited interests marked on the books of a book-entry custodian, the March Rule stated that an acknowledgment must be sent to both the transferor and transferee of the security interest, on the assumption that both parties would have an established customer relationship with the book-entry custodian. Two comments pointed out that, in such a situation, it is likely that the book-entry custodian will not have a customer relationship with the secured party, and that the book-entry custodian may know nothing about the secured party other than the secured party's name. For this reason, a provision was added to this rule to the effect that if the book-entry custodian does not have the address of the transferee of the limited interest, then the transferee's acknowledgment shall be sent to the transferee at the address of the transferor.

It should be noted that because the notice-type transfer of a security interest (§ 357.13(c) of the March Rule) has been eliminated, the corresponding requirements for acknowledgment of that type of transfer have also been eliminated. It should further be noted that since acknowledgments are only required for transfer of a limited interest by the book-marking method under § 357.12(a)(4), a clearinq bank would not be required to provide confirmation of its clearing lien to a dealer because a transfer of a security interest in those circumstances occurs under § 357.12(a)(5).

The March Rule also included a provision (§ 357.15(d)) that stated that a book-entry custodian must provide to a customer, or to another person designated by the customer, upon written request, information as to the interests of any customers of the book-entry custodian in a security in which the requesting customer has an interest, as shown on the books of that book-entry custodian. This provision has been retained, but in response to a number of comments, several clarifications have been made.

Several comments raised a question about the meaning of the term "security" in this context and expressed concern about a violation of confidentiality if disclosure of the interests of other customers in securities of the same issue would be required. The language in paragraph (c) of this section has been clarified to indicate that only customer interests "in that same security" need be disclosed. For example, assume that a book-entry custodian ("book-entry custodian #1") maintains $500,000 of Treasury notes of a particular issue in its account at another book-entry custodian ("book-entry custodian #2"). A customer of book-entry custodian #1, who owns a $5,000 Treasury note of that same issue, as reflected on book-entry custodian #1's books, requests a statement under § 357.16(c) of these rules. The statement book-entry custodian #1 would be required to provide would relate only to the $5,000 Treasury note owned by the customer. However, book-entry custodian #1 would be required to identify any interests that affect either that particular note or the entire aggregate amount of notes maintained on the books of book-entry custodian #2 for the account of book-entry custodiam #1.

A statement issued by a book-entry custodian under § 357.16(c) must reflect the interests recorded on the book-entry custodian's books, and interests granted by, or in favor of, the book-entry custodian, as of the date the customer's request is received. A book-entry custodian has no obligation to advise the requester of changes that occur thereafter, unless the customer subsequently requests another statement. This rule also recognizes that to constitute an adequate request from a customer, the request must be in writing, must provide the address to which a response is to be furnished, and must be received in the department of the book-entry custodian responsible for maintaining records of book-entry securities.

A suggestion was made that the regulations should cover the question whether a standing request by a customer must be honored, and if so, when the request would become stale. This suggestion was not adopted because the Department is of the opinion that this is a matter that can be resolved by agreement between a book-entry custodian and its customer.

A number of banking institutions objected in principle to the confirmation requirements, pointing out that under rules of the Federal Reserve and other regulatory agencies, they are already subject to confirmation and record-keeping requirements in effecting securities transactions for customers. The Department agrees that if these financial institutions are already subject to such requirements, there would be little purpose in subjecting them to another set of requirements. Therefore, this section of the regulations has been amended to provide that if a book-entry custodian is subject to Federal banking regulation requiring that a confirmation be furnished to a customer for whom it effects a securities transaction, then the book-entry custodian is not subject to the confirmation requirements of these regulations, provided the book-entry custodian is in compliance with the banking regulation.

Several comments also expressed the view that a book-entry custodian and customer should be permitted to agree to waive the confirmation requirements, such as in a case where a customer only wishes to receive a statement periodically, in lieu of a confirmation of each transaction. Under these rules, a waiver is permissible only if it is specifically authorized by other Federal

regulations. The Department is reluctant to sanction a waiver in other cases, because it appears such a practice could be used to undermine the protections intended to be provided by this section.

Section 357.17 [Section 357.15]. The March Rule provided that by sending a confirmation of a transfer of a security, a book-entry custodian would (i) warrant to its transferee, and any subsequent transferee, that it had made an appropriate entry on its books, or that such an entry would be made before the book-entry custodian next opens for business, and (ii) warrant the book-entry custodian's good faith and authority. The warranty of good faith and authority included a warranty that the security described was free of claims of, or claims created by, the book-entry custodian, except as specifically noted on the confirmation; and a warranty that, to the knowledge of the book-entry custodian, the security described was free of claims, except as specifically noted on the confirmation. The March Rule also provided that by issuing a confirmation upon the request of a customer, a book-entry custodian would warrant to its customer that the information provided therein was accurate.

This section changes, to some extent, the warranties given by a book-entry custodian, and also includes warranties for other transferors of a security or security interest.

Most of the comments that addressed warranties agreed that it is appropriate for a book-entry custodian to give certain warranties, although one financial institution objected to the warranties on the basis that they would not encourage any greater degree of care on the part of the book-entry custodian. The Department agrees with the majority of the comments. Although warranties admittedly provide only limited protection to investors, such protection may have a beneficial effect. Also, as pointed out by the comments, under existing law, an "intermediary" warrants its good faith and authority. (See section 8–306(3) of the UCC.)

One financial institution suggested that a book-entry custodian should not be liable for consequential or special damages for breach of warranty, in view of the potential for large losses. This section does not address the measure of damages for breach of warranty. The Department is of the view that damages for breach of warranty could be limited by agreement between the parties to the securities transaction, provided the limitation is not unconscionable. Also, it is noted that as a general rule, consequential damages are not recoverable unless they are foreseeable.

The March Rule provided that the book-entry custodian's warranty to a transferee would arise upon the sending of a confirmation. A comment was made to the effect that the warranty should attach at the time the books are marked (*i.e.*, the time of transfer) rather than when the confirmation is sent. The Department agrees that it is desirable for the warranty to attach at the time an entry is made, because this will normally occur at an earlier point in time than the time when the confirmation is sent. Consequently, paragraph (a) of this section states that a book-entry custodian's transfer warranty arises in connection with the actual transfer of a security or an interest in a security in accordance with § 357.12.

The March Rule also provided that the warranty of a book-entry custodian would run to its transferee and any subsequent transferee. Two comments urged that the warranty run only to the immediate transferee, for reasons of consistency with existing law and the inability, in any event, of a subsequent transferee to trace a book-entry security. The Department agrees that each transferor should only give a warranty to the party with whom it deals, and this section has been changed accordingly.

Several comments expressed concerns about the warranty that a security is free of claims of, or claims created by, the book-entry custodian, and other claims of which the book-entry custodian has knowledge, except as specifically noted on the confirmation. With respect to "claims of" the book-entry custodian, two financial institutions pointed out that it may be difficult to describe a book-entry custodian's claims against its customer specifically, since many different circumstances could result in a lien or charge under the applicable custody or other agreement, and that such circumstances may not be known at the time a confirmation is sent. Because the claims between a book-entry custodian and its customer should already be known to the customer, there is no purpose in requiring that these claims be noted on a confirmation. Thus, the language relating to "claims of" a book-entry custodian has been deleted.

In connection with the claims of third parties of which the book-entry custodian has knowledge, several banks commented on their potential exposure if notices of claims are received at an office other than where the customer's account is maintained. Although these comments were prompted primarily by the provision on notice-type transfers of security interests (§ 357.13(c) of the March Rule), which has been eliminated in this proposed rule, the Department has considered whether it would be appropriate to define what constitutes "knowledge" of claims by a book-entry custodian. The Department has concluded that because of the many types of organizations involved and the unpredictability of the potential factual situations, it would be difficult to prescribe such a rule. It should be noted, however, that the Department would not consider a general disclaimer by the book-entry custodian noted on the confirmation acceptable compliance with the warranties required under paragraph (a).

A suggestion was made that a warranty should be made that, at the time of the transfer, a sufficient quantity of securities of that issue is in the transferor's account to effect the transfer to the transferee and all contemporaneous transfers to other transferees. The Department is of the view that such a provision would focus on the timing of transfers with a precision that does not actually correspond to the realities of trading in an electronic book-entry system. Nonetheless, the Department believes it is appropriate for a book-entry custodian to warrant that the security being transferred is actually present in the book-entry custodian's own account. Thus, the book-entry custodian's warranty of good faith and authority has been expanded in paragraph (a) of this section to include a warranty that the security is part or all of an amount of the same security maintained in an account of the book-entry custodian on the books of another book-entry custodian or on the books of a Federal Reserve Bank.

Another comment was made to the effect that a book-entry custodian's warranty of good faith and authority should include a warranty that a security will not be transferred from a customer's account except upon instructions from the customer or a court of competent jurisdiction. The rationale for this proposal was to provide a basis for a Federal claim against a book-entry custodian who acts negligently or fraudulently in transferring securities from an account of a customer. The Department has decided not to include it in these rules for the reason that it does not appear it would realistically create any added protection for investors.

Paragraph (c) of this section adds a warranty that is applicable to any transferor of a security or an interest in a security, other than the United States or a Federal Reserve Bank. Such a transferor warrants to its transferee that the transfer is rightful and effective and

that the transferor is acting in good faith. Paragraph (b) of this section provides that where a book-entry custodian is also the transferor of the security or an interest in a security, it will warrant to the transferee that the transfer is rightful and effective, in addition to the other warranties given by a book-entry custodian.

The transferor warranty was added in response to comments stating that a seller which is not a book-entry custodian should also give certain warranties to the purchaser. Under the regulations currently in effect, which are based on the concept that a book-entry security is deemed to be the equivalent of a bearer definitive security, a transferor would give such warranties under applicable law, among them a warranty that the transfer is effective and rightful (section 8–306 of the UCC). With the elimination of the bearer definitive fiction, commenters pointed out that the transferor warranty also would have been inadvertently eliminated in those states that have not adopted the revised UCC Article 8 (applicable to uncertificated securities).

The March Rule contained a provision stating that by sending a confirmation upon specific request of a customer, a book-entry custodian would warrant that the information provided therein is accurate. One comment was made to the effect that this provision should be deleted in the case of banks, which are already held to a high standard of care. The provision has been retained as paragraph (d) of this section because it does not appear to create any new administrative burden for book-entry custodians.

Paragraph (e) of this section retains the provision in § 357.15(f)(1) of the March Rule that by sending a confirmation of a transfer, a book-entry custodian warrants that it has made a transfer entry or that such an entry will be made before the book-entry custodian next opens for business. Although a book-entry custodian's warranty will arise under paragraph (a) of this section upon the transfer of the security or an interest in the security, rather than upon the sending of a confirmation, it is necessary to provide some assurance that an entry actually has been made or will be made before the book-entry custodian next opens for business. Thus, paragraph (e) provides that by sending a confirmation of transfer in accordance with § 357.16(a) or pursuant to a similar requirement under other Federal regulation, a book-entry custodian warrants that it has made a transfer entry as described in § 357.12(a)(3) or that such an entry will be made before the book-entry custodian next opens for business.

Paragraph (f) of this section provides that the warranties described in this section may not be disclaimed or limited by agreement. It is noted that the obligations of good faith, diligence, reasonableness and care prescribed by the Uniform Commercial Code may not be disclaimed by agreement, although the parties may by agreement determine the standards by which the performance of such obligations is to be measured if such standards are not manifestly unreasonable (See section 1–102(3) of the UCC). Paragraph (f) of this section makes clear that the warranties in these rules preempt other provisions of law which might permit the disclaimer or variation of warranties by agreement. The warranties in these rules are intended to set standards for good faith, reasonableness, and care in the applicable transactions.

Section 357.18. This section, which describes when a duty to transfer is fulfilled, is new. It was added in response to comments on the March Rule to the effect that by prescribing a Federal rule on securities transfers, the existing State law on the obligation of a transferor to deliver a security had been altered or eliminated (see UCC sec. 8–314).

Paragraph (a) of this section states that a book-entry custodian fulfills its duty to transfer a security at the time it makes an entry on its books or instructs another book-entry custodian or Federal Reserve Bank to make an entry or it instructs its book-entry custodian or Federal Reserve Bank to transfer the security to TREASURY DIRECT. The intent is that the action that must be taken is the action that is appropriate for the circumstances. For example, if a customer of a book-entry custodian (BEC #1) which maintains an account at another book-entry custodian (BEC #2) instructs BEC #1 to transfer a security to a purchaser who maintains an account at a third book-entry custodian (BEC #3), then BEC #1 has fulfilled its duty to transfer at the time it instructs BEC #2 to make a transfer entry.

Paragraph (b) provides that a transferor other than a book-entry custodian, a Federal Reserve Bank, or the United States, fulfills its duty to transfer at the time it instructs its book-entry custodian to make an entry on its books or to instruct another book-entry custodian or Federal Reserve Bank to make an entry or to transfer the security to TREASURY DIRECT. As described above, the applicable action should be appropriate to the circumstances. In addition, the transferor must instruct its book-entry custodian in the manner required by the book-entry custodian.

Section 357.19 [357.16]. Section 357.16 of the March Rule dealt with the priority of interests of the United States. It provided that a security interest in a security transferred to the United States to secure deposits of public money, deposits to Treasury tax and loan accounts, or pursuant to a similar requirement of Federal statute or regulation, shall be superior to any other interest in the security. It also provided that a security transferred to the United States shall be free of adverse claims, unless the security was acquired in a transaction in which the United States was acting in a proprietary, rather than governmental, capacity. Those provisions have been retained and redesignated as § 357.19 of this rule.

Comments were made to the effect that some limitation should be included on the ability of the United States or a Federal Reserve Bank to claim securities under these provisions that have been segregated for customers. Other comments raised the possibility that a security interest granted to the United States could operate as a "secret lien" and could cut off the claims of other parties without notice. For example, if an individual were to grant a security interest to the United States, interests of others such as a clearing bank or a dealer would be subordinated to the interest of the United States.

As noted in the discussion of the March Rule, a priority for security interests in favor of the United States is appropriate in the circumstances described because the security interests run to the benefit of the general public. As a practical matter, it is unlikely that there would be competing customer interests in any securities in which a security interest has been granted to secure Treasury tax and loan and similar accounts, because such securities are transferred on the books of a Federal Reserve Bank to a specific account maintained for the United States.

This section relates only to interests of the United States and the Department. It does not address the interests of a Federal Reserve Bank arising from its extension of credit to a clearing bank. See § 357.15 with respect to the clearing lien of a Federal Reserve Bank.

Another comment made the suggestion that in lieu of the distinction between a "proprietary" and "governmental" capacity used in this provision, that a "commercial"/"governmental" distinction would be preferable, based on concepts in

statutes such as the Foreign Sovereign Immunities Act. The comment was also made that the qualification that priority treatment would only apply to transfer of a security to the United States when the United States is acting in a "governmental" capacity should apply as well to transfers of security interests to the United States.

The Department has decided to retain the term "proprietary" because the suggested concept of a "commercial" capacity does not appear to be illuminating in this context. Arguably, the nature of every securities transaction is "commercial." With respect to the application of the governmental/proprietary concept to transfers of security interests, the Department is of the view that transfers of security interests to the United States as required by Federal statute or regulation are inherently governmental in nature, and it is thus unnecessary to introduce the concept in this part of this provision.

A new sentence was added to the end of § 357.19 to clarify that a security or a limited interest in a security required by statute or regulation that is transferred to the name of any executive department of the United States has the same priority as a security or limited interest transferred expressly to the United States or the Department. The term "executive department" is defined in 5 U.S.C. 105.

Section 357.20. This section, which is new, describes the general authority of the Federal Reserve Banks, as fiscal agents of the United States, to issue, service, maintain, and transfer book-entry securities, and to make related payments of principal and interest. The provision simply restates a similar rule in § 306.116 of Subpart O.

Section 357.21 [357.17]. Section 357.17(b) of the March Rule provided that the United States and the Federal Reserve Banks would be entitled to treat the entity in whose account a security is credited as the entity exclusively entitled to transfer the security and would not be liable for acting on the instruction of that entity. This provision now appears in paragraph (b) of this section of these rules.

One comment was made that this provision could be interpreted to permit the United States or a Federal Reserve Bank to exercise a right of set-off against securities in an account where the interests of third parties could be jeopardized. This section is not intended to address the property claims of the United States or a Federal Reserve Bank and is intended solely to enable the Federal Reserve Banks to continue to operate the Fedwire securities transfer mechanism through automated transmissions that are not reviewed by Federal Reserve Bank personnel. The property claims of a Federal Reserve Bank that may arise from extensions of credit to banks must be established or perfected as provided for in other parts of these regulations. Policy matters associated with such claims are being addressed separately by the Board of Governors of the Federal Reserve System.

Section 357.42. Paragraph (b) of § 357.42 of the proposed rule provided, in part, that in the event that the United States is unable to make a payment when due, the liability of the United States would be limited to the amount of the payment. This provision has been retained.

One comment was made suggesting that the provision be amended to state that for principal payments that are not made when due, interest at the contract rate would continue to accrue. This suggestion has not been adopted because the Department has no authority to pay interest after the maturity of a security and no funds have been appropriated for that purpose.

Section 357.44. This section, which is unchanged from the March Rule, states that notices of judicial proceedings affecting a security are to be directed to the Federal Reserve Bank or book-entry custodian, as appropriate, whose books show the interest of the person against whom the proceedings are directed.

A suggestion was made that the provision be changed to provide that an enforcement order is not effective until the Federal Reserve Bank or book-entry custodian receives written process or notification at the appropriate location. The Department has decided not to expand the provision as suggested because it is intended to be merely informational in approach. It is not intended to reach substantive questions of the effectiveness of notices or orders.

Procedural Requirements

The proposed rule is not considered a "major rule" for purposes of Executive Order 12291. A regulatory impact analysis, therefore, is not required.

Although this rule is being issued in proposed form to secure the benefit of public comment, the notice and public procedures of the Administrative Procedure Act are inapplicable, pursuant to 5 U.S.C. 553(a)(2). As no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*) do not apply.

List of Subjects in 31 CFR Part 357

Electronic funds transfer, Federal Reserve System, Government securities.

Dated: November 20, 1986.

Gerald Murphy,

Fiscal Assistant Secretary.

Part 357 of Subchapter BI of Title 31, Code of Federal Regulations, Chapter II is proposed to be amended as follows:

1. The authority citation for Part 357 continues to read as follows:

Authority: 31 U.S.C. Chapter II; 12 U.S.C. 391.

2. The Table of Contents for Part 357 is amended by adding entries for §§ 357.0, 357.1 and 357.2 to Subpart A, and by adding Subpart B, consisting of §§ 357.10–357.21, and by adding headings to §§ 357.42 and 357.44 in Subpart D to read as follows:

PART 357—REGULATIONS GOVERNING BOOK-ENTRY TREASURY BONDS, NOTES AND BILLS (DEPARTMENT OF THE TREASURY CIRCULAR, PUBLIC DEBT SERIES NO. 2-86)

Subpart A—General Information

Subpart B—Treasury/Reserve Automated Debt Entry System (TRADES)

Subpart D—Additional Provisions

3. Sections 357.0, 357.1, and 357.2 are added to Subpart A to read as follows:

Subpart A—General Information

§ 357.0 Dual book-entry systems.

Securities to which this Part applies, as set forth in § 357.1, shall be maintained in either of the following two book-entry systems, and may be transferred from one system to the other in accordance with this Part:

(a) *Treasury/Reserve Automated Debt Entry System (TRADES).* A security is maintained in TRADES if it is credited to a securities account maintained at a Federal Reserve Bank. *See* Subpart B for rules pertaining to TRADES.

(b) *TREASURY DIRECT Book-entry Securities System (TREASURY DIRECT).* A security is maintained in TREASURY DIRECT if it is credited to a TREASURY DIRECT account as described in § 357.20 of this Part.[1] See Subpart C for rules pertaining to TREASURY DIRECT.

§ 357.1 Applicability.

(a) This Part applies to all transactions in securities in book-entry form that occur on or after [the date which is 60 calendar days after the date of publication of Subparts A, B, and D of this Part in final form], except that:

(1) A security may not be transferred to or maintained in TREASURY DIRECT unless the offering circular applicable to such security specifies that it is eligible to be maintained in TREASURY DIRECT or until such time as the Secretary announces that such security has become eligible to be maintained in TREASURY DIRECT; and

(2) Nothing contained in the rules set forth in this Part shall limit or restrict existing rights and duties of the United States with respect to any security issued and outstanding prior to the date such security becomes eligible to be maintained in TREASURY DIRECT. In addition, these rules shall not affect the rights that parties have acquired in a transaction in such outstanding securities that occurred prior to [the date which is 60 calendar days after the date of publication of Subparts A, B, and D of this Part in final form] and that was rightful and effective under the regulations and law then applicable to such outstanding security.

(b) For purposes of determining the applicability of Subpart B of this Part to a transaction in a security in accordance with paragraph (a) of this section, a transaction involving a transfer of a security or a limited interest in a security will be deemed to have occurred on the date on which occurs the act that constitutes the transfer of the security or of the limited interest in a security as described in this Part. For purposes of the preceding sentence, the parties to a transaction that will involve two or more transfers of a security or a limited interest in a security and that will continue beyond the date specified in paragraph (a), may agree in writing either that the entire transaction shall be governed by Part 357 or that the entire transaction shall be governed by applicable Treasury regulations as in effect prior to adoption of Part 357.

(c) For transactions in securities that were issued prior to [the date which is 60 days after the date of publication of Subparts A, B, and D of this Part in final form] this Part supplements, amends, and modifies the regulations contained in Subpart O Department Circular No. 300, current revision (31 CFR Part 306) and Department Circular, Public Debt Series No. 26–76 (31 CFR Part 350), and to the extent that the rules contained in this Part are inconsistent with the regulations contained in Circular Nos. 300 and 26–76, the rules of this Part shall control, subject only to the limitation set forth in paragraph (a)(2) of this section.

§ 357.2 Governing law.

(a) The rights and obligations of the United States and the Department with respect to securities to which this Part applies are governed solely by applicable Treasury regulations, including the regulations of this Part, the offering circular, the announcement and/or notice of the offering, and other applicable Federal law (hereinafter collectively referred to as "applicable Federal law").

(b) The rights and obligations arising out of interests in securities, other than rights and obligations of the United States, are governed by applicable Federal law, except as provided in paragraph (c) of this section.

(c) Notwithstanding paragraph (b) of this section, the rights and obligations, other than rights and obligations of the United States, arising out of interests in securities maintained on the books of a book-entry custodian at a place outside the United States, its territories or possessions are governed by applicable foreign law, if the business of such book-entry custodian conducted at such place is subject to the laws of a jurisdiction other than the United States, its territories or possessions, and such book-entry custodian and its customer have not made a valid choice of applicable Federal law with respect to such securities.

4. Section 357.3 is revised to read as follows:

§ 357.3 Definitions.

In this Part, unless the context indicates otherwise:

"Bill" means an obligation of the United States, with a term of not more than one year issued under Chapter 31 of Title 31 of the United States Code, in book-entry form.

"Bond" means an obligation of the United States, with a term of more than ten years, issued under Chapter 31 of Title 31 of the United States Code, in book-entry form.

"Book-entry custodian" is a person other than the Department or a Federal Reserve Bank, that in the ordinary course of its business maintains book-entry securities accounts for other persons. A book-entry custodian may have a security interest in securities held for another person and also may hold securities for its own account.

"Clearing bank" means a depository institution, as defined below but excluding a depository institution described in paragraph (g), which has a book-entry securities account at a Federal Reserve Bank through which it provides clearing services.

"Clearing lien" means a security interest granted to a clearing bank or Federal Reserve Bank, pursuant to a written agreement, to secure credit extended in providing clearing services.

"Clearing services" means delivering and receiving securities and payments for securities on behalf of other persons.

"Department" means the United States Department of the Treasury and, where appropriate, the Federal Reserve Banks acting as fiscal agents of the United States.

"Depository institution" means an entity described in section 19(b) of the Federal Reserve Act (12 U.S.C. 461(b)). Under section 19(b) of the Federal Reserve Act, the term "depository institution" includes:

(a) Any insured bank as defined in 12 U.S.C. 1813 or any bank which is eligible to make application to become an insured bank under 12 U.S.C. 1815;

(b) Any mutual savings bank as defined in 12 U.S.C. 1813 or any bank which is eligible to make application to become an insured bank under 12 U.S.C. 1815;

(c) Any savings bank as defined in 12 U.S.C. 1813 or any bank which is eligible to make application to become an insured bank under 12 U.S.C. 1815;

(d) Any insured credit union as defined in 12 U.S.C. 1752 or any credit

[1] TREASURY DIRECT accounts are maintained through a system administered by the Federal Reserve Bank of Philadelphia, acting as fiscal agent of the United States. Such accounts may be accessed by investors in accordance with Subpart C through any Federal Reserve Bank or the Bureau of the Public Debt.

union which is eligible to make application to become an insured institution under 12 U.S.C. 1781;

(e) Any member as defined in 12 U.S.C. 1422;

(f) Any insured institution as defined in 12 U.S.C. 1724 or any institution which is eligible to make application to become an insured institution under 12 U.S.C. 1726; and

(g) For the purpose of 12 U.S.C. 248(o), 342 to 347, 347c, and 372, any association or entity which is wholly owned by or which consists only of institutions referred to in paragraphs (a) through (d) of this definition.

"Entity" means any person except an individual.

"Federal Reserve Bank" or "Reserve Bank" means a Federal Reserve Bank or Branch.

"Financial institution" means, for purposes of direct deposit, an institution which has agreed to receive credit payments under 31 CFR Part 210, as amended from time to time, and has not withdrawn its participation in a direct deposit program under Part 210, or an institution which is willing to agree to receive credit payments under 31 CFR Part 210 and has enrolled with its Federal Reserve Bank.

"Incompetent" means an individual who is legally, medically or mentally incapable of handling his or her business affairs, except that a minor is not an incompetent solely because of age.

"Issue" means a group of securities, as defined in this section, that is identified by the same CUSIP number.

"Maturity value" is the amount that the Department is obligated to pay when a security matures.

"Minor" means an individual who is under the age of majority, as determined by applicable state law.

"Note" means an obligation of the United States, with a term of at least one year, but of not more than ten years, issued under Chapter 31 of Title 31 of the United States Code, in book-entry form.

"Original issue" means the offering by the Department of the Treasury of a marketable Treasury security to the public and its issuance in book-entry accounts maintained either directly by the Treasury or held through a Federal Reserve Bank.

"Owner," as used in Subpart C, means the individual(s) or entity in whose name a security is registered. If a security is registered in more than one name, the term "owner" includes all those whose names appear on the registration and are authorized by this Part to make a transaction request on a security held in TREASURY DIRECT.

"Person" means and includes an individual, corporation, company, governmental entity, association, firm, partnership, trust, estate, and any other similar organization.

"Redemption" means payment of a security at maturity, or pursuant to a call for redemption in accordance with the terms of a security.

"Representative" includes an executor, administrator, legal guardian, committee, conservator, and any similar person or entity appointed by a court to represent the estate of a decedent, minor, or incompetent, as well as a trustee, whether appointed by a court or otherwise.

"Secured party" is a person in whose favor there is security interest.

"Security" means a bond, note, or bill, each as defined in this section, and any other obligation issued by the Department that, by the terms of the applicable offering circular or announcement, is made subject to this Part. Solely for purposes of this Part, it also means the interest and principal components of a security eligible for Separate Trading of Registered Interest and Principal of Securities ("STRIPS"), if such security has been divided into such components by the express terms of the offering circular under which the security was issued and the components are maintained separately on the books of a Federal Reserve Bank. A security shall be deemed a security for purposes of State law.

"Security agreement" means an agreement that creates a security interest.

"Security interest" and "pledge" mean an interest in a security, which interest is acquired by a secured party to secure payment or performance of an obligation and is created by a security agreement between the person having such obligation and the secured party.

"Taxpayer identifying number" or "TIN" means a social security account number or an employer identification number, as appropriate.

"TRADES" is the Treasury/Reserve Automated Debt Entry System.

"Transaction request" means a request to effect a change in an account master record or securities portfolio maintained in TREASURY DIRECT.

"Transaction request form" means a form or series of forms prescribed for use by the Department to request a transaction in TREASURY DIRECT. (This term includes a document that the Department has determined contains all of the elements required by the transaction request form.)

"TREASURY DIRECT" is the TREASURY DIRECT Book-Entry Securities System.

5. New Subpart B, consisting of §§ 357.10 through 357.21, is added to read as follows:

Subpart B—Treasury/Reserve Automated Debt Entry System (TRADES)

§ 357.10 Payment of interest; payment at maturity or upon call.

(a) Interest on securities maintained in TRADES shall be credited to such reserve or other account at a Federal Reserve Bank as is designated by the entity to whose securities account at such Federal Reserve Bank such securities have been credited.

(b) Securities maintained in TRADES shall be redeemed at maturity or upon call by charging the securities account in which they are maintained and by crediting the amount of the redemption proceeds, including both principal and interest, where applicable, to such reserve or other account at a Federal Reserve Bank as is designated by the entity whose securities account at such Federal Reserve Bank was charged.

(c) The obligation of the Department and the United States to make payments of interest and principal on securities held in TRADES shall be discharged at the time payment in the appropriate amount is credited to an account at a Federal Reserve Bank in accordance with paragraph (a) or (b) of this section.

(d) Subject to any rights it may have as a secured party under a written security agreement, a book-entry custodian that is maintaining securities on behalf of another person shall, upon receipt of any payment in accordance with paragraph (a) or (b) of this section relating to such securities, make such payment available for withdrawal or use by such other person at the earliest possible time on such date of receipt and in any event not later than the close of business on such date of receipt.

§ 357.11 Rights acquired upon transfer and perfection.

(a) Upon transfer of a security in accordance with § 357.12, the transferee acquires the rights in the security that the transferor had or had actual authority to convey.

(b) A transferee of a limited interest (including a security interest) in a security acquires rights only to the extent of the interest transferred and to the extent described in § 357.13. The creation of a security interest as described in § 357.13(a) or the termination of a security interest as described in § 357.13(e) constitutes a transfer of a security interest for purposes of this paragraph.

§ 357.12 Transfers.

(a) Transfer of a security or a limited interest (including a security interest) in a security to a transferee occurs only:

(1) At the time an entry is made on Federal Reserve Bank books that credits a security to a securities account maintained for the transferee; or

(2) With respect to the transfer of a limited interest in accordance with § 357.20(a), at the time an entry is made on the books of the Federal Reserve Bank on whose books the interest of the transferor appears identifying such limited interest in favor of the transferee; or

(3) At the time an entry is made on the books of a book-entry custodian that credits such security to a securities account maintained for the transferee or that otherwise permits identification of the transferee and the security transferred; or

(4) With respect to the transfer of a limited interest other than the transfer of a security interest as described in paragraph (a)(5) of this section, at the time an entry is made on the books of the book-entry custodian on whose books the interest of the transferor appears identifying such limited interest in favor of the transferee; or

(5) With respect to the transfer of a security interest where the secured party is to be the book-entry custodian on whose books the interest of the transferor of the security interest appears, when both the security has been transferred to the transferor of the security interest in accordance with this section, and the transferor has executed a written security agreement with the book-entry custodian granting the book-entry custodian such security interest.

(b) By written agreement, a transferor and a transferee of a limited interest under paragraph (a)(4) or a security interest under paragraph (a)(5) of this section may place additional conditions on the transfer of such limited interest that delay the effectiveness of such transfer until such time as the specified conditions have been fulfilled. Notwithstanding any such conditions that may be agreed to as described in the preceding sentence, the book-entry custodian effecting a transfer under paragraph (a)(4) shall be entitled to treat the transfer as effective as to both the transferor and the transferee, unless the book-entry custodian is a party to such agreement.

(c) A transfer under paragraph (a) (3), (4), or (5) of this section is effective only if the security transferred or the security in which the limited interest is granted is part or all of an amount of securities of the same issue that (1) are maintained at a Federal Reserve Bank in an account of the book-entry custodian effecting the transfer, or (2) is credited on the books of another book-entry custodian to an account of the book-entry custodian effecting the transfer and is maintained at a Federal Reserve Bank.

(d) For the purposes of this section, an entry is made if it is (1) in writing on tangible media, (2) displayable in writing (such as on a video screen) from data contained in or retrievable by electronic or other data processing equipment, or (3) convertible into either form within a reasonable time without undue delay or unreasonable expense.

(e) A security eligible to be maintained in TREASURY DIRECT under § 357.1(a)(1) may be transferred from an account in TRADES to an account in TREASURY DIRECT in accordance with § 357.22(a). A transfer of a security from TREASURY DIRECT to TRADES is effective when the book-entry custodian of the transferee designated on the transaction request form by the transferor makes an entry on its books that credits such security to a securities account maintained for the transferee or that otherwise permits identification of the transferee and the security transferred.

§ 357.13 Enforceability, perfection and termination of a security interest.

(a) A security interest is enforceable between the grantor of the security interest and the secured party, only if:

(1) The security interest has been granted pursuant to a security agreement between the grantor of the security interest and the secured party,

(2) The grantor of the security interest has rights in the security, and

(3) The secured party has given value.

(b) A security interest becomes perfected and enforceable against third parties at the time at which the security or security interest has been transferred to the secured party pursuant to § 357.12(a).

(c) Prior to the time a security interest becomes perfected in accordance with paragraph (b) of this section, if the security agreement referred to in paragraph (a)(1) of this section has been reduced to written form signed by the grantor of the security interest and containing a description of the collateral, a security interest is perfected and enforceable against third parties for a period of seven (7) calendar days from the date on which it became enforceable against the grantor under paragraph (a) of this section. Thereafter, a security interest will continue to be perfected only if, no later than the seventh day of the period described in this paragraph, the security interest becomes perfected in accordance with paragraph (b) of this section. If the security interest does not become perfected in accordance with paragraph (b) within the seven-day period, the security interest will become unperfected and unenforceable against third parties, but will continue to be enforceable between the secured party and the grantor of the security interest, until the time at which the transfer requirement of paragraph (b) has been complied with, and the security interest will be deemed to be perfected only as of such time.

(d) A security interest that is perfected in accordance with this section shall be perfected for all purposes, including but not limited to the applicability of any state or local law concerning priority of perfected security interests.

(e) A security interest in a security is terminated by (1) transfer of the security, by or with the agreement of the secured party, to the grantor of the security interest, a designee of the grantor, or any successor in interest of the grantor, (2) fulfillment of the obligation for which the security interest was granted, or (3) written release of the security interest signed by the secured party.

§ 357.14 Good faith transferee.

(a) A good faith transferee is a transferee that acquired a security or a limited interest in a security for value, in good faith, and without notice of any adverse claim.

(b) Except as otherwise provided in §§ 357.15 and 357.19, a good faith transferee, in addition to acquiring rights in a security in accordance with § 357.11, acquires its interest in the security free of any adverse claim which arose prior to the transfer of such interest to such transferee.

(c) An "adverse claim" includes a claim that a transfer was or would be wrongful or that a particular adverse person is the owner of or has an interest in the security.

(d) A transferee is a transferee for purposes of this section if:

(1) The transferee takes a security or a limited interest in a security by any voluntary transaction creating or granting an interest in a security, and not solely by operation of law; and

(2) Such security or limited interest is transferred to the transferee in accordance with the provisions of § 357.12(a)(1), (a)(3), or (a)(5).

(e) Among transferees whose interests in securities are reflected on the books of the same book-entry custodian, the interests of the good faith transferees shall have priority over the interests of those who do not qualify as good faith

transferees. In the event that the claims to securities of the same issue of those who qualify as good faith transferees exceed the aggregate amount of such securities available to satisfy their claims, the good faith transferees shall share ratably in the available securities of that issue.

(f) Notwithstanding § 357.11, the transferee of a security or a limited interest that has been a party to any fraud or illegality affecting the security, or that as a prior transferee of the security had notice of an adverse claim, cannot improve its position by taking from a good faith transferee.

§357.15 Clearing lien priority.

(a) A clearing lien in a security shall have priority over all other claims of third parties to that security including claims of a transferee that qualifies as a good faith transferee except that:

(1) All clearing liens are subject to any interests of the United States in the same security as provided in § 357.19; and

(2) A clearing lien asserted by a clearing bank is subject to a clearing lien of a Federal Reserve Bank in the same security.

(b) A clearing lien qualifies for the priority provided under this section only to the extent of credit actually extended in performing clearing services and only if:

(1) The lien is perfected in accordance with § 357.13(b); and

(2) The lien was acquired in good faith.

(c) A clearing lien may not be asserted by a clearing bank against securities which the clearing bank has segregated or otherwise identified on its own books as securities belonging to customers of a book-entry custodian for which the clearing bank provides clearing services, except where such customers have agreed in writing to permit use of their securities as collateral. A clearing lien may not be asserted by a Federal Reserve Bank against securities which are segregated on the books of the Federal Reserve Bank as securities belonging to customers of the depository institution for which the Federal Reserve Bank provides clearing services except where such customers have agreed in writing to permit use of their securities as collateral.

§ 357.16 Duties of book-entry custodians.

(a) A book-entry custodian shall send to its customer confirmation of a transfer of a security to such customer under § 357.12(a)(3) no later than the close of business on its next business day after the day on which the entry described in § 357.12(a)(3) is made.

(b) A book-entry custodian shall send an acknowledgment of the transfer of a limited interest in accordance with § 357.12(a)(4) to the transferor and to the transferee of such limited interest no later than the close of business on its next business day after the day on which the entry described in § 357.12(a)(4) is made. If the transferee has not provided the book-entry custodian with its address, the acknowledgment required to be sent to the transferee shall be sent to the transferee at the address of the transferor.

(c) A book-entry custodian, upon receipt of an adequate request by a customer, shall provide a statement to such customer or a designee of such customer, of:

(1) The interest in such security of such customer and any other customer in that same security, as such interests appear on the books of the book-entry custodian as of the date the request is received, and

(2) Any limited interest in favor of the book-entry custodian, or granted by the book-entry custodian to a third party, as of the date the request is received. For purposes of this paragraph, an adequate request is a request in writing, that provides the address to which a response is to be sent, and which is received at the department of the book-entry custodian that is responsible for maintaining the records of book-entry securities. For purposes of this paragraph, a customer of a book-entry custodian is any person whose interest in a security, including a limited interest, is recorded on the books of the book-entry custodian.

(d) Any confirmation, acknowledgment, or statement issued pursuant to this section must be delivered in writing or in such other form that at the option of the recipient may be reduced to writing.

(e) For purposes of this section, if any book-entry custodian is subject to a regulation of the Board of Governors of the Federal Reserve System, Office of the Comptroller of the Currency, Federal Deposit Insurance Corporation, or other Federal regulatory agency under which a book-entry custodian effecting a securities transaction for a customer is required to furnish to its customer a confirmation or written notification of the transaction, then such book-entry custodian shall not be subject to the requirements of this section so long as it is in compliance with such regulation.

(f) A confirmation, acknowledgment, or statement required under this section may not be waived by the person entitled to receive it unless such waiver is specifically authorized by Federal regulation referred to in paragraph (e) of this section.

§ 357.17 Warranties.

(a) In connection with any transfer of a security or an interest in a security in accordance with § 357.12, a book-entry custodian warrants its good faith and authority. Such warranty of good faith and authority shall include, but shall not be limited to:

(1) A warranty that the security described in any required confirmation is free of any lien, encumbrance, or claim, including any adverse claim of ownership, granted by the book-entry custodian except as specifically noted on the confirmation;

(2) A warranty that, to the knowledge of the book-entry custodian, the security described in the confirmation is free of any other claims, except as specifically noted on the confirmation; and

(3) A warranty that the security is part or all of an amount of the same security maintained in an account of the book-entry custodian on the books of another book-entry custodian or on the books of a Federal Reserve Bank.

(b) A book-entry custodian that is also the transferor of the security or an interest in a security warrants to the transferee that the transfer is rightful and effective, in addition to the warranties described in paragraph (a) of this section.

(c) Any transferor of a security or an interest in a security, other than the United States, a Federal Reserve Bank, or a book-entry custodian, warrants to its transferee that the transfer is rightful and effective and that the transferor is acting in good faith.

(d) By providing a statement in accordance with § 357.16(c) or pursuant to a similar requirement under other Federal regulation, a book-entry custodian warrants to its customer that the information provided therein is accurate.

(e) By sending a confirmation in accordance with § 357.16(a) or pursuant to a similar requirement under other Federal regulation or an acknowledgment in accordance with § 357.16(b), a book-entry custodian warrants to its transferee that the book-entry custodian has made an entry as described in § 357.12(a) (3) or (4), as appropriate, or that such an entry will be made before the book-entry custodian next opens for business.

(f) The warranties described in this section may not be disclaimed or limited by agreement.

§ 357.18 Duty to transfer.

(a) Unless otherwise agreed, a book-entry custodian fulfills its duty to transfer a security at the time:

(1) It makes an entry on its books or instructs another book-entry custodian to make such an entry in accordance with § 357.12(a)(3);

(2) It instructs a Federal Reserve Bank to make an entry in accordance with § 357.12(a)(1); or

(3) It instructs its book-entry custodian or Federal Reserve Bank to transfer the security to TREASURY DIRECT.

(b) Unless otherwise agreed, a transferor other than the United States, a Federal Reserve Bank, or a book-entry custodian fulfills its duty to transfer at the time it instructs its book-entry custodian, in the manner required by such book-entry custodian:

(1) To make an entry on its books or instruct another book-entry custodian to make such an entry in accordance with § 357.12(a)(3);

(2) To instruct a Federal Reserve Bank to make an entry in accordance with § 357.12(a)(1); or

(3) To transfer the security to TREASURY DIRECT.

§ 357.19 Priority of interests of the United States.

A limited interest in securities transferred to the United States or the Department to secure deposits of public money or deposits to the Treasury tax and loan accounts, or any other limited interest in favor of the United States that is required by Federal statute or regulation and is transferred to the United States or the Department, shall be superior to any other interest created in such securities, whenever created. A security transferred to the United States or the Department shall be free of any adverse claims, whenever created, unless the security was acquired in a transaction in which the United States or the Department was acting in a proprietary rather than governmental capacity. For purposes of this section, a security or a limited interest in a security is transferred to the United States if an entry is made in accordance with § 357.12 identifying either the United States or any executive department thereof as the transferee.

§ 357.20 Authority of Federal Reserve Banks.

Each Federal Reserve Bank is hereby authorized as fiscal agent of the United States to issue securities offered and sold by the Department to which this Subpart applies, in accordance with the terms of the applicable offering circular and with procedures established by the Bureau of the Public Debt; to service and maintain such securities in securities accounts established for such purposes; to make payments of principal and interest on such securities, as directed by the Department; and to effect transfer of securities between securities accounts as directed by the entities for which such securities accounts are maintained.

§ 357.21 Rights of the United States and Federal Reserve Banks with respect to transfers on Federal Reserve Bank records.

(a) A transfer of a limited interest on the books of a Federal Reserve Bank under § 357.12(a)(2) may be made to a person or entity other than a Federal Reserve Bank or the United States only pursuant to an order of a Federal court or a specific requirement of Federal law or by agreement with the Federal Reserve Bank on whose books the transfer is to be recorded. In the event that a limited interest is transferred on the books of a Federal Reserve Bank pursuant to § 357.12(a)(2), that Federal Reserve Bank shall recognize the interest of the transferee only to the extent expressly set forth in the applicable Federal statute or regulations, that Federal Reserve Bank's operating circulars and letters, or by specific agreement with the transferee.

(b) Except as otherwise provided in paragraph (a) of this section, and notwithstanding any information or notice to the contrary, the United States and the Federal Reserve Banks shall be entitled to treat the entity in whose account a security is credited as the entity exclusively entitled to effect transfers of such security, to receive interest and other payments with respect to such security and otherwise to exercise control over the security. Subject only to any requirements to recognize the interest of a transferee, as described in paragraph (a) of this section, a Federal Reserve Bank that has transferred a security or a limited interest according to the instruction of the entity in whose account the security is maintained, shall not be liable for conversion or participation in breach of fiduciary duty even though the instructing entity had no right to issue the instruction. The Federal Reserve Bank shall be fully discharged by completing the order of the entity in whose account the security is maintained.

6. Subpart D is amended by adding text to §§ 357.42 and 357.44. Sections 357.40, 357.41, 357.43, and 357.45 are republished.

Subpart D—Additional Provisions

§ 357.40 Additional requirements.

In any case or any class of cases arising under these regulations, the Secretary of the Treasury ("Secretary") may require such additional evidence and a bond of indemnity, with or without surety, as may in the judgment of the Secretary be necessary for the protection of the interests of the United States.

§ 357.41 Waiver of regulations.

The Secretary reserves the right, in the Secretary's discretion, to waive any provision(s) of these regulations in any case or class of cases for the convenience of the United States or in order to relieve any person(s) of unnecessary hardship, if such action is not inconsistent with law, does not impair any existing rights, and the Secretary is satisfied that such action will not subject the United States to any substantial expense or liability.

§ 357.42 Liability of Department and Federal Reserve Banks.

(a) The Department and the Federal Reserve Banks may rely on the information provided in a tender or transaction request form and are not required to verify the information. The Department and the Federal Reserve Banks shall not be liable for any action taken in accordance with the information set out in a tender or transaction request form or evidence submitted in support thereof.

(b) In the event that the United States or the Department is unable to make a payment on a security when due, the liability of the United States and the Department is limited to the amount of the payment. In the event that the United States or the Department is unable to take any other action with respect to securities to which this Part applies, neither the United States nor the Department shall be liable for failure to take such action if such failure to take action is due to an event which is beyond the reasonable control of the United States or the Department. An event which is beyond reasonable control includes but is not limited to natural disasters, acts of God, war or other civil commotion, accident, computer or other equipment failure, or the failure or interruption of electrical power or of communications lines.

§ 357.43 Liability for transfers to and from TREASURY DIRECT.

A depository institution or other entity that transfers to, or receives, a security from TREASURY DIRECT is deemed to be acting as agent for its customer and

agrees thereby to indemnify the United States and the Federal Reserve Banks from any claim, liability, or loss resulting from the transaction.

§ 357.44 Notices of attachment for securities in TRADES.

In the event of judicial proceedings in which a person seeks to attach a security maintained by a Federal Reserve Bank for an entity's account or to obtain an order concerning disposition of such securities, any notice of attachment or other notice arising from such judicial proceeding shall be directed to the Federal Reserve Bank on whose books such security is maintained. In all other cases in which a person seeks to attach a security maintained in TRADES or to obtain an order concerning disposition of such security, any notice of attachment or other notice arising from such judicial proceeding shall be directed to the book-entry custodian on whose books appears the interest of the person against whom the attachment or other disposition is sought.

§ 357.45 Supplements, amendments or revisions.

The Secretary may, at any time, prescribe additional supplemental, amendatory or revised regulations with respect to securities, including charges and fees for the maintenance and servicing of securities in book-entry form.

[FR Doc. 86-26591 Filed 11-25-86; 8:45 am]
BILLING CODE 4810-10-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD8-86-11]

Drawbridge Operations Regulations; Pascagoula River, MI

AGENCY: U.S. Coast Guard, DOT.

ACTION: Proposed rule.

SUMMARY: At the request of the Mississippi State Highway Department, the Coast Guard is considering a change to the regulation governing the operation of the U.S. Highway 90 drawbridge across the Pascagoula River, mile 1.8 at Pascagoula, Mississippi. The proposed change would permit the draw of the bridge to remain closed to navigation from 6:15-7:15 a.m., 7:25-8 a.m. and 3:30-4:45 p.m. Monday through Friday except holidays. The bridge presently is permitted to remain closed to vessel traffic from 6:15-7:15 a.m., 7:25-8 a.m., 3:15-4:15 p.m., and 4:30-5:30 p.m. Monday through Friday except holidays.

This proposal is being made because of an increase in vehicular traffic and a change in the pattern of vehicular traffic flow. This action should help to relieve congestion at the bridge site during the peak hours of traffic flow, while still providing for the reasonable needs of navigation.

DATE: Comments must be received on or before January 12, 1987.

ADDRESS: Comments should be mailed to Commander (obr), Eighth Coast Guard District, 500 Camp Street, New Orleans, Louisiana 70130. The comments and other materials referenced in this notice will be available for inspection and copying in Room 1115 at this address. Normal office hours are between 8:00 a.m. and 3:30 p.m., Monday through Friday, except holidays. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: Perry Haynes, Chief, Bridge Administration Branch, at the address given above, telephone (504) 589-2965.

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

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

Drafting Information

The drafters of this notice are Perry Haynes, project officer, and Lieutenant Commander James Vallone, project attorney.

Discussion of Proposed Regulation

The U.S. Highway 90 drawbridge across the Pascagoula River, mile 1.8 at Pascagoula, has a closed vertical clearance of 31 feet above high water. Waterway traffic consists of commercial vessels, fishing boats and recreational craft. Data submitted by the Mississippi State Highway Department show that vessel traffic flow remains approximately the same as it was upon implementation of the current regulations, while vehicular traffic has increased and the traffic flow has changed.

Economic Assessment and Certification

This proposed regulation is considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under the Department of Transportation regulatory policies and procedures (44 FR 11034: February 26, 1979).

The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. The basis for this conclusion is that the bridge will actually remain in the closed to navigation position less than with the current regulation. The new closure time is requested in an effort to expedite the flow of the changed vehicular traffic pattern. Since the economic impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 117

Bridges.

Proposed Regulation

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

PART 117—DRAWBRIDGE OPERATION REGULATIONS

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

Authority: 33 U.S.C. 499; 49 CFR 1.46(c)(5); 33 CFR 1.05-1(g).

2. Section 117.683 is revised to read as follows:

§ 117.683 Pascagoula River.

The draw of the US90 bridge mile 1.8 at Pascagoula, shall open on signal; except that, from 6:15 a.m. to 7:15 a.m., 7:25 a.m. to 8 a.m., and 3:30 p.m. to 4:45 p.m. Monday through Friday except Federal holidays, the draw need not be opened for the passage of vessels.

Dated: November 14, 1986.

E.B. Acklin,

Captain, U.S. Coast Guard Commander 8th Coast Guard, District, Acting.

[FR Doc. 86-26767 Filed 11-26-86; 8:45 am]
BILLING CODE 4910-14-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

42 CFR Part 57

Grants for Advanced Nurse Training Programs

AGENCY: Public Health Service, HHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule would revise existing regulations governing the program of Grants for Advanced Nurse Training, authorized by section 821 of the Public Health Service Act (the Act) amending the eligibility criteria to specify that up to 1 year of planning time is allowed for all projects to plan, develop and operate an advanced nurse education program This proposal would also revise the regulations to incorporate the amendments made to section 821 of the Act by Pub. L. 99–92, the Nurse Education Amendments of 1985 enacted on October 22, 1985 and Pub. L. 99–129, the Health Professions Training Assistance Act enacted on October 22, 1985.

DATE: Comments must be received by January 27, 1987. When these proposed rules are issued as final rules, technical changes made to conform the regulations to legislative amendments will be made effective as of the effective date in the relevant legislation.

ADDRESSES: Written comments should be addressed to Mr. Thomas D. Hatch, Director, Bureau of Health Professions, Health Resources and Services Administration, Room 8–05, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857. All comments received will be available for public inspection and copying at the Office of Program Support, BHPr, Room 7–74, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland, weekdays (Federal holidays excepted) between the hours of 8:30 a.m. and 5:00 p.m.

FOR FURTHER INFORMATION CONTACT: Mrs. Gretchen A. Osgood, R.N., M.S., Deputy Director, Division of Nursing, Bureau of Health Professions, Health Resources and Services Administration, Room 5C–26, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857; telephone number 301 443–5786.

SUPPLEMENTARY INFORMATION: Section 821 of the Public Health Service Act (the Act), authorizes the award of grants to public and private nonprofit collegiate schools of nursing to meet the costs of projects to: (a) Plan, develop, and operate, (b) expand, or (c) maintain programs which lead to masters' and doctoral degrees and which prepare nurses to serve as nurse educators, administators, or researchers or to serve in clinical nurse specialities determined by the Secretary to require advanced education. Final regulations for the Grants for Advanced Nurse Training Program are codified at 42 CFR Part, 57, Subpart Z.

The Department is proposing to amend the eligibility criteria in the existing regulations to shorten the planning time for projects to plan, develop and operate an advanced nurse education program. In 1975, when the program was authorized, few doctoral programs in nursing existed. A long planning time was important to assure that the program could obtain approval by their respective States. Now, with a number of doctoral programs in existence, significantly sophisticated faculties and stronger university support, it is believed that up to 1 year of federally supported planning time is sufficient. Therefore, it is proposed to revise § 57.2503, *"Eligibility."*, to specify a planning time of up to 1 year for all projects to plan, develop and operate advanced nurse education programs.

Interested persons may submit written comments to this proposal to the Director of the Bureau of Health Professions at the address given above. Following the close of the comment period, the regulation will be revised as warranted by public comment.

In addition to the above, a number of amendments are necessary to conform the existing regulations with Pub. L. 99–92 and with Pub. L. 99–129 as follows:

1. Revise the title of 42 CFR Part 57, Subpart Z from "Grants for Advanced Nurse Training Program" to "Grants for Advanced Nurse Education Program," and strike out the word "training" and insert in lieu thereof "education" wherever it appear in the text.

2. Revise § 57.2501, *"Applicability."*, to include as eligible the projects which prepare nurse researchers and substitute "public and private nonprofit" for "public and nonprofit private" when referring to collegiate schools of nursing.

3. Revise § 57.2502, *"Definitions."*, to change the following terms:

(a) The definition of "State" by striking out "the Canal Zone" and inserting in lieu thereof "the Commonwealth of the Northern Mariana Islands";

(b) The definition of "Advanced nurse education program" to specify the level of education in nursing from "graduate degree" to "masters' and doctoral degrees", and add "researchers" to the fields of nurse specialties that require advanced education; and

(c) The definition of "Collegiate school of nursing" to specify the level of education in nursing from "graduate degree" to "masters' and doctoral degrees."

4. Revise § 57.2503, *"Eligibility."*, to:

(a) Clarify the applicant eligibiltiy criteria by substituting "public or private nonprofit" for "public or nonprofit private" when referring to collegiate schools of nursing; and

(b) Clarify the project eligibility criteria by deleting the words "significantly" and "existing" when referring to a project to expand or maintain an advanced nurse education program and add research as a specialty area for project eligibility.

5. Revise § 57.2506, *"Evaluation and grant awards."*, (b) *Funding preference.* to clarify the method for funding applications and to add a funding priority for education projects in geriatric and gerontological nursing.

It is also proposed to amend the existing regulations to provide an added emphasis on the national need to train more minority and financially needy students, and to have the applicants include as part of their applications a plan for sustaining a project beyond the period during which Federal support is available. Therefore, the regulations would be amended further as follows:

1. Revise § 57.2504, *"Application."*, to include two additional application requirements for: (a) a plan to attract and retain a higher than average number of minority and financially needy students; and (b) a plan to sustain the project beyond the period during which Federal assistance is available.

2. Revise § 57.2506, *"Evaluation and grant awards."*, (a) *Evaluation.* to include among other evaluation factors the degree to which the applicant proposes to attract, retain and graduate minority and financially needy students; and (b) *Funding preference.* to add a special consideration for projects which include a plan to attract and retain minority and financially needy students.

Regulatory Flexibility Act and Executive Order 12291

These regulations govern a financial assistance program in which participation is voluntary. The rule will not exceed the threshold level of $100 million established in section (b) of Executive Order 12291. For these reasons, the Secretary has determined that this rule is not a major rule under Executive Order 12291 and a regulatory impact analysis is not required. Further, because the rule does not have a significant economic impact on a substantial number of small entities, a regulatory flexibility analysis under the

Regulatory Flexibility Act of 1980 is not required.

Paperwork Reduction Act of 1980

Section 57.2504 contains information collection requirements which are subject to review by the Office of Management and Budget (OMB) under section 3507 of the Paperwork Reduction Act of 1980. We have submitted a copy of these information collection requirements to OMB for approval. Other organizations and individuals desiring to submit comments on the information collections should direct them to the agency official designated for this purpose whose name appears in this preamble, and to the Office of Information and Regulatory Affairs, OMB, New Executive Office Building (Room 3208), Washington, DC 20205, Attn: Desk Officer for HHS.

List of Subjects in 42 CFR Part 57

Dental health,
Education of the disadvantaged,
Educational Facilities,
Educational study program,
Emergency medical services,
Grant programs—education,
Grant programs—health,
Health facilities,
Health professions,
Loan programs—health,
Medical and dental schools,
Scholarships and fellowships,
Student aid.

Accordingly, 42 CFR Part 75, Subpart Z is proposed to be amended as follows:

(*Catalog of Federal Domestic Assistance*, No. 13.299, Grants for Advanced Nurse Training Programs)

Dated: July 28, 1986.

Robert E. Windom,

Assistant Secretary for Health.

Approved: August 22, 1986.

Otis R. Bowen,

Secretary.

1. The title of 42 CFR Part 57, Subpart Z (§§ 57.2501—57.2514) is revised to read as follows:

Subpart Z—Grants for Advanced Nurse Education Programs

2. The authority citation for Subpart Z is revised to read as follows:

Authority: Sec. 215 of the Public Health Service Act, 58 Stat. 690, as amended by 63 Stat. 35 (42 U.S.C. 216); sec. 821 of the Public Health Service Act, 89 Stat. 361; as amended by 95 Stat. 930, and by 99 Stat. 394 and 548 (42 U.S.C. 296*l*).

3. Section 57.2501 is revised to read as follows:

§ 57.2501 Applicability.

The regulations of this subpart apply to the award of grants to public and private nonprofit collegiate schools of nursing under section 821 of the Public Health Service Act (42 U.S.C. 296*l*) to meet the costs of projects to: plan, develop, and operate; expand; or maintain programs which lead to masters' and doctoral degrees and which prepare nurses to serve as nurse educators, administrators, or researchers or to serve in clinical nurse specialties determined by the Secretary to require advanced education.

4. Section 57.2502 is amended by alphabetizing the definitions, and revising the definitions for "Advanced nurse training program", "Collegiate school of nursing", and "State", as follows:

§ 57.2502 Definitions.

* * * * *

"Advanced nurse education program" means a program of study in a collegiate school of nursing which lead to masters' and doctoral degrees and which prepares nurses to serve as nurse educators, administrators, or researchers or to serve in clinical nurse specialties determined by the Secretary to require advanced education.

* * * * *

"Collegiate school of nursing" means a department, division, or other administrative unit in a college or university which provides primarily or exclusively a program of education in professional nursing and allied subjects leading to the degree of bachelor of arts, bachelor of science, bachelor of nursing, or to an equivalent degree, or to masters' and doctoral degrees in nursing, and including advanced education related to this type of educational program provided by the school, but only if the program, or unit, college or university is accredited.

* * * * *

"State" means a State, the Commonwealth of Puerto Rico, the District of Columbia, the Commonwealth of the Northern Mariana Islands, Guam, American Samoa, the Virgin Islands, or the Trust Territory of the Pacific Islands.

5. Section 57,2503 is amended by revising paragraphs (a)(1), (b)(1), (b)(2) introductory text, (b)(2)(i), (b)(2)(iii), and (b)(3) to read as follows:

§ 57.2503 Eligibility.

(a) * * *

(1) Be a public or private nonprofit collegiate school of nursing.

* * * * *

(b) * * *

(1) A project to plan, develop, and operate an advanced nurse education program. The planning period of this project is limited to one year. The project must enroll students before the end of the project period;

(2) A project to expand an advanced nurse education program through one or more of the following activities:

(i) The addition to the masters' or doctoral program of a new clinical, research, or functional (administration or teaching) specialty area,

(ii) * * *

(iii) The addition of a new educational site for the program; or

(3) A project to maintain an advanced nurse education program.

6. Section 57.2504 is amended by revising paragraphs (c)(1), (c)(11), and (d) and by adding new paragraphs (c)(12) and (c)(13) to read as follows:

§ 57.2504 Application.

* * * * *

(c) * * *

(1) A proposal for a project to: plan, develop, and operate; expand; or maintain an advanced nurse education program.

* * * * *

(11) Information concerning the source and number of potential students for the education program, and a description of plans, if any to encourage graduates of the education program to practice in States in need of nurses prepared in the specialty in which education is to be provided; and

(12) A plan to sustain the project beyond the period during which Federal assistance is available; and

(13) A plan to attract and retain a higher than average number of minority and financially needy students.

(d) In the cast of a project to expand or to maintain an advanced nurse education program, the application shall contain an assurance satisfactory to the Secretary that the applicant will expand, in carrying out the program during the fiscal year for which a grant under this subpart is sought, an amount of non-Federal funds (excluding costs of construction) at least as great as the average amount of non-Federal funds (excluding expenditures of a nonrecurring nature, including costs of construction) expended for this purpose during the 3 fiscal years immediately preceding the fiscal year for which the grants is sought.

* * * * *

7. Section 57.2505 is amended by revising paragraph (b) to read as follows:

§ 57.2505 Evaluation and grant awards.

* * * * *

(b) A project supported under this subpart shall enroll professional nurses,

as defined in § 57.2502, or students who will be professional nurses, as defined in § 57.2502, at or prior to completion of the advanced nurse education program.

8. Section 57.2506 is amended by revising paragraphs (a)(1), (a)(2), (a)(3), (a)(4), (a)(5), (a)(8), and (b); and by adding paragraph (a)(9) to read as follows:

§ 57.2506 Evaluation and grant awards.

(a) * * *

(1) The need for the proposed project including, with respect to projects to provide education in professional nursing specialties determined by the Secretary to require advanced education:

(i) The current or anticipated need for professional nurses educated in the specialty; and

(ii) The relative number of programs offering advanced education in the speciality;

(2) The need for nurses in the specialty in which education is to be provided in the State in which the education program is located, as compared with the need for these nurses in other States;

(3) The degree to which the applicant proposes to recruit students from States in need of nurses in the specialty in which education is to be provided, and to promote their return to these States following education;

(4) The degree to which the applicant proposes to encourage graduates to practice in States in need of nurses in the specialty in which education is to be provided;

(5) The potential effectiveness of the proposed project in carrying out the educational purposes of section 821 of the Act and this subpart;

* * * * *

(8) The potential of the project to continue on a self-sustaining basis after the period of grant support; and

(9) The degree to which the applicant proposes to attract, retain and graduate minority and financially needy students.

(b) *Funding preference:* In determining the priority for funding applications approved under paragraph (a) of this section, the Secretary will consider:

(1) The relative merit of the proposed project based upon the factors in paragraph (a) of this section; and

(2) Whether a proposed project contains any of the following elements:

(i) An educational program in geriatric and gerontological nursing;

(ii) A plan to attract and retain minority and financially needy students (the project will be given special consideration); and

(iii) Special funding preferences as announced by the Secretary by notice in the **Federal Register**, should specific needs warrant such action.

* * * * *

9. Section 57.2509 is amended by revising paragraphs (a)(1), and (b) to read as follows:

§ 57.2509 Nondiscrimination.

(a) * * *

(1) Section 855 of the Act (42 U.S.C. 298b–2) and its implementing regulation, 45 CFR Part 83 (prohibiting discrimination on the basis of sex in the admission of individuals to education programs).

* * * * *

(b) The grantee shall not discriminate on the basis of religion in the admission of individuals to its education programs.

10. Section 57.2511 is amended by revising paragraphs (b)(1) introductory text and (c)(2) to read as follows:

§ 57.2511 Grantee accountability.

* * * * *

(b) * * *

(1) Royalties received during the period of grant support as a result of copyrights or patents may be retained by the grantee and, in accordance with the terms and conditions of the grant, used in either or both of the following ways:

* * * * *

(c) * * *

(2) *Final settlement.* There shall be payable to the Federal Government as final settlement with respect to each approved project the total sum of: (i) Any amount not accounted for under paragraphs (a) and (b) of this section; and (ii) Any other amounts due under Subparts F, M, and O of 45 CFR Part 74. This total sum shall constitute a debt owed by the grantee to the Federal Government and shall be recovered from the grantee or its successors or assigns by offset or other lawful action.

[FR Doc. 86–26665 Filed 11–26–86; 8:45 am]

BILLING CODE 4160–15–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 86–419, RM–5430]

Radio Broadcasting Services; Centre, AL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Cherokee Broadcasting Corporation to allot Channel 290A to Centre, Alabama, as that community's first local FM service.

DATES: Comments must be filed on or before January 8, 1987, and reply comments on or before January 23, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Gary S. Smithwick, Esq., Keith & Smithwick, 1320 Westgate Drive, Winston-Salem, NC 27103.

FOR FURTHER INFORMATION CONTACT: Nancy V. Joyner, (202) 634–6530, Mass Media Bureau.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 86–419, adopted October 15, 1986, and released November 17, 1986. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., 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.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from time to time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 86–26784 Filed 11–26–86; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 86-428, RM-5335]

Television Broadcasting Services; Peoria, IL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a proposal to delete the reservation on UHF Television Channel *59 at Peoria, Illinois, making it available for commercial use, and to reserve Channel 47, already in use on a noncommercial educational basis, in response to a petition filed by Donald L. Markley.

DATES: Comments must be filed on or before January 8, 1987, and reply comments on or before January 23, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Donald L. Markley, 206 North Bergan, Peoria, Illinois 61604 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Montrose H. Tyree, (202) 634-6530, Mass Media Bureau.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 86-428, adopted October 20, 1986, and released November 17, 1986. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., 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.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all ex parte contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible ex parte contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Television broadcasting.

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 86-26785 Filed 11-26-86; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 86-429, RM-5336]

Radio Broadcasting Services; Kaplan, LA

AGENCY: Federal Communications Commission.

ACTION: Proposal rule.

SUMMARY: This document requests comments on a petition filed by Mid-Acadiana Broadcasting, Inc. proposing the substitution of Channel 247C2 for Channel 249A at Kaplan, Louisiana, and modification of the license of Station KMDL (FM) to specify operation on Channel 247C2 as that community's first wide area coverage FM channel. Finalization of this proposal is contingent upon the grant of a pending application filed by Station KAYD (FM), Beaumont, Texas, to change to Class C1 which will eliminate a short spacing problem.

DATES: Comments must be filed on or before January 8, 1987, and reply comments on or before January 23, 1987.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Bradford D. Carey, Fawer, Brian, Hardy, & Zatkis, 700 Camp Street, New Orleans, Louisiana 70130-3702 (Counsel to Petitioner).

FOR FURTHER INFORMATION CONTACT: D. David Weston (202) 634-6530, Mass Media Bureau.

SUPPLEMENTARY INFORMATION: This is a summary of the Commissions Notice of Proposed Rule Making, MM Docket No. 86-429, adopted October 20, 1986, and released November 17, 1986. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW, 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.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 86-26787 Filed 11-26-86; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 86-430, RM-5310]

Radio Broadcasing Services; Bogue Chitto, MS

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Bogue Chitto Broadcasting Company, proposing the allotment of FM Channel 225A to Bogue Chitto, Mississippi, as that community's first FM broadcast service.

DATES: Comments must be filed on or before January 8, 1987, and reply comments on or before January 23, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Donald B. Brady, Bogue Chitto Broadcasting Company, 623 Northwest Avenue, McComb, Mississippi 39648.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, (202) 634-6530

Proposed Rule Making, MM Docket No. 86-430 adopted October 20, 1986, and released November 17, 1986. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW, 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.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 86-26786 Filed 11-26-86; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 86-436; RM-5493]

Radio Broadcasting Services; Defiance, OH

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission proposes to allocate Channel 290A to Defiance Ohio, as the community's second local FM service, at the request of Gary Wilson. Canadian concurrence is required.

DATES: Comments must be filed on or before January 12, 1987, and reply comments on or before January 27, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultants as follows: Gary Wilson, 1719 Dorr Street, #196, Toledo, Ohio 43517, (petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 86-436, adopted October 24, 1986, and released November 21, 1986. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW, 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.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all ex parte contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible ex parte contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 86-26783 Filed 11-26-86; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 86-433, RM-5477]

Radio Broadcasting Services; Hormigueros, PR

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission proposes the allocation of Channel 291A to Hormigueros, Puerto Rico, as the community's second local FM Service, at the request of Occidental Broadcasting Corporation. A site restriction of 16.6 kilometers south is required.

DATES: Comments must be filed on or before January 12, 1987, and reply comments on or before January 27, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: John L. Tierney, Esq., Ann Bavender, Esq., Tierney & Swift, 1020 19th Street, NW, Suite 200, Washington, DC. (counsel to petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 86-433, adopted October 24, 1986, and released November 21, 1986. The full text of this Commission decision is avilable for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW, 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.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 86-26780 Filed 11-26-86; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 86-434, RM-5573]

Radio Broadcasting Services; Pago Pago, American Samoa

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document proposes the allocation of Channel 221A to Pago Pago, American Samoa, as the community's first local FM service, at the request of Samoa Technologies, Inc. The channel can be allocated in compliance with the Commission's minimum distance separation and other technical requirements without the imposition of a site restriction.

DATES: Comments must be filed on or before January 12, 1987, and reply comments on or before January 27, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the

petitioners, or their counsel or consultant, as follows: Ray D. Thrower, P.E., Thrower & Associates, Inc. P.O. Box 12725, Salem, Oregon 97309 (Consultant to petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, (202) 634–6530, Mass Media Bureau.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 86–434, adopted October 24, 1986, and released November 21, 1986. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., 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.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 86–26781 Filed 11–26–86; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 86–431, RM–5417]

Radio Broadcasting Services; Albert Lea, MN

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Albert Lea Communications, proposing the allotment of FM Channel 241A to Albert Lea, Minnesota. The proposal could provide a second broadcast service for the community.

DATES: Comments must be filed on or before January 12, 1987, and reply comments on or before January 27, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should service the petitioners, or their counsel or consultant, as follows: Harry G. Sells, Sells & Gregory, 10401 Georgetown Pike, Great Falls, Virginia 22066 (counsel to the petitioner).

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 86–431, adopted October 20, 1986, and released November 21, 1986. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., 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.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 86–26778 Filed 11–26–86; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 86–420, RM–5446]

Radio Broadcasting Services; Atwater, MN

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Norman Jones, proposing the allotment of FM Channel 231A to Atwater, Minnesota, as that community's first broadcast service. There is a site restriction 5.5 kilometers (3.4 miles) south of the community.

DATES: Comments must be filed on or before January 8, 1987, and reply comments on or before January 28, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or the counsel or consultant, as follows: A.L. Stein, Colorado Building, Suite 915, 1341 G Street NW., Washington, DC 20005 (counsel to petitioner).

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle (202) 634–6530, Mass Media Bureau.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 86–420, adopted October 15, 1986, and released November 17, 1986. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcript Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 86–26779 Filed 11–26–86; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 86-435, RM-5516]

Radio Broadcasting Services; Morehead City, NC

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document proposes the substitution of FM Channel 242C2 for Channel 240A at Morehead City, NC at the request of Curtis Radio Group, Inc. and the modification of its license for Station WRHT(FM) to specify operation on the higher-powered channel. Channel 242C2 can be allocated without a site restriction. However, it cannot be used at Station WRHT(FM)'s present site due to a .9 kilometer short-spacing to Station WYLT, Channel 241, Raleigh, NC.

DATES: Comments must be filed on or before January 12, 1987, and reply comments on or before January 27, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Mark J. Prak, Esq., Tharrington, Smith and Hargrove, 209 Fayetteville Street Mall, P.O. Box 1151, Raleigh, NC 27602 (Counsel to petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro (202) 634–6530, Mass Media Bureau.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 86–435, adopted October 24, 1986, and released November 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 NW., 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.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 37 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 86–26782 Filed 11–26–86; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 85-350; FCC 86-498]

Television, AM Radio, FM Radio; Amendment to the Commission's Rules and Procedures Concerning Broadcast Equal Opportunity Practices and Reporting Requirements

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This Further Notice of Proposed Rule Making (Further Notice) seeks comment on an alternative proposal for the Broadcast Equal Employment Opportunity (EEO) Program Report submitted by the Office of Management and Budget (OMB). The Commission believes that this proposal is worthy of further consideration as an alternative to the EEO Program Report proposed by the Commission in its *Notice of Proposed Rule Making* (*Notice*) in MM Docket No. 85–350, adopted November 14, 1986 (50 FR 49566; December 3, 1985). A further notice in this proceeding is also desirable to ensure compliance with certain procedural requirements of the Paperwork Reduction Act. The Further Notice requests comment on whether OMB's proposal for the Broadcast EEO Program Report would provide the Commission with sufficient information to evaluate a broadcast licensee's efforts to comply with the EEO requirements. It also seeks comment on whether this proposal would minimize the reporting and administrative burden of these requirements for both broadcasters and the Commission.

DATES: Comments due January 5, 1987; replies due January 20, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Marcia Glauberman, Mass Media Bureau, (202) 632–6302.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Further Notice of Proposed Rule Making in MM Docket No. 85–350, adopted October 31, 1986, and released November 12, 1986. The full text of this Commission decision, including the proposed OMB broadcast EEO report form, is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, Northwest, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street Northwest, Suite 140, Washington, DC 20037.

Summary of the Further Notice of Proposed Rule Making

1. In the *Notice*, the Commission proposed to replace its 5-point and 10-point Model EEO Program Reports with a new Broadcast EEO Program Report, to revise the Annual EEO reporting requirements for broadcasters, and to revise its procedures for evaluating broadcast licensee EEO performance. The two proposed new forms were submitted to OMB for clearance under the Paperwork Reduction Act.

2. OMB contended, however, that the submission was not timely under its rules and returned the forms without action. Subsequently, OMB filed comments regarding the proposed forms and suggested an alternative version of Form 396, the Broadcast EEO Program Report. In its comments, OMB contends that the proposed Form 396 is not an improvement over the existing form. In particular, OMB criticizes the required submission of job descriptions and the questions requiring narrative answers. It believes that these requirements would be burdensome on licensees and the Commission, would not be very useful because broadcasters could carefully craft responses to be technically true while not revealing their shortcomings in EEO performance, and would be difficult for the Commission to use in its evaluation of EEO efforts. OMB also believes that the proposed form does not give broadcasters a clear and simple explanation of the Commission's EEO requirements.

3. In order to remedy the problems that it sees with the reporting requirements proposed by the Commission in the *Notice*, OMB proposes an alternative Form 396 styled after the existing 10-point Model Program Report form. The Commission believes that alternative reporting requirements proposed by OMB are worthy of further consideration. Accordingly, the Commission has adopted this Further Notice to seek comment on this proposed Broadcast EEO Program Reporting format.

4. 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.

5. Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 603, this proceeding proposes alternative EEO program reporting requirments for all 11,000 broadcast stations. Public comment is requested on the initial regulatory flexibility analysis set out in full in the Commission's complete decision.

6. The proposal contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980 and found to impose a new or modified information collection requirement on the public. Implementation of any new or modified requirement will be subject to approval by the Office of Management and Budget as prescribed by the Act.

7. 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 January 5, 1987; and reply comments on or before January 20, 1987. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding.

List of Subjects in 47 CFR Part 73

Television, AM radio, FM radio.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 86-26788 Filed 11-26-86; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 216

[Docket No. MMPAH-1986-1]

Regulations Governing the Taking and Importing of Marine Mammals

AGENCY: Office of the Administrative Law Judge, U.S. Department of Commerce, for the National Marine Fisheries Service (NMFS), NOAA.

ACTION: Correction relating to witnesses in formal rulemaking proceeding.

SUMMARY: On November 13, 1986, a notice announced, *inter alia*, the witnesses in a forthcoming formal Rulemaking proceeding, 51 FR 41814, (Nov. 19, 1986). This notice corrects the witness list for the Hearing scheduled to be conducted on December 1, 1986, in Seattle, Washington.

DATES: The dates remain as published in the Orders of September 17, 1986, 51 FR 33907 (Sept. 24, 1986) and November 13, 1986, 51 FR 41814 (Nov. 19, 1986).

ADDRESS: Office of the Administrative Law Judge Suite 6716 U.S. Department of Commerce 14th and Constitution Ave., NW. Washington, DC 20230

FOR FURTHER INFORMATION CONTACT: Rosalie Smith, Office of the Administrative Law Judge Suite 6716 U.S. Department of Commerce 14th & Constitution Ave., NW. Washington, DC 20230 Telephone: 202-377-3135

SUPPLEMENTARY INFORMATION: .

In the Matter of: Proposed Regulations to Govern the Taking of Marine Mammals (Dall's Porpoise) Incidental to Commercial Salmon Fishing Operations.

Order

The following witnesses' names were erroneously omitted from the Order of November 13, 1986 Federal Register of November 19, 1986, 51 FR 41814:

Harud Ogi
Roger McManus
Natasha Adkins
Walter V. Reid
Alan Reichman
Paul Spong

Dated: November 21, 1986.

Hugh J. Dolan,

Administrative Law Judge.

[FR Doc. 86-26757 Filed 11-26-86; 8:45 am]

BILLING CODE 3510-08-M

50 CFR Part 652

[Docket No. 61198-6209]

Atlantic Surf Clam and Ocean Quahog Fisheries

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of proposed 1987 fishing quotas and request for comments.

SUMMARY: NOAA issues a notice of proposed quotas for th surf clam and ocean quahog fisheries for 1987 and requests public comment. These proposed quotas have been selected from a range defined as optimum yield (OY) for each fishery. The intended effect of this action is to establish allowable harvests of surf clams and ocean quahogs from the fishery conservation zone in 1987.

DATE: Comments will be accepted until December 26, 1986.

ADDRESS: Comments on the proposed 1987 fishing quotas should be sent to Bruce Nicholls, National Marine Fisheries Service, 2 State Fish Pier, Gloucester, MA 01930. The information used to justify the quotas is available for public inspection at this address; copies may be requested in writing.

FOR FURTHER INFORMATION CONTACT: Bruce Nicholls (Plan Coordinator), 617-281-3600, ext. 263.

SUPPLEMENTARY INFORMATION: The Fishery Management Plan for Atlantic Surf Clam and Ocean Quahog Fisheries (FMP) directs the Secretary of Commerce (Secretary), in consultation with the Mid-Atlantic Fishery Management Council, to specify quotas for surf clams and ocean quahogs on an annual basis from within ranges which have been identified as OY for each fishery.

In selecting the quota values proposed in this action, the Regional Director, Northeast Region, NMFS, has considered stock assessments, catch records, and other relevant information concerning exploitable biomass and spawning biomass, fishing mortality rates, stock recruitment, projected effort and catches and areas likely to be reopened to fishing.

As of October 3, 1986, surf clam landings from the Mid-Atlantic Area were 2,181,000 bushels, out of a quota (adjusted) of 2,725,000 bushels. Surf clam landings from the Georges Bank Area were 215,000 bushels from a quota of 300,000 bushels. Surf clam landings from the Nantucket Shoals Area, reduced by subtraction of surf clams taken on Stellwagen Bank, on October 24, 1986, reached 204,000 bushels from a quota of 200,000 bushels. This fishery was closed on October 31 (51 FR 40173, November 5, 1986) Harvest of ocean quahogs in all areas reached 3,111,000 bushels from the overall quota of 6,000,000 bushels.

Analyses of stock assessments, catch records, and all other relevant information indicate stable productivity in the surf clam and ocean quahog fisheries. Adequate resources currently exist to maintain current harvest levels in the surf clam fishery and to allow the ocean quahog fishery to continue to grow towards established quota limits.

The following quotas are proposed for the surf clam and ocean quahog fisheries for 1987:

Fishery areas	1986 quota (in bushels)
Mid-Atlantic surf clam	2,650,000
Georges Bank surf clam	300,000
Nantucket Shoals surf clam	200,000
Ocean quahog	6,000,000

Comments on the proposed quotas will be accepted for 30 days. Comments will be considered by the Secretary,

who will determine appropriate final annual quotas for each fishery and publish those quotas in the **Federal Register.**

Other Matters

This action is taken under authority of 50 CFR 652.21 and is in compliance with Executive Order 12291. The action is covered by the certification for Amendment 3 to the FMP, and under the Regulatory Flexibility Act, that the authorizing regulations do not have a significant economic impact on a substantial number of small entities.

List of Subjects in 50 CFR Part 652

Fisheries, Reporting and recordkeeping requirements.

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

Dated: November 24, 1986.

Carmen J. Blondin,

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

[FR Doc. 86-26839 Filed 11-26-86; 8:45 am]

BILLING CODE 3510-22-M

50 CFR Part 655

[Docket No. 61108-6208]

Atlantic Mackeral, Squid, and Butterfish Fisheries

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of preliminary initial specifications for 1987 and request for comments.

SUMMARY: NOAA issues this notice to propose preliminary initial specifications for the 1987 fishing year for Atlantic mackeral, squid, and butterfish, and requests public comments. Regulations governing these fisheries require the Secretary of Commerce (Secretary) to publish preliminary initial specifications. This action provides data and requests comments for NOAA's determination of the final initial specifications for the 1987 fishing year.

DATE: Comments must be received on or before December 26, 1986.

ADDRESS: Send comments to Salvatore A. Testaverde, Northeast Regional Office, NMFS, NOAA, 2 State Fish Pier, Gloucester, MA 01930-3097. Mark on the outside of the envelope, "Comments on 1987 Annual Specifications".

FOR FURTHER INFORMATION CONTACT: Salvatore A. Testaverde, 617-281-3600 Ext. 273.

SUPPLEMENTARY INFORMATION: Regulations implementing the Fishery Management Plan for Atlantic Mackeral, Squid, and Butterfish Fisheries (FMP) (FR 51 10547, March 27, 1986) stipulate at §§ 655.22(b) that the Secretary will publish a notice specifying the preliminary annual amounts of the initial optimum yield (IOY) as well as the amounts for domestic annual harvest (DAH), domestic annual processing (DAP), joint venture processing (JVP), and total allowable levels of foreign fishing (TALFF) for the species managed under the FMP. No reserves are permitted under the FMP for any of these species.

Procedures for determining the initial annual amounts are found at § 655.21. The Secretary is required to publish this notice on or about November 1 of each year and to provide a 30-day comment period on the preliminary specifications. These specifications are based on information submitted by the Mid-Atlantic Fishery Management Council (Council), including an analysis of the nine economic factors specified at § 655.21(b)(1)(ii). The Council's recommendations and other relevant data are available for inspection at the NMFS Regional Office at the above address during the comment period. The New England Fishery Management Council has not yet formulated its recommendations for all of these annual specifications. However, the New England Council has recommended that, for 1987, the *Loligo* TALFF should be set at no more than 1,700 mt, and the *Illex TALFF* should be set at zero. Also, this Council recommended that any TALFF earned under the 1986 TALFF/squid purchase ratio policy would be available up to March 31, 1987, within the foreign fishing area. The New England Council will discuss all the 1987 annual specifications at a meeting during the comment period. There recommendations, public comments, and future comments by the New England Council on all annual specifications will be considered in the final decision. A notice of final determination of the initial amounts and response to public comments is expected to be published in the **Federal Register** before January 1, 1987.

The following table lists the preliminay initial specifications in metric tons for the maximum optimum yield (Max OY), allowable biological catch (ABC), IOY, DAH, DAP, JVP, and TALFF for Atlantic mackeral, *Illex* and *Loligo* and butterfish. These initial specifications are the amounts that the Regional Director, Northeast Region, NMFS, is proposing for the 1987 fishing year beginning January 1.

TABLE. PRELIMINARY INITIAL ANNUAL SPECIFICATIONS FOR ATLANTIC MACKEREL SQUID, AND BUTTERFISH FOR THE 1987 FISHING YEAR, JANUARY 1 THROUGH DECEMBER 31, 1987.

[in Metric tons]

Specifications	Squid		Atlantic mackerel	Butterfish
	Loligo	Illex		
Max OY [1]	44,000	30,000	[2] N/A	[3] 16,000
ABC	37,000	22,500	294,000	[3] 16,000
IOY	28,534	15,000	154,600	13,068
DAH	28,500	15,000	[4] 69,600	13,000
DAP	25,000	12,000	29,000	13,000
JVP	3,500	3,000	28,000	.....
TALFF	34	0	85,000	68

[1] These are the maximum OYs as stated in the FMP.
[2] Not applicable; depends upon $F_{0.1}$ and U.S. domestic development; see the FMP.
[3] IOY can rise to this amount.
[4] Includes 12,600 mt projected recreational catch.

The Regional Director has determined that the IOY levels proposed for the 1987 fishing year will promote the continued growth of the domestic industry, thereby providing the greatest overall benefits to the United States. These levels were set to encourage growth in both the harvesting and processing sectors of the U.S. fishing industry in accordance with the purposes of the Magnuson Act. They were selected after meetings and discussions with the Council, considering information from industry groups and foreign national representatives, and review of the performance of U.S. fishermen, projected domestic landings, and joint venture information.

As in the previous fishing year, specifications give priority to domestic users. Squid TALFFs are initially set at bycatch levels as prescribed by the

regulations. The Regional Director publishes the squid TALFFs as proposed by the Council, set at bycatch only throughout the fishing year. The Council has recommended an *Illex* TALFF of zero unless stock assessments support a foreign directed fishery for silver and red hake during 1987. The scientific assessments for the hakes have not been completed at this time. Until the completion of the assessments and the determination of hake TALFFs, the Regional Director proposes an *Illex* TALFF initially set at zero. If a directed fishery for hakes by foreign nations is allowed during 1987, the appropriate bycatch will be added to the TALFFs for the FMP's species.

Atlantic mackerel specifications, especially ABC, have been increased because of the continued rebuilding of the mackerel stocks. TALFF has been increased to provide for foreign vessels which participate in joint ventures and also for those allowed to engage in directed fisheries.

Butterfish specifications for DAH and DAP are increased by 1,000 mt from last year, and a TALFF of 68 mt is again provided for bycatch in other fisheries.

Classification

This action is authorized by 50 CFR Part 655 and complies with Executive Order 12291.

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

List of Subjects in 50 CFR Part 655

Fisheries, Reporting and recordkeeping requirements.

Dated: November 24, 1986.

Carmen J. Blondin,

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

FR Doc. 86-26840 Filed 11-26-86; 8:45 am]

BILLING CODE 3510-22-M

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50 CFR Part 663

[Docket No. 61107-6207]

Pacific Coast Groundfish Fishery

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of preliminary fishery specifications and request for comment.

SUMMARY: The NMFS announces and requests comments on the preliminary 1987 specifications for groundfish taken in the fishery conservation zone and territorial waters off the coasts of Washington, Oregon, and California. These preliminary specifications estimate the acceptable level of biological catch, the optimum yield quota, and the distribution of the optimum yield between domestic and foreign fishing operations as required by the regulations implementing the Pacific Coast Groundfish Fishery Management Plan. The intended effect of this action is to obtain public comments which will be considered before determining the final specifications for 1987.

DATE: Comments on the preliminary specifications for 1987 must be received by December 15, 1986.

ADDRESSES: Send comments to Rolland A. Schmitten, Regional Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way NE, BIN C15700, Seattle, Washington 98115 or E. Charles Fullerton, Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731.

FOR FURTHER INFORMATION CONTACT: Rolland A. Schmitten at 206-526-6150 or E. Charles Fullerton at 213-514-6169.

SUPPLEMENTARY INFORMATION: The implementing regulations for the Pacific Coast Groundfish Fishery Management Plan (FMP) at 50 CFR Part 663 state that management specifications for groundfish will be evaluated each calendar year, preliminary specifications will be published in the **Federal Register** followed by a public comment period, and final specifications for the succeeding calendar year will be published near the beginning of that year. The management specifications include the acceptable biological catch (ABC) for all groundfish species, an estimate of the annual catch that could be taken without jeopardizing a resource' s productivity, and the optimum yield (OY) for six species (Pacific whiting, sablefish, Pacific ocean perch, shortbelly rockfish, widow rockfish, and, north of 39° N. latitude, jack mackerel), which is based on socioeconomic as well as biological factors and thus is not necessarily equal to the ABC. The OYs for these six species are the maximum amounts of fish (in round weight) that may be taken and retained or landed each year from the fishery conservation zone (3-200 nautical miles) and the territorial sea (0-3 nautical miles) off Washington, Oregon, and California.

The OY for each of these six species is comprised of several components that will be reassessed near July 1. The domestic annual harvest (DAH), which consists of estimates of domestic annual processing (DAP) and joint venture processing (JVP), is verified by surveys in September and June of the needs of the domestic fishing and processing industries. The total allowable level of foreign fishing (TALFF) is the remainder, if any, of OY after domestic needs have been subtracted. Before TALFF is designated a reserve of 20 percent of OY is established for each species in case the domestic industry needs more than was initially estimated.

The OYs and ABCs may be changed during the year within limits, under the procedures outlined in the regulations at § 663.22.

The Pacific Fishery Management Council (Council) reviewed and approved preliminary specifications for the 1987 ABCs and OYs and received public comment at its September 1986 meeting in Portland, Oregon. However, after the Council endorsed preliminary ABC specifications in September, updated biological analyses for some species were received from the Council's Groundfish Management Team and released to the public by the Council. These analyses are considered to be the best available information at this time. Also, the Council recommended increases in ABC greater than 30 percent for two species, widow and chilipepper rockfish. Such increases are prohibited by the regulations at § 663.24. Consequently, the specifications presented in this notice in some cases differ from the numbers the Council recommended in September.

The 1987 preliminary management specifications are given in Tables 1 and 2, followed by a discussion of the specifications for each species with a numerical OY and for each species whose ABC in 1987 is not the same as in 1986. The aggregate data upon which these preliminary specifications are based are available for public inspection at the Regional Directors' offices during business hours until the end of the comment period.

TABLE 1.—PRELIMINARY ESTIMATES OF ABC FOR 1987 IN METRIC TONS (MT) FOR THE CALIFORNIA/WASHINGTON REGION BY INPFC AREAS

Species	Vancouver [1]	Columbia	Eureka	Monterey	Conception	Total
Roundfish:						
Lingcod	1,000	4,000	500	1,100	400	7,000
Pacific Cod	2,200	900	([2])	([2])	([2])	3,100
Pacific Whiting						[3] 195,000
Sablefish						12,000
Rockfish:						
Pacific Ocean Perch	0	0	([2])	([2])	([2])	0
Shortbelly						[3] 10,000
Widow						[3] 12,000
Other Rockfish [4]:						
Bocaccio	([2])	([2])	([2])	4,100	2,000	6,100
Canary	800	[5] 2,100	600	([2])	([2])	3,500
Chilipepper						[3] 3,000
Yellowtail	1,100	[5] 2,600	300	([2])	([2])	4,000
Remaining Rockfish	800	[5] 3,700	1,900	4,300	3,300	14,000
Flatfish:						
Dover Sole	2,400	11,500	8,000	5,000	1,000	27,900
English Sole						[3] 1,900
Petrale Sole	600	1,100	500	800	200	3,200
Other Flatfish (except arrowtooth flounder)	700	3,000	1,700	1,800	500	7,700
Other Fish [6]:						
Jack Mackerel [7]						12,000
Others	2,500	7,000	1,200	2,000	2,000	14,700

[1] U.S. portion.

[2] These species are not common nor important in the areas footnoted. Accordingly, for convenience, Pacific cod is included in "Other" category for the areas footnoted and rockfish species are included in the "Remaining Rockfish" category for the areas footnoted only.

[3] Total all areas.

[4] "Other rockfish" means rockfish species at § 663.2, as amended, which do not have a numerical OY.

[5] For management of the *Sebastes* complex of rockfish, the Columbia area is split into northern and southern parts of Coos Bay, Oregon (43°21'34" N. latitude), and ABCs for the Columbia area are prorated as follows:

Species	Columbia area (total)	North of Coos Bay	South of Coos Bay
Canary	2,100	1,700	400
Yellowtail	2,600	2,500	100
Remaining rockfish	3,700	3,300	400

[6] "Other fish" includes sharks, skates, ratfish, morids, grenadiers, jack mackerel, arrowtooth flounder, and, in the Eureka, Monterey, and Conception area, Pacific cod. "Other fish" is part of the "other species" category listed at § 663.2.

[7] North of 39° N. latitude.

TABLE 2.—PRELIMINARY SPECIFICATIONS OF OY AND ITS DISTRIBUTION FOR 1987

[In thousands of metric tons]

Species	Total OY	DAP	JVP[1]	DAH	Reserve	TALFF[1]
Pacific whiting	195.0	15.0	120.0	135.0	39.0	21.0
Sablefish	[2] 12.0	12.0	0.0	12.0	0.0	0.0
Pacific ocean perch	([3])	([3])	0.0	([3])	0.0	0.0
Shortbelly rockfish	10.0	1.0	5.0	6.0	2.0	2.0
Widow rockfish	12.5	12.5	0.0	12.5	0.0	0.0
Jack mackerel	12.0	0.0	0.0	0.0	2.4	9.6
Other species	([4])					

[1] In the foreign trawl and joint venture fisheries for Pacific whiting, incidental catch allowance percentages (based on TALFF) and incidental retention allowance percentages (based on JVP) are: sablefish 0.173 percent; Pacific ocean perch 0.062 percent; rockfish excluding Pacific ocean perch 0.738 percent; flatfish 0.1 percent; jack mackerel 3.0 percent; and other species 0.5 percent. In foreign trawl and joint venture fisheries, "other species" means all species, including nongroundfish species, except Pacific whiting, sablefish, Pacific ocean perch, rockfish excluding Pacific ocean perch, flatfish, jack mackerel, and prohibited species. In a foreign trawl or joint venture fishery for species other than Pacific whiting, incidental allowance percentages will be stated in the conditions and restrictions to the foreign fishing permit. See § 611.70(c)(2) for application of incidental retention allowance percentages to joint venture fisheries.

[2] Of this 12,000 metric tons, 2,500 metric tons is for part of the Monterey subarea. See § 663.21(a)(2).

[3] The exact amount of OY for Pacific ocean perch is not yet determined, but will allow only for incidental catches taken while fishing for other species. The OY is expected to be lower than 1,550 metric tons. (In 1986, the OY was 1,550 metric tons, 950 metric tons for the Columbia subarea and 600 metric tons for the Vancouver subarea.) Pacific ocean perch from other subareas are included in the OY for "other species." See § 663.21(a)(3).

[4] The total OY for "other species" is that amount of fish that may be lawfully harvested and/or processed under § 611.70 and Part 663. See § 663.2 for species listing.

Numerical OY Species (Tables 1 and 2)

Pacific whiting. Although the annual ABC/OY for Pacific whiting has not been harvested in any of the past nine years, the very strong 1977 and 1980 year-classes that supported the fishery have been reduced without replacement. Reproduction apparently has been poor since 1980, and there have been three very weak year-classes since 1983. This is only partly offset by the 1984 year class which appears strong. In addition, new information indicates that the spawn-recruit relationship used to make the 1986 estimates was too optimistic. Accordingly, the ABC and OY are reduced to 195,000 mt in 1987 from 295,800 mt in 1986.

In 1987 as in 1986, ABC and OY are proposed to be equal. The estimates for shore-based processing (DAP) and for joint venture process ing (JVP) are the same as in 1986, 15,000 mt and 120,000 mt, respectively. Accordingly, DAH is preliminarily estimated at 135,000 mt and initial TALFF at 21,000 mt. The reserve, which is established in case the domestic industry needs more fish than originally projected, is set at 39,000 mt (20 percent of OY).

Sablefish. In view of the declining contribution of the 1980 year class and uncertainty about the strength of subsequent year classes, it currently is believed that the exploitation rate of the west coast sablefish stock should not exceed that at MSY (the maximum sustainable yield overtime). The estimate of MSY in 1986 is maintained in 1987, modified by a 13 percent increase which accounts for deepwater sablefish stocks which had not been included in previous analyses. Accordingly, thc 1987 preliminary estimate of ABC for sablef ish is 12,000 mt, 13 percent higher than in 1986. The 1987 OY for sablefish is proposed to equal ABC and thus is reduced about 10 percent from 1986 levels; OY was 28 percent above ABC in 1986. Because the shore-based industry intends to process all available sablefish, none is available for joint venture or foreign fishing in 1987 except for minimal allowances for unavoidable incidental catches.

An ABC and OY of 2,500 mt for sablefish in the Monterey Bay subarea are specified in the FMP. However it has not been possible to identify (from available landings data) which fish were caught in this area. As a result, no ABC is proposed for the Monterey Bay area in 1987. The Council is preparing an amendment to the FMP which proposes removing the OY for Monterey Bay; the 2,500 mt OY is maintained for this area until the issue is fully considered in the amendment process and deleted by final rulemaking.

Pacific ocean perch. Pacific ocean perch have been overfished and are managed under the rebuilding schedule specified in the FMP. The most recent available data indicate that there has been no rebuilding of the Pacific ocean perch stock since 1979 and even if the OY were reduced by more than half, rebuilding would be slight. Accordingly, the ABCs for both the Vancouver and Columbia areas are set at zero; OY will be set at a level that will allow some if not all incidental catches to be landed, but will not allow directed fishing. Although OY has not been estimated yet (pending receipt of a report from the Council's Groundfish Management Team analyzing the latest available data), it is expected to be below the 1986 OY of 1,550 mt (600 mt in the Vancouver subarea and 950 mt in the Columbia subarea). Clearly, domestic processors will fully utilize OY so no Pacific ocean perch are available for joint venture or foreign fishing in 1987 except for minimal allowances for unavoidable incidental catches.

Shortbelly rockfish. The preliminary 1986 ABC and OY estimates for shortbelly rockfish are both 10,000 mt, the same as in 1983–1986. A DAP of 1,000 mt as indicated by the year-end survey should supply shore-based processing needs adequately, and 5,000 mt is estimated for joint venture processing in 1987, the same as in 1986; the joint venture never developed in 1986. The remaining 4,000 mt of OY is divided 2,000 mt for foreign fishing and 2,000 mt for a reserve in case domestic needs become higher than initially estimated. Most shortbelly are available south of 39° N. latitude, in an area closed to foreign trawling, and no interest has been expressed in a directed foreign fishery for this species north of 39° N. latitude in 1987.

Widow rockfish. The preliminary 1986 coastwide ABC for widow rockfish is 12,100 mt, 30 percent higher than the 9,300 mt ABC in 1986. Scientific data support an increase of 34 percent (to 12,500 mt), but the regulations at § 663. 24 limit annual increases of ABC and OY to 30 percent above the level at the beginning of the previous year. Accordingly, the initial ABC for widow rockfish in 1987 is increased by the maximum 30 percent. The OY, however, was 10 percent higher than ABC in 1986, and thus can be increased to 12, 500 mt in 1987 (from 10,200 mt) without exceeding the 30 percent limit. These increases in ABC and OY occur because the strength of incoming year classes, particularly from 1978, 1979, and 1980, was underestimated. Because this species is fully utilized by domestic shore-based processors, no widow rockfish are available for joint venture or foreign fishing in 1987 except for minimal allowances for unavoidable incidental catches.

Jack mackerel (north of 39° N. latitude). The 1987 ABC and OY estimates for jack mackerel (both at 12,000 mt) are proposed to be maintained at the same levels as in 1985 and 1986. No domestic interest was identified on the stock north of 39° N. latitude.

Accordingly, a reserve of 2,400 mt is proposed along with 9,600 mt designated as available for foreign fishing in 1987.

Species Without a Numerical OY (Table 2)

The other species managed under the FMP do not have numerical OYs. For the most part, they cannot be harvested selectively and, unless biological stress is documented, have not been regulated by quotas. Full utilization by domestic processors of some species in the multispecies complex precludes joint venture or foreign targeting on underexploited species because large incidental catches of the fully utilized species are likely to result. Consequently, no numerical specifications for DAH, DAP, JVP, and TALFF are made because JVP and TALFF are not available for any species in the multispecies complex. However, ABCs are specified for the major species or species groups. Only two changes in ABC are proposed for this multispecies complex in 1987, for chilipepper rockfish and for English sole.

Chilipepper rockfish. The 1987 ABC for chilipepper rockfish is 3,000 mt, 30 percent higher than the 2,300 mt ABC in 1986, and applies coastwide. In 1986, the ABC was specified only for two subareas, 1,300 mt for Monterey and 1,000 mt for Conception. Considerable evidence exists of a single unit stock of chilipepper rockfish off California, so the ABCs are combined in 1987. Scientific data support a 57 percent increase in ABC (to 3,600 mt), but the regulations at 50 CFR 663. 24 limit annual increases of ABC to 30 percent above the level at the beginning of the previous year. Accordingly, the initial ABC for chilipepper in 1987 is increased by the maximum 30 percent. The proposed increase in ABC is due to (1) several large year classes, especially 1973 and 1975, which contributed significantly to the fishery between 1978 and 1983; (2) the 1979 year class which is above average in strength; and (3) no

apparent trend toward juvenescence as a result of intense exploitation.

English sole. The proposed ABC for English sole in 1987 is 1,900 mt, 27 percent higher than the 1,500 mt ABC in 1986. This increase results from new analyses which apply to the Vancouver and Columbia subareas and which are extrapolated coastwide.

Classification

These preliminary specifications are made under the authority of and in accordance with 50 CFR Part 663. This action is in compliance with Executive Order 12291 and is covered by the Regulatory Flexibility Analysis prepared for the implementing regulations.

(16 U.S.C 1801 *et seq.*)

List of Subjects in 50 CFR Part 663

Fisheries, Fishing, Foreign relations.

Dated: November 24, 1986.

James E. Douglas, Jr.,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 86-26748 Filed 11-24-86; 12:40 pm]

BILLING CODE 3510-22-M

Notices

Federal Register
Vol. 51, No. 229
Friday, November 28, 1986

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Public Meeting of Assembly

Notice is hereby given, pursuant to the Federal Advisory Committee Act, Pub. L. No. 92–463, that the membership of the Administrative Conference of the United States, which makes recommendations to administrative agencies, to the President, Congress, and the Judicial Conference of the United States regarding the efficiency, adequacy, and fairness of the administrative procedures used by administrative agencies in carrying out their programs, will meet in Plenary session on Thursday, December 4, 1986 at 1:15 p.m. and Friday, December 5, 1986 at 9:00 a.m. in the Amphitheatre of the Federal Home Loan Bank Board, 1700 G Street NW., Washington, DC

The Conference will consider, not necessarily in the order stated, proposed recommendations on the following subjects.

1. Separation of Functions in Agency Adjudication: The OSHA Model.

2. Improving the Medicare Appeals System for Coverage and Payments Disputes.

3. Agency Procedures for Responding to Petitions for Rulemaking.

4. Case Management as a Tool for Improving agency adjudication.

5. Acquiring the Services of "Neutrals" for Alternative Means of Dispute Resolution.

The Assembly will also consider a proposed amendment to the Bylaws of the Conference.

Plenary sessions are open to the public. Further information on the meeting, including copies of proposed recommendations, may be obtained from the Office of the Chairman, 2120 L Street NW., Suite 500, Washington, DC 20037, telephone (202) 254–7020.

Richard K. Berg,
General Counsel.
November 20, 1986.

[FR Doc. 86–26713 Filed 11–26–86; 8:45 am]
BILLING CODE 6110–01–M

Committee on Regulation; Meeting

AGENCY: Committee on Regulation, ACUS.

ACTION: Committee meeting.

SUMMARY: The Administrative Conference Committee on Regulation will meet to discuss a draft report on the regulation of policy making.

DATE: December 4, 1986, 9:00 a.m.

ADDRESS: 1330 Connecticut Avenue, N.W., Conference Center, Level C, Washington, DC.

Public Participation: Attendance at the meeting is open to the public, but limited to the space available. Persons wishing to attend should notify the contact person at least one day in advance. The committee chairman may permit members of the public to make oral statements at the meeting. Written statements may be submitted to the committee at any time. Minutes of the meeting will be available on request.

FOR FURTHER INFORMATION CONTACT: William C. Bush, Administrative Conference of the United States, 2120 L Street NW., Suite 500, Washington, DC 20037; telephone (202) 254–7020.

SUPPLEMENTARY INFORMATION: Professor Thomas D. Morgan has submitted a draft report on the subject of control and oversight of the policy making activities of regulatory agencies.

This research project was initially intended to review proposals to institute a legislative "regulatory budget" by which Congress would approve, on an annual basis, economic costs that could be imposed under particular regulatory programs. The study has been expanded to address other forms of control over regulation, including congressional oversight, regulatory review by the Office of Management and Budget, and judicial review of agency actions. The Committee met with Professor Morgan in June 1986 to discuss this project when it was in the formative stage, and will now review a more finished draft report. No proposed Conference recommendations are expected to be formulated at the meeting.

Dated: November 20, 1986.

Richard K. Berg,
General Counsel.

[FR Doc. 86–26751 Filed 11–26–86; 8:45 am]
BILLING CODE 6110–01–M

DEPARTMENT OF COMMERCE

[Docket Nos. 4652–04 and 4652–05]

Ognian Bozarov and Assen Koinov (Respondents); Order Amending Temporary Denial Order

By Order of February 3, 1984, 49 FR 4958 (February 9, 1984), Respondents Ognian Bozarov and Assen Koinov, together with three other respondents and five related persons, were temporarily denied U.S. export privileges, pursuant to the authority of § 388.19 of the Export Administration Regulations (currently codified at 15 CFR Parts 368–399 (1986)). Respondents Bozarov and Koinov have now moved to vacate the temporary denial order of February 3, 1984 as to them; and the U.S. Department of Commerce has stated that it does not oppose such vacating as to these two Respondents.

Accordingly, it is hereby ordered that, effective November 20, 1986, the temporary denial order of February 3, 1984 is amended by deleting, from the respondents named therein:

Ognian Bozarov,
57 Boul. Tcherni Vrah,
Sofia, Bulgaria
and
Assen Koinov,
57 Boul. Tcherni Vrah,
Sofia, Bulgaria

This amendment of the temporary denial order of February 3, 1984 applies only to Respondents Bozarov and Koinov; this amendment has no application to any of the other respondents or to any of the related persons named in such order.

A copy of this amendment of the temporary denial order of February 3, 1984 shall be published in the **Federal Register.**

Dated: November 20, 1986.

Thomas W. Hoya,
Administrative Law Judge.

[FR Doc. 86–26768 Filed 11–26–86; 8:45 am]
BILLING CODE 3510–DT–M

International Trade Administration

[A-489-602]

Initiation of Antidumping Duty Investigation; Acetylsalicylic Acid (Aspirin) From Turkey

AGENCY: International Trade Administration, Import 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 an antidumping duty investigation to determine whether acetylsalicylic acid (aspirin) from Turkey is being, or is 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 this product are causing material injury, or threaten material injury, to a U.S. industry. If this investigation proceeds normally, the ITC will make its preliminary determination on or before December 15, 1986, and we will make ours on or before April 9, 1987.

EFFECTIVE DATE: November 28, 1986.

FOR FURTHER INFORMATION CONTACT: Charles E. Wilson or Steven Lim, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377-5288 or (202) 377-5332.

SUPPLEMENTARY INFORMATION:

The Petition

On October 31, 1986, we received a petition in proper form filed by Monsanto Company on behalf of the U.S. industry producing aspirin. In compliance with the filing requirements of § 353.36 of the Commerce Regulations (19 CFR 353.36), the petition alleged that imports of the subject merchandise from Turkey 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 are causing injury, or threaten material injury, to a U.S. industry.

Initiation of Investigation

Under section 732(c) of the Act, we must determine, within 20 days after a petition is filed, whether it sets forth the allegations necessary for the initiation of an antidumpting duty investigation and, further, whether it contains information reasonably available to the petitioner supporting the allegations.

We examined the petition on aspirin from Turkey and 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 aspirin from Turkey is being, or is likely to be, sold in the United States at less than fair value.

Scope of Investigation

The product covered by this investigation is acetylsalicylic acid (aspirin), contining no additives other than inactive substances (such as starch, lactose, cellulose, or coloring material) and/or active substances in concentrations less than that specified for particular non-prescription drug combinations of aspirin and active substances as published in the *Handbook of Non-Prescription Drugs*, 8th edition, American Pharmaceutical Association, and is not in tablet, capsule or similar forms for direct human consumption. This product is currently classified under item 410.72 of the *Tariff Schedules of the United States (TSUS).*

United States Price and Foreign Market Value

Petitioner calculated United States price based on Bureau of Census import statistics. Petitioner based foreign market value on the home market prices of Turkish producers.

Based on this method of comparison, petitioner alleged dumping margins ranging from 33 percent to 83 percent.

After analysis of petitioner's allegations and supporting data, we conclude that a formal investigation is warranted.

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 nonproprietary information. We will also allow the ITC access to all privileged and business proprietary 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 December 15, 1986, whether there is a reasonable indication that imports of aspirin from Turkey are causing material injury, or threaten material injury, to a U.S. industry. If its determination is negative, the investigation will terminate; otherwise, it will proceed according to the statutory and regulatory procedures.

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

November 20, 1986.

[FR Doc. 86-26658 Filed 11-26-86; 8:45 am]

BILLING CODE 3510-DS-M

[C-489-603]

Initiation of Countervailing Duty Investigation: Acetylsalicylic Acid (Aspirin) From Turkey

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the U.S. Department of Commerce, we are initiating a countervailing duty investigation to determine whether manufacturers, producers, or exporters of acetylsalicylic acid (aspirin) 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. If this investigation proceeds normally, the ITC will make its preliminary determination on or before December 15, 1986, and we will make ours on or before January 26, 1987.

EFFECTIVE DATE: November 28, 1987.

FOR FURTHER INFORMATION CONTACT: Barbara Tillman, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377-2438.

SUPPLEMENTARY INFORMATION:

The Petition

On October 31, 1986, we received a petition in proper form from the Monsanto Company with respect to aspirin from Turkey. 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 aspirin receive subsidies within the meaning of section 701 of the Tariff Act of 1930, as amended (the Act). In addition, the petition alleges that such

imports materially injure, or threaten material injury to, the U.S. industry.

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 whether it contains information reasonably available to the petitioner supporting the allegations. We have examined the petition on aspirin from Turkey and have found that it meets the requirements of section 702(b) of the Act. Therefore, in accordance with section 702(c) of the Act, we are initiating a countervailing duty investigation to determine whether manufacturers, producers, or exporters in Turkey of aspirin receive benefits which constitute subsidies within the meaning of the Act. If our investigations proceeds normally, we will make our preliminary determination on or before January 26, 1987.

Scope of Investigation

The product covered by this investigation is acetylsalicyclic acid (aspirin), containing no additives other than inactive substances (such as starch, lactose, cellulose, or coloring material) and/or active substances in concentrations less than that specified for particular non-prescription drug combinations of aspirin and active substances as published in the *Handbook of Non-Prescription Drugs*, 8th edition, American Pharmaceutical Association, and is not in tablet, capsule or similar forms for direct human consumption. This product is currently provided for in item 410.72 of the *Tariff Schedules of the United States*.

Allegations of Subsidies

The petition lists a number of practices by the Government of Turkey which allegedly confer subsidies on the manufacturers, producers, or exporters in Turkey of aspirin. We are initiating an investigation on the following alleged programs:

—General Incentives Program:
—Interest Rebates
—Credit for Operational Requirements
—Preferential Interest Rates on Loans of Foreign Origin
—Income and Corporation Tax Allowance
—Accelerated Depreciation
—Re-evaluation of Fixed Assets
—Customs Duty Exemptions
—Customs Duty Exemptions on Physically Incorporated Raw
—Materials
—Customs Duty Deferrals
—Exemptions From Taxes on Payments to Foreign Suppliers
—Foreign Exchange Allocation Scheme
—Authorization to Seek Foreign Financing
—Employee Wage and Salary Tax Exemption
—Other Tax Exemptions
—Preferential Export Financing
—Export Tax Rebate and Supplemental Tax Rebate
—Exemptions on Loan Fees
—Export Revenue Tax Deduction
—Resource Utilization Support Fund
—Premium to Support Investment
—Incentive Premium for Domestically Obtained Capital Goods

Notification of 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 adminsitrative protective order without the consent of the Deputy Assistant Secretary for Import Administration.

Preliminary Determination by ITC

The ITC will determine by December 15, 1986 whether there is a reasonable indication that imports of aspirin 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 and regulatory procedures.

This notice is published pursuant to section 702(c)(2) of the Act.

Gilbert B. Kaplan,

Deputy Assistant Secretary of Import Administration.

November 20, 1986.

[FR Doc. 86-26769 Filed 11-26-86; 8:45 am]

BILLING CODE 3510-DS-M

Electronic Instrumentation Technical Advisory Committee; Partially Closed Meeting

A meeting of the Electronic Instrumentation Technical Advisory Committee will be held December 16 and 17, 1986, in the Federal Building, 450 Golden Gate Avenue, San Francisco, CA. On December 16 the meeting will be held in Room 13029 starting at 9:30 a.m. and will continue in Room 13029 on December 17.

The Committee advises the Office of Technology and Policy Analysis with respect to technical questions which affect the level of export controls applicable to electronics and related equipment and technology.

General Session:

1. Opening remarks by the Chairperson.
2. Presentation of papers or comments by the public.
3. Continuation of discussion concerning the export controls on ECCN 1521A (broad band amplifiers).
4. Public comments are invited on the following entries on the Commodity Control List (CCL):

CCL 1522A—Lasers and Laser Systems
CCL 1529A—Electronic Test Equipment—particularly Subitem b(5) and Subitem (f)
CCL 1531A—Frequency Synthesizers
CCL 1541A—Cathode Ray Tubes
CCL 1572A—Recording and Reproducing Equipment.

Comments should consider the need for revision (strengthening, relaxation or decontrol) of the current regulations based on technological trends, foreign availability and national security. The Committee is also interested in proposals for revision to the People's Republic of China guidelines and G–COM regulations relating to these CCL numbers.

Executive Session

5. 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 and can be directed to: Technical Support Staff, Office of Technology & Policy Analysis, Room 4073, 14th Street & Constitution Avenue, NW. Washington, DC 20230.

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 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 Betty A. Ferrell, 202/377–2583.

Dated: November 21, 1986.

Margaret A. Cornejo,

Director, Technical Support Staff, Office of Technology & Policy Analysis.

[FR Doc. 86–26770 Filed 11–26–86; 8:45 am]

BILLING CODE 3510-DT-M

University of Chicago; Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR 301). Related records can be viewed between 8:30 AM and 5:00 PM in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket No. 85–016. Applicant: University of Chicago, Argonne, IL 60439. Instrument: Ultra High Vacuum Chamber. Manufacturer: Kratos Analytical Instruments, United Kingdom. Intended Use: See notice at 49 FR 47283.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States.

Reasons: The foreign article is a compatible accessory to an existing instrument providing ultra high vacuum to $5x10^{11}$ torr. The capability is pertinent to the applicant's intended purpose. We know of no domestic apparatus of equivalent scientific value to the foreign article which can be readily adapted to the instrument.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 86–26772 Filed 11–26–86; 8:45 am]

BILLING CODE 3510-DS-M

University of Houston-University Park; Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR 301). Related records can be viewed between 8:30 AM and 5:00 PM In Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue NW, Washington, DC.

Docket No. 86–058. Applicant: University of Houston–University Park, Houston, TX 77004. Instrument: Gas Isotope Ratio Mass Spectrometer System, Model Delta E with Accessories. Manufacturer: Finnigan MAT, West Germany. Intended Use: See notice at 51 FR 666.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States.

Reasons: The foreign article provides automated instrument parameter monitoring functions, precise measurement of small samples and a multielement multicollector (six-Faraday cup) system. These capabilities are pertinent to the applicant's intended purpose. We know of no domestic instrument or apparatus of equivalent scientific value to the foreign instument for the applicant's intended use.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 86–26773 Filed 11–26–86; 8:45 am]

BILLING CODE 3510-DS-M

University of Kentucky; Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational Scientific, and Cultural Materials Importation Act of 1986 (Pub. L. 89–651, 80 Stat. 897; 15 CFR 301). Related records can be viewed between 8:30 AM and 5:00 PM in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC.

Docket No. 85–012. Applicant: University of Kentucky, Lexington KY 40506–0055. Instrument: Fourier-Transform Infrared Spectrometer System, Model IZMO1 with Accessories. Manufacturer: Bomen Inc., Canada. Intended Use: See Notice at 49 FR 47283.

Comments: None Received.

Decision: No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States.

Reasons: The Foreign article provides an unapodized resolution of 0.024 cm^{-1}. The capability is pertinent to the applicant's intended purpose. We know of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 86–26774 Filed 11–26–86; 8:45 am]

BILLING CODE 3510-DS-M

University of Minnesota; Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR 301). Related records can be viewed between 8:30 AM and 5:00 PM in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC.

Docket No.: 84–277. Applicant: University of Minnesota, Minneapolis, MN 55455. Instrument: Mass Spectrometer, Model Delta E. Manufacturer: Finnigan MAT, West Germany. Intended Use: See notice at 49 FR 35398.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States.

Reasons: The foreign article provides an internal precision of 0.02°/00 for 20 microliter samples of $CO_2$and a automated 20 sample port heatable manifold. These capabilities are pertinent to the applicant's intended purpose. We know of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 86–26775 Filed 11–26–86; 8:45 am]

BILLING CODE 3510-DS-M

Geological Survey, Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR 301). Related

records can be viewed between 8:30 AM and 5:00 PM in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC.

Docket No. 84–301. Applicant: U.S. Geological Survey, Arvada, CO 80002. Instrument: Inductively Coupled Plasma Mass Spectrometer, Model ELAN 250. Manufacturer: SCIEX Incorporated, Canada. Intended use: See notice at 49 FR 40069.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States.

Reasons: The foreign article provides simultaneous qualitative and quantitative data at major, minor, trace and ultratrace levels directly from aqueous samples. This capability is pertinent to the applicant's intended purpose. We know of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 86–26771 Filed 11–26–86; 8:45 am]

BILLING CODE 3510–DS–M

Woods Hole Oceanographic Institution; Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR 301). Related records can be viewed between 8:30 AM and 5:00 PM in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC.

Docket No. 86–277. Applicant: Woods Hole Oceanographic Institution, Woods Hole, MA 02543. Instrument: Mass Spectrometer, Model Delta E. Manufacturer: Finnigan MAT, West Germany. Intended Use: See notice at 51 FR 28859.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States.

Reasons: The foreign instrument provides an internal precision of 0.04‰ for samples of N_2O down to 5.0 micromoles. The National Bureau of Standards advises in its memorandum dated September 15, 1986 that (1) this capability is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

We know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States

Frank W. Creel,

Director Statutory Import Programs Staff.

[FR Doc. 86–26776 Filed 11–26–86; 8:45 am]

BILLING CODE 3510–DS–M

National Oceanic and Atmospheric Administration

New England Fishery Management Council; Public Meeting

AGENCY: National Maritime Fisheries Service, NOAA, Commerce.

The New England Fishery Management Council will convene a public meeting, December 2–3, 1986, at the King's Grant Inn, Danvers, MA. On December 2 at 10 a.m., the Council will convene to discuss reports of the lobster, scallop and groundfish oversight committees; reports on the gillnet/recreational mediation effort; the gillnet study, and fishery management in New Zealand, as well as to discuss other fishery management and administrative matters. The meeting will adjourn on December 3, at approximately 4 p.m.

FOR FURTHER INFORMATION CONTACT: Douglas G. Marshall, Executive Director, New England Fishery Management Council, Suntaug Office Park, 5 Broadway, (Route One), Saugus, MA 01906; telephone: (617) 231–0422.

Richard B. Roe,

Director, Office of Fisheries Management, National Maritime Fisheries Service.

[FR Doc. 86–26841 Filed 11–26–86; 8:45 am]

BILLING CODE 3510–22–M

Marine Mammals; Application for Permit; National Marine Fisheries Service, Northwest and Alaska Fisheries Center (P77#23)

Notice is hereby given that an Applicant has applied in due form for a Permit to take marine mammals as authorized by the the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), and the Regulatory Governing the Taking and Importing of Marine Mammals (50 CFR Part 216).

1. Applicant:

a. Name: National Marine Fisheries Service, Northwest and Alaska Fisheries Center, National Marine Mammal Laboratory.

b. Address: 7600 Sand Point Way NE., BIN C15700, Seattle, Washington 98115.

2. Type of Permit: Scientific Research.

3. Species:

North sea lion (*Eumetopias jubatus*)
Harbor seal (*Phoca vitulina*)
Largha seal (*Phoca largha*)
Ringed seal (*Phoca hispida*)
Ribbon seal (*Phoca fasciata*)
Bearded seal (*Erignathus barbatus*)

4. Number and Type of Take:

To take for five (5) years up to 5,000 northern sea lions and 1,000 harbor seals by capturing up to 3 (3) times each using physical and/or chemical restraint for marking, weighing, measuring, obtaining blood, milk, and swab samples, and sex identification. Of the proceding, 500 northern sea lions and 100 harbor seals will be instrument tagged. And additional, 200 northern sea lions, 200 harbor seals, 100 largha seals, 100 ringed seals, 100 ribbon seals, and 100 bearded seals will be taken by intentional sacrifice for food habits and disease studies.

In addition, all of the above species will be taken in the following manners: (1) Collection of an unspecified number of specimen materials from dead animals that become available from subsistence takes by Alaskan residents, found dead, or made available by the research; (2) incidential harassment of an unspecified number of animals associated with and supporting the research in addition to ground surveys, aerial surveys, and boat or ship surveys; and (3) importation of biological specimen material.

5. Location of Activity: Alaska and adjacent waters including the eastern North Pacific and the Chukchi Sea.

6. Period of Activity: 5 years.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, Washington, DC 20235, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries.

Documents submitted in connection with the above application are available for review in the following offices:

Office of Protected Species and Habitat Conservation, National Marine Fisheries Service, 1825 Connecticut Avenue, NW., Room 805, Washington, DC; and Director, Alaska Region, National Marine Fisheries Service, 709 West 9th Street, Federal Building, Juneau, Alaska 99802.

Dated: November 20, 1986.

Richard B. Roe,

Director, Office of Fisheries Management, National Marine Fisheries Service.

[FR Doc. 86-26844 Filed 11-26-86; 8:45 am]

BILLING CODE 3510-22-M

Marine Mammals; Issuance of Permit; Dr. Kenneth S. Norris, Dr. Randall S. Wells, and Dr. William T. Doyle (P20G)

On September 25, 1986, notice was published in the **Federal Register** (51 FR 34115) that an application had been filed by Dr. Kenneth S. Norris, Dr. Randall S. Wells, and Dr. William T. Doyle, Institute of Marine Sciences, Long Marine Laboratory, University of California, Santa Cruz, California 95064, to capture, maintain, and release Pacific white-sided dolphins (*Lagenorhynchus obliquidens*) for scientific research.

Notice is hereby given that on November 19, 1986, as authorized by the provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407), the National Marine Fisheries Service issued a Permit for the above taking subject to certain conditions set forth therein.

The Permit is available for review by interested persons in the following offices:

Office of Protected Species and Habitat Conservation, National Marine Fisheries Service, 1825 Connecticut Avenue NW., Room 805 Washington, DC; and

Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731-7415,

Dated: November 20, 1986.

Richard B. Roe,

Director, Office of Fisheries Management, National Marine Fisheries Service.

[FR Doc. 86-26843 Filed 11-26-86; 8:45 am]

BILLING CODE 3510-22-M

[Modification No. 4 to Permit No. 413]

Marine Mammals; Permit Modification, Southwest Fisheries Center

Notice is hereby given that pursuant to the provisions of § 216.33(d) and (e) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216), and § 222.25 of the regulations governing endangered species permits (50 FR 222), Scientific Research Permit No. 413 issued to the Southwest Fisheries Center, National Marine Fisheries Service, P.O. Box 271, La Jolla, California 92038, on April 20, 1983 (48 FR 17638), as modified on July 6, 1983 (48 FR 31062), May 11, 1984 (49 FR 20047), and July 11, 1985 (50 FR 28238), is further modified as follows:

Section B.7 & 8 is added:

7. Captive research studies to determine underwater auditory thresholds and the appropriate dose of an inhibitory analog of gonadotropin-releasing hormone as described in the modification request of May 2, 1986, may be conducted on the animals held under Condition A-5.

8. A veterinarian shall be present during the initial conduct of the inhibitory analog of gonadotropin-releasing hormone experimental procedures as well as at any other times during the course of the research that the veterinarian believes his presence would be advisable.

This modification became effective on November 20, 1986.

As required by the Endangered Species Act of 1973 issuance of this modification is based on a finding that such modification: (1) was applied for in good faith, (2) will not operate to the disadvantage of the endangered species which are the subject of this Permit; (3) and will be consistent with the purposes and policies set forth in section 2 of the Endangered Species Act of 1973. This Modification was also issued in accordance with and is subject to Parts 220 through 222 of Title 50 CFR, the National Marine Fisheries Service regulations governing endangered species permits.

Documents submitted in connection with the above modification are available for review in the following offices:

Protected Species Division, National Marine Fisheries Service, 1825 Connecticut Avenue, Room 805, Washington, DC; and

Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731.

Dated: November 21, 1986.

Richard B. Roe,

Director, Office of Fisheries Management, National Marine Fisheries Service.

[FR Doc. 86-26842 Filed 11-26-86; 8:45 am]

BILLING CODE 3510-22-M

National Technical Information Service

Intent To Grant Exclusive Patent License to Polysciences, Inc.

The National Technical Information Service (NTIS), U.S. Department of Commerce, intends to grant to Polysciences, Inc., having a place of business in Warrington, PA, an exclusive right in the United States and certain foreign countries to manufacture, use and sell products in the inventions entitled "Silver Stains for Detection of Polypeptides and Nucleic Acids," U.S. Patent Application Serial Number No. 6-859,822. The patent rights in this invention has been assigned to the United States of America, as represented by the Secretary of Commerce.

The proposed exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.9 The proposed license may be granted unless, within sixty days from the date of this published Notice, NTIS receives written evidence and argument which establishes that the grant of the proposed license would not serve the public interest.

Inquiries, comments and other materials relating to the proposed license must be submitted to Papan Devnani, Office of Federal Patent Licensing, NTIS, Box 1423, Springfield, VA 22151.

Douglas J. Campion,

Patent Licensing Specialist, Office of Federal Patent Licensing, U.S. Department of Commerce, National Technical Information Service.

[FR Doc. 86-26738 Filed 11-26-86; 8:45 am]

BILLING CODE 3510-04

Intent To Grant Exclusive Patent License

The National Technical Information Service (NTIS), U.S. Department of Commerce, intends to grant to Calcol, Inc., having a place of business in Shaker Heights, OH 44122, an exclusive right in the United States and certain foreign countries to manufacture, use and sell products in the inventions entitled "Tumor Treatment in Humans with 4-Carboxyphthalo-(1,2-diaminocyclohexane)-Platinum (II)" U.S. Patent Application Serical Number No. 6-540,667. The patent rights in this invention has been assigned to the United States of America, as represented by the Secretary of Commerce.

The proposed exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.9. The proposed license may be granted unless, within sixty days from the date of this published

Notice. NTIS receives written evidence and argument which establsihes that the grant of the proposed license would not serve the public interest.

Inquiries, comments and other materials relating to the proposed license must be submitted to Papan Devnani, Office of Federal Patent Licensing, NTIS, Box 1423, Springfield, VA 22151.

Douglas J. Campion,

Patent Licensing Specialist, Office of Federal Patent Licensing, U.S. Department of Commerce, National Technical Information Service.

[FR Doc. 86-26732 Filed 11-26-86; 8:45 am]

BILLING CODE 3510-04-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjusting Import Limits for Certain Cotton Wool and Man-Made Fiber Textile Products Produced or Manufactured in the People's Republic of China

November 24, 1986.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on November 28, 1986. For further information contact Diana Solkoff, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on quota status of these limits, please refer to the Quota Status Reports which are posted on the bulletin boards of each Customs port. For information on embargoes and quota re-openings, please call (202) 377-3715.

Background

On December 30, 1985 a directive dated December 24, 1985, as amended, was published in the **Federal Register** (50 FR 53182), which announced the import restraint limits for certain cotton, wool and man-made fiber textile products, including Categories 338, 345, 347/348, 352, 359-V (only TSUSA numbers 381.0258, 381.0554, 381.3949, 381.5800, 381.5920, 384.0451, 384.0648, 384.0650, 384.0651, 384.3449, 384.3450, 384.4300, 384.4421, and 384.4422), 369-L (only TSUSA numbers 706.3210, 706.3650, and 706.4111), 445/446, 636, 639, 640, 652, and 669 pt. (only TSUSA number 385.5300), among others, produced or manufactured in China and exported during the twelve-month period which began on January 1, 1986 and extends through December 31, 1986. In accordance with the terms of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of August 19, 1983, as amended, and at the request of the Government of the People's Republic of China, CITA is adjusting the foregoing limits, variously, for carryforward and swing. To the extent used, the carryforward applied to the limits for Categories 345, 347/348, 636 and 639 will be deducted from the applicable limits for these products in the 1987 agreement year. In addition, charges amounting to 12,599 dozen will be deducted from imports charged to the current year sublimit for Category 338-pt. and charged to the 1985 sublimit for the category. Accordingly, in the letter which follows this notice, the Chairman of CITA directs the Commissioner of Customs to adjust the restraint limits previously established for the indicated categories. The limits for Categories 359-V and 669 pt. are being reduced to account for swing being applied to other categories.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), July 14, 1986 (51 FR 25386) and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1986).

William H. Houston III,

Chairman, Committee for the Implementation of Textiles Agreements.

November 25, 1986.

Committee for the Implementation of Textile Agreements

November 24, 1986.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229

Dear Mr. Commissioner: This directive further amends, but does not cancel, the directive issued to you on December 24, 1985 by the Chairman of the Committee for the Implementation of Textile Agreements, concerning imports into the United States of certain categories of cotton, wool, and man-made fiber textile products, produced or manufactured in the People's Republic of China and exported during 1986.

Effective on November 28, 1986, the directive of December 24, 1985 is hereby further amended to adjust the previously established limit for cotton, wool and man-made fiber textile products in the following categories, as provided under the terms of the bilateral agreement of August 19, 1983, as amended: [1]

Category	Adjusted 1986 limit [1]
338	894,035 dozen of which not more than 640,285 dozen shall be in TSUSA numbers 381.0240 and 381.4130.
345	100,787 dozen.
347/348	2,142,533 dozen.
352	1,375,952 dozen.
359-V [2]	613,750 pounds.
369-L [3]	4,079,250 pounds.
445/446	275,891 dozen.
636	386,485 dozen.
639	1,080,568 dozen.
640	1,026,538 dozen.
652	1,890,000 dozen.
669 pt. [4]	2,161,407 pounds.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1985.

[2] In Category 359, only TSUSA numbers 381.0258, 381.0554, 381.3949, 381.5800, 381.5920, 384.0451, 384.0648, 384.0650, 384.0651, 384.3449, 384.3450, 384.4300, 384.4421, and 384.4422.

[3] In Category 369, only TSUSA numbers 706.3210, 706.3650, and 706.4111.

[4] In category 669, only TSUSA number 385.5300.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

William H. Houston III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 86-26872 Filed 11-26-86; 8:45 am]

BILLING CODE 3510-DR-M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Federal Acquisition Regulation (FAR); Information Collection 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

[1] The agreement provides, in part, that: (1) with the exception of Category 315, any specific limit may be exceeded by not more than 5 percent of its square yards equivalent total, provided that the amount of the increase is compensated for by and equivalent square yard decrease in one or more other specific limits in that agreement year; (2) the specific limits for certain categories may be increased for carryforward, and (3) administrative arrangements or adjustments may be made to resolve minor problems arising in the implementation of the agreement.

Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection.

ADDRESS: Send comments to Franklin S. Reeder, FAR Desk Officer, Room 3235, NEOB, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Ms. Victoria Moss, Office of Federal Acquisition and Regulatory Policy (202) 523–4820 or Mr. Owen Green, Defense Acquisition Regulatory Council, (703) 697–7268.

SUPPLEMENTARY INFORMATION: a. *Purpose:* When the same item or class of items is being acquired by more than one agency, the exchange and coordination of pertinent information, particularly cost and pricing data, is necessary to promote uniformity of treatment of major issues and the resolution of particularly difficult or controversial issues. For this reason, the contracting officer, early in a negotiation of a contract, or in connection with the review of a subcontract, must request the contractor to furnish information as to the contractor's or subcontractor's previous Government contracts and subcontracts for the same or similar end items and major subcontractor components. This information is particularly beneficial during the period of acquisition planning, presolicitation, evaluation, and preaward survey. The information is used to determine a firm's responsibility.

b. *Annual reporting burden:* The annual reporting burden is estimated as follows: Respondents, 2,000; responses per respondent, 10; total annual responses 20,000; hours per response, .25; and total burden hours, 5,000.

Obtaining copies of proposals

Requesters may obtain copies from the FAR Secretariat (VRS), Room 4041, GSA Building, Washington, DC 20405, telephone (202) 523–4755. Please cite OMB Control No. 9000–0036, Information Regarding Previous Contracts.

Dated: November 17, 1986.

Margaret A. Willis,

FAR Secretariat.

[FR Doc. 86–26715 Filed 11–26–86; 8:45 am]

BILLING CODE 6820–61–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Unauthorized Use of the Global Positioning System (GPS)

AGENCY: Command, Control, Communications, and Intelligence (C^3I).

ACTION: Notice of Unauthorized use of the global positioning system (GPS)

SUMMARY: The Department of Defense currently has a research and development (R&D) constellation of navigation satellites in orbit that are the forerunners of an operational Global Positioning System (GPS) constellation of 18 navigation satellites plus three on orbit spares. The R&D satellites plus operational satellites that are scheduled to join the constellation beginning in 1988, are essential to the development of the military user equipment and operational uses of the system. During the development and deployment phases of the GPS, the R&D and operational satellites will transmit signals which are intended *only* for government testing purposes, and are not intended for operational use. The signals from the R&D and operational satellites are subject to change without advanced warning, may transmit non-useable altered signals for government testing, and may be turned on and off at any time. Therefore, any use of the GPS satellite signals for positioning, navigation, time transfer, or any other purpose, is not authorized by the U.S. Government and will be at the risk of the user.

On 1 January 1987, the GPA Control Segment will begin using the World Geodetic System (WGS) 84, versus the current WGS 72, to upload satellite navigation message ephermeris data elements. The GPS Control Segment has used the Department of Defense (DOD) World Geodetic System (WGS 72) as the modeling basis for GPS satellite ephermeris generation during the early phases of the GPS system development and production.

Since the advent of WGS 72, the Defense Mapping Agency (DMA) has continued to refine the WGS modeling process and has evolved the new WGS 84 version which is a significant change and improvement over WGS 72. DMA is in the final process of the development and implementation of the WGS 84. The GPS Control Segment will begin using WGS 84 for satellite vehicle broadcast message elements on 1 January 1987. Although the two versions of the WGS are similar, use of the WGS 72 description in GPS receivers, without acounting for the difference in WGS 84, will result in systematic biases and geographically variable positioning errors.

When the GPS is declared fully operational, an event that is scheduled to occur in 1991, the DOD intends to provide GPS Standard Positioning Service (SPS) to any user, world-wide, at an accuracy of 100 meters, Two Distance Root Mean Square (2 DRMS). There is no plan to charge users for this service.

ADDRESS: Office of the Assistant Secretary of Defense, Command, Control, Communications, and Intelligence, Room 3D174, The Pentagon, Washington, DC 20301.

FOR FURTHER INFORMATION CONTACT: Colonel Phillip Baker, telephone (202) 695–6123, for general information on GPS. Questions regarding WGS should be directed to Mr. Michael Ellett, telephone (213) 643–0191.

Linda M. Lawson,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 86–26733 Filed 11–26–86; 8:45 am]

BILLING CODE 3810–01–M

DOD Advisory Group on Electron Devices; Advisory Committee Meeting

SUMMARY: Working Group C (Mainly Opto Electronics) of the DOD Advisory Group on Electron Devices (AGED) announces a closed session meeting.

DATE: The meeting will be held at 1:00 p.m. on Monday, 1 December and 9:00 a.m. on Tuesday, 2 December 1986.

ADDRESS: The meeting will be held at the Naval Ocean Systems Center, Building 33, (Cloud Room), San Diego, California 92152.

FOR FURTHER INFORMATION CONTACT: Gerald Weiss, AGED Secretariat, 201 Varick Street, New York, 10014.

SUPPLEMENTARY INFORMATION: The mission of the Advisory Group is to provide the Under Secretary of Defense for Acquisition, the Director, Defense Advanced Research Projects Agency and the Military Departments with technical advice on the conduct of economical and effective research and development programs in the area of electron devices.

The Working Group C meeting will be limited to review of research and development programs which the military propose to initiate with industry, universities or in their laboratories. This opto-electronic device area includes such programs as imaging devices, infrared detectors and lasers. The review will include classified program details throughout.

In accordance with section 10(d) of Pub. L. No. 92–463, as amended, (5 U.S.C. App. II 10(d) (1982)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552(c)(1) (1982), and that

accordingly, this meeting will be closed to the public.

Linda M. Lawson,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

November 20, 1986.

[FR Doc. 86-26762 Filed 11-26-86; 8:45 am]

BILLING CODE 3810-01-M

Department of the Air Force

Cancellation of USAF Scientific Advisory Board Meeting

The meeting of the USAF Scientific Advisory Board Ad Hoc Committee on Minuteman III Penetration Aids, scheduled to meet at Headquarters Ballistic Missile Office, Norton AFB CA, on November 24–25, 1986, has been canceled. The meeting was announced on November 6, 1986, 51 FR 40352.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 86-26735 Filed 11-26-86; 8:45 am]

BILLING CODE 3910-01-M

Department of the Army

Army Science Board; Notice of 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: Tues. & Wed., 16–17 December 1986.

Times of meeting: 0730–1700 hours each day.

Place: LTV Aerospace and Defense Company, 1725 Jefferson Davis Highway, Suite 900, Arlington, VA.

Agenda: The Army Science Board Ad Hoc Subgroup for Effectiveness Review of ARDEC will meet for the purpose of reviewing additional ARDEC programs, conducting discussions with customers of ARDEC products and services, and meeting with cognizant representatives of the DA Staff. The panel will meet in executive session to discuss their emerging observations, identifying additional informational requirements, and methodology for continuing the 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) 695–3030 or 695–7046.

Sally A Warner,

Administrative Officer, Army Science Board.

[FR Doc. 86-26734 Filed 11-26-86; 8:45 am]

BILLING CODE 3710-08-M

DEPARTMENT OF EDUCATION

Notice Inviting Applications for a Grant for the National Center for Research in Vocational Education (CFDA 84.051)

Purpose: To provide a grant to a nonprofit entity associated with a public or private nonprofit university for the five-year operation of the National Center for Research in Vocational Education.

Deadline For Transmittal of Applications: August 14, 1987.

Applications Available: December 5, 1986.

Available Funds: $6 million annually.

Project Period: 5 years beginning January 16, 1988.

Applicable Regulations: (a) The regulations in 34 CFR Part 417; and (b) The Education Department General Administrative Regulations, 34 CFR Parts 74, 75, 77, and 78.

For Applications or Information Contact: Mary G. Lovell, U.S. Department of Education, Office of Vocational and Adult Education, 400 Maryland Avenue, SW, Room 519 Reporters Building, Washington, DC 20202. Telephone (202) 732–2371.

Program Authority: 20 U.S.C. 2404.

Dated: November 24, 1986.

John K. Wu,

Acting Assistant Secretary for Vocational and Adult Education.

[FR Doc. 86-26731 Filed 11-26-86; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Bonneville Power Administration

[BPA File No: RSES]

Proposed 1988 Resource Strategy; Notice of Intent to Prepare an Environmental Impact Statement and Scoping Meetings

AGENCY: Bonneville Power Administration (BPA), DOE.

ACTION: Notice of intent to prepare an environmental impact statement (EIS), announcement of scoping, notice of scoping meetings, and request for comment.

SUMMARY: BPA hereby gives notice of its intent to prepare and consider an Environmental Impact Statement (EIS) on the 1988 Resource Strategy.

The Resource Strategy is a document that is prepared annually to describe BPA's conservation and generating resources program priorities for a given rate and budget period, in the context of a long-term planning horizon. The 1988 Resource Strategy will be a key input to BPA's 1989 rate case and fiscal year 1990 budget process. In developing its Resource Strategy, BPA examines the Northwest Power Planning Council's (Council) latest Power Plan and identifies programs to implement the Power Plan. The Council's Power Plan presents a portfolio of power resources for the region, ranking these resources by cost, type, and sequence of development. The Council's Power Plan is BPA's principal guide to action. The Resource Strategy emphasizes those actions BPA must take in the near term considering long-term needs. Its development also provides forum for resolving resource-related policy issues.

The programmatic EIS will analyze the environmental impacts of the alternative strategies which BPA will examine for meeting future demands for electricity. BPA expects that the analysis in this EIS will be broad enough to encompass future Resource Strategies which continue along the same general direction. Therefore, BPA anticipates the need to update the EIS only when significant changes in the strategy occur. The analysis in the EIS will focus on the environmental differences among alternative combinations of resources. It will be used by decisionmakers, along with the results of other analyses, in selecting a preferred Resource Strategy. The EIS will also encompass any specific proposals for action that may be contained in the Resource Strategy.

During the development of the 1988 Resource Strategy, BPA plans to develop alternative levels for conservation and generation programs and projects focusing on fiscal years 1990 through 1994. These levels will reflect the outcome of various studies to determine what the resource picture would look like if BPA served the electrical needs of the entire region; and will reflect the feasibility of firming up supplies of nonfirm hydropower through various means, including the use of direct service industry (DSI) interruptibility, combustion turbines, and contractual mechanisms. BPA will also incorporate in the 1988 Resource Strategy the conclusions of its 1987 study of whether to restart, terminate, or continue to preserve Washington Public Power Supply System Nuclear Plants (WNP)-1 and -3.

DATES: Two scoping meetings will be held:

December 12, 1:00 p.m., 415 First Avenue North, Room 250, Seattle, Washington

(Please call Mr. Terry Esvelt at 206–442–4130 if you plan to attend.)

December 16, 1:30 p.m., 1005 NE. Holladay, Room 464, Portland, Oregon

Responsible Official: Mr. Roy B. Fox, Environmental Coordinator for the Office of Power and Resources Management, is the responsible official for the development of the EIS on the 1988 Resource Strategy, and may be contacted at (503) 230–4261 in Portland.

FOR FURTHER INFORMATION: Written comments on the scope of the EIS and the environmental analysis should be submitted to Mr. Anthony R. Morrell, Environmental Manager, at P.O. Box 3621–SJ, Portland, Oregon 97208, by December 31, 1986.

To have your name placed on the Resource Strategy or the EIS mailing list, or for other questions, please call the Public Involvement office at 230–3478 in Portland. Toll-free lines: Oregon callers may use 800–452–8429; callers in California, Idaho, Montana, Nevada, Utah, Washington, and Wyoming may use 800–547–6048.

Information may also be obtained from:

Mr. George Gwinnutt, Lower Columbia Area Manager, Suite 288, 1500 Plaza Building, 1500 NE. Irving Street, Portland, Oregon 97232, 503–230–4551.

Mr. Ladd Sutton, Eugene District Manager, Room 206, 211 East Seventh Avenue, Eugene, Oregon 97401, 503–687–6952.

Mr. Wayne Lee, Upper Columbia Area Manager, Room 561, West 920 Riverside Avenue, Spokane, Washington 99201, 509–456–2518.

Mr. George E. Eskridge, Montana District Manager, 800 Kensington, Missoula, Montana 59801, 406–329–3060.

Mr. Ronald K. Rodewald, Wenatchee District Manager, P.O. Box 741, Wenatchee, Washington 98801, 509–662–4377, extension 379.

Mr. Terence G. Esvelt, Puget Sound Area Manager, 415 First Avenue North, Room 250, Seattle, Washington 98109, 206–442–4130.

Mr. Thomas V. Wagenhoffer, Snake River Area Manager, West 101 Poplar, Walla Walla, Washington 99362, 509–522–6226.

Mr. Robert N. Laffel, Idaho Falls District Manager, 531 Lomax Street, Idaho Falls, Idaho 83401, 208–523–2706.

Mr. Frederic D. Rettenmund, Boise District Manager, Room 376, 550 West Fort Street, Boise, Idaho 83724, 208–334–9137.

SUPPLEMENTARY INFORMATION:

Background

BPA's Resource Strategy assesses the alternative loads that the Administrator may have to serve, explains how the Administrator proposes to serve those loads with additional conservation and generating resources, and explains the rationale for the proposal. It translates general conclusions based on analysis and guidance from the Council's Power Plan into levels of conservation and generation programs (acquisition, research and development, etc.). Development of the Resource Strategy also provides a forum to resolve certain issues which are significant to near-term and long-term power resource planning and development.

BPA staff is working on the 1988 Resource Strategy by defining significant issues to consider in the next 2 years. Teams have begun consulting with various groups for information and comment. The draft 1988 Resource Strategy and EIS will be distributed in Fall 1987; the final strategy and EIS will be available in Spring 1988.

Alternatives

The Resource Strategy will be composed of different resource alternatives open to BPA. A set of conservation and generating resource actions, together with the timing of such actions, constitutes a single resource alternative. BPA will identify a range of possible alternatives, and then analyze the consequences of each in terms of a range of impacts, such as rate effects, environmental impacts, financial impacts, and net economic costs both to the region and to various customer rate classes in the region.

The resource alternatives which BPA will analyze in the EIS will be identified through public comment during the EIS scoping period and through other public processes associated with the Resource Strategy development, including the guidance of the Council's Power Plan. The alternatives can range from very low resource acquisition levels to aggressive levels of acquisition such as purchasing options on coal plants and providing large incentives for conservation measures.

The analysis will examine these alternatives under a wide variety of assumptions reflecting some key uncertainties, such as uncertain load growth and the variability in output of the hydro system due to variations in precipitation.

The principle of the analysis is simple, but its execution is complex. The analysis must consider many thousands of quantitative relationships among loads and resources, as well as qualitative factors. It is important to emphasize that such analysis does *not* produce a "best" Resource Strategy. In this situation it is impossible to find a strategy which is best in all ways. For example, a strategy which could produce a long-term economic benefit to the entire region might also have negative near-term rate impacts on certain customer classes or require levels of long-term financing from third parties and BPA which cannot be achieved.

Major Resource Strategy Issues

Certain components are common to any Resource Strategy. These include: (1) Conducting an analysis of loads and resources to assess combinations of resources that could be acquired by BPA in the future; and (2) program planning for conservation and generating resources, by which proposed program levels and costs are determined as the basis for preparing BPA's budget. These components will be incorporated into the 1988 Resource Strategy as proposed program levels for fiscal years 1990 through 1994.

Following are the key subject areas of the Resource Strategy. The outcome of these various subjects will be a range of alternative strategies from which a preferred strategy and program levels will be chosen. It there are proposals for action to implement the preferred strategy, they will be analyzed in the EIS, in terms of the impacts which they have on the quality of the human environment.

A. Administrator's Obligation

The Administrator's Obligation Studies seek to gain more information on how customer utilities will make decisions on building their own resources or turning to BPA to meet their loan growth. The Resource Strategy may identify specific actions that BPA might take to achieve certain goals, such as contractual arrangements or incentive programs. If specific actions are proposed, an environmental analysis would be included in the EIS.

B. Strategies for Firming Nonfirm Hydropower

For the 1988 Resource Strategy, BPA will analyze alternative ways of making firm, dependable power out of power that cannot always be counted on due to variability in river flows and, consequently, in hydro system output. These alternatives might include backing nonfirm resources with the use of combustion turbines, contracting for the use of extraregional resources, load management, or changing the planning criteria for the hydroelectric system.

The EIS would look primarily at how changes to hydro system operations would affect fish and wildlife resources. The analysis will also include air quality issues associated with combustion

turbine operations and changes in extraregional generation patterns.

C. WNP–1 and –3 Study.

The 1988 Resource Strategy will incorporate the study conclusions reached during a public process in 1986 and 1987 on whether termination, completion, or continued preservation is the best choice for one or both of the nuclear projects. The EIS will reflect these conclusions.

Major Environmental Concerns

The tentative scope of the 1988 Resource Strategy includes those issues which are described above. The thread common to these issues is their implication for BPA's resource activities in the near future—on the need for resources, on the makeup of the preferred mix of resources, and on how those resources would be acquired by BPA. Thus, the common environmental theme will be a comparison of the environmental impacts of various conservation and generating resources. The EIS will examine the impacts of the range of alternative combinations of resources that BPA could acquire in the future. The EIS will focus on resource decisions that are contained in the Resource Strategy, and will not attempt to re-evaluate the underlying assumptions or studies conducted by BPA. The EIS will also analyze any proposal for action, considering the effect it may have on the need for resources, and for the extent to which it affects the timing, amount, or selection of one resource type over another.

The folowing list shows the relevant environmental impact categories that we expect to address in the EIS.

1. *Conservation resources:* The impacts of known and available energy conservation measures on air quality as well as any relevant socioeconomic impacts.

2. *Thermal resource development:* The impacts of additional thermal resource development on air, land, and water quality. Incentive for thermal development vary by the load which BPA serves.

3. *Thermal resource operations:* The impacts of changes in generation patterns of existing resources, both in the Federal system and for the entire region. For example, the EIS will include generic discussions of coal, nuclear, and combustion turbine generation. Generation patterns may vary according to the amount and type of loads which BPA serves.

4. *Hydro development:* The impacts of additional hydro development on air, land, and water quality, and any effects on fisheries resources. Incentives for hydro development may be affected by the load which BPA serves.

5. *Hydro system operations:* The impacts of changes to river elevations and flows on fish and wildlife, recreation, irrigation, and cultural resources. Changes may occur if BPA adopts some strategies for firming nonfirm hydropower, imports resources, or varies the amount and type of loads which it serves.

6. *Canadian resources:* The impacts of changes to hydro operations and development in Canada as a result of interregional power acquisitions. The changes could occur if Canadian resources are developed or operated for sale to the Pacific Northwest.

7. *Extraregional resources:* Changes in the availability of BPA power to sell to other regions could affect California utility operating and planning decisions, which may have environmental consequences.

8. *Socioeconomics:* The impacts of conservation and generating resource actions on human activities, communities, and institutional arrangements. This category would include an analysis of any changes in loads or operations of BPA's customers.

Related Issues

BPA is currently preparing an EIS on its power sales contracts in response to a lawsuit filed in 1981. This EIS will examine BPA's existing contracts with its customers. A relationship between the Resource Strategy and the power sales contracts exists because the strategy may propose methods of meeting power supply obligations which are established through the contracts. A relationship between the two EISs would occur if the Resource Strategy identifies the need for contractual mechanisms to promote BPA becoming the region's provider of resources to meet future electrical energy needs.

Related Documents

Copies of the 1986 Resource Strategy, an Issue Backgrounder on the Resource Strategy, and an Issue Alert on the future of WNP–1 and –3 are available from BPA's Public Involvement office. BPA will also be preparing various public materials on the 1987 and 1988 Resource Strategies.

Issued in Portland, Oregon, on November 13, 1986.

James J. Jura,

Administrator.

[FR Doc. 86–26836 Filed 11–26–86; 8:45 am]

BILLING CODE 6450–01–M

Economic Regulatory Administration

[Docket No. ERA–C&E–87–03; OFP Case No. 65041–9330–20–24]

Acceptance of Petition From O'Brien Energy Systems for Exemption From the Prohibitions of the Powerplant and Industrial Fuel Use Act of 1978 and Availability of Certification

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of acceptance.

SUMMARY: On October 22, 1986, O'Brien Energy Systems, filed a petition with the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) requesting a permanent cogeneration exemption for a proposed cogeneration facility to be located in Salinas, California, 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"). Title II of FUA prohibits both the use of petroleum and natural gas as a primary energy source in any new powerplant and the construction of any such facility without the capability to use an alternate fuel as a primary energy source. Final rules setting forth criteria and procedures for petitioning for exemption from the prohibitions of Title II of FUA are found in 10 CFR Parts 500, 501 and 503. Final rules governing the cogeneration exemption were revised on June 25, 1982 (47 FR 29209, July 6, 1982), and are found at 10 CFR 503.37.

ERA has determined that the petition appears to include sufficient evidence to support an ERA determination on the exemption request and it is therefore accepted pursuant to 10 CFR 501.3. A review of the petition is provided in the **SUPPLEMENTARY INFORMATION** section below.

As provided in sections 701(c) and 9d) of FUA and 10 CFR 501.31 and 501.33, interested persons are invited to submit written comments in regard to this petition and any interested person may submit a written request that ERA convene a public hearing.

The public file containing a copy of this Notice of Acceptance and Availability of Certification as well as other documents and supporting materials on this proceeding is available upon request through DOE, Freedom of Information Reading Room, 1000 Independence Avenue SW., Room 1E–190, Washington, DC 20585, from 9:00 a.m. to 4:00 p.m., Monday through Friday, except Federal holidays.

ERA will issue a final order granting or denying the petition for exemption

from the prohibitions of the Act within six months after the end of the period for public comment and hearing, unless ERA extends such period. Notice of any such extension, together with a statement of reasons therefor, would be published in the **Federal Register.**

Docket No. ERA–C&E–87–03 should be printed on the outside of the envelope and the document contained therein.

FOR FURTHER INFORMATION CONTACT:

John Boyd, Office of Fuels Programs, Economic Regulatory Administration, 1000 Independence Avenue, SW., Room GA–093, Washington, DC 20585, Telephone: (202) 252–4523

Steven E. Ferguson, Esq., Office of General Counsel, Department of Energy, Forrestal Building, Room 6A–113, 1000 Independence Avenue SW., Washington, DC 20585, Telephone: (202) 252–6947.

SUPPLEMENTARY INFORMATION: The proposed cogeneration facility will consist of a General Electric (GE) gas turbine which will operate at base load, in conjunction with a hot gas generator and one three level pressure heat recovery boiler with a supplementary duct burner capable of producing 163,000 lb/hr of high pressure steam. The facility will use natural gas. The wast heat recovery boilers rely primary upon the turbine generator's exhaust heat. The steam turbine will accept high pressure steam from the boiler and deliver low pressure steam and/or generate additional electricity. The facility will have a power production capacity of approximately 41.5 MW during summer on-peak operating conditions. Its heat input requirements for natural gas is 342.81 MW BTU/hr. For lower heating value basis, and 380.62 MW BTU/hr. on a higher value basis. The facility's capacity is expected to be 95 percent and its utilization factor will be 95 percent.

Merchants Refrigeration (MR) will purchase all the refrigerant output of the facility, which will be utilized for cold storage. Salinas Tallowing and Semplot Foods will purchase the steam output. The electrical production of the facility will be purchased by Pacific Gas and Electric (PS&E).

Section 212(c) of the Act and 10 CFR 503.7 provide for a permanent cogeneration exemption from the prohibitions of Title II of FUA. In accordance with the requirements of § 503.37(a)(1), the petitioners have certified to ERA that:

1. The oil or gas to be consumed by the cogneration facility will be less than that which would otherwise be consumed in the absence of the proposed powerplant, where the calculation of savings is in accordance with 10 CFR 503.37(b); and

2. The use of a mixture of petroleum or natural gas and an alternate fuel in the cogeneration facility, for which an exemption under 10 CFR 503.38 would be available, would not be economically or technically feasible.

On May 22, 1986, DOE published in the **Federal Register** (51 FR 18866) a notice of the amendment to its guidelines for compliance with the National Environmental Policy Act of 1969 (NEPA). Pursuant to the amended guidelines, the grant or denial of a cogneration FUA permanent exemption, is among the classes of actions that DOE has categorically exclused from the requirements to prepare an Environmental Impact Statement or an Environmental Asssessment pursuant to NEPA (categorical exclusion).

This classification raises a rebuttable presumption that the grant or denial of the exemption will not significantly affect the quality of the human environment. The petitioners have certified that they will secure all applicable permits and approvals prior to commencement of operation of the new unit under exemption.

DOE's Office of Environment, in consultation with the Office of General Counsel, will review the completed environmental checklist submitted by the petitoners' pursuant to 19 CFR 503.13, together with other relevant information. Unless it appears during the proceeding on the petitioner's petition that the grant or denial of exemption will significantly affect the quality of the human environment, it is expected that no additional environmental review will be required.

The acceptance of the petition by ERA does not constitute a determination that the petitioners are entitled to the exemption requested. That determination will be based on the entire record of this proceeding, including any comments received during the public comment period provided for in this notice.

Issued in Washington, DC, on November 20, 1986.

Robert L. Davies,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 86–26811 Filed 11–26–86; 8:45 am]

BILLING CODE 6450–01–M

[ERA Docket No. 86–59–NG]

Natural Gas Imports; Forest Marketing Corp.; 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 for Short-Term and Spot Sales.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice of receipt on November 7, 1986, of the application of Forest Marketing Corporation (FMC) for blanket authorization to import from Canada up to a total of 100 Bcf of natural gas during a two-year term beginning on the date of first delivery. The natural gas would be purchased from a variety of suppliers located in Canada. The Canadian gas would be sold in the U.S. on a short-term and spot market basis to such purchasers as local distribution companies, electric utilities, pipelines and industrial and commercial end-users. FMC would import the gas for its own account or as an agent for both Canadian suppliers and U.S. purchasers. The firm intends to use existing facilities to transport the imported gas, and proposes to inform the ERA of the date of its first transaction, and to file quarterly reports to the ERA. The quarterly reports would be filed within 30 days following each calendar quarter and would show the details of each transaction including: parties, price, volume, transporters, term of the agreements, take-or-pay or make-up provisions, if any, points of entry, and markets served.

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.

DATE: Protests, motions to intervene, or notices of intervention, as applicable, and written comments are to be filed no later than December 29, 1986.

FOR FURTHER INFORMATION CONTACT:

Edward J. Peters, Jr., Natural Gas Division, 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 has asserted that the import arrangement is competitive. Parties opposing the arrangement bear the burden of overcoming this assertion.

Public Comment Procedures

In responses 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 this proceeding and to have written comments considered as a 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, RG–23, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 252–9478. They must be filed no later than 4:30 p.m., December 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 trial-type hearing. 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 on 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 FMC's application is available for inspection and copying in the Natural Gas Division Docket Room, GA–076, 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, November 20, 1986.

Robert L. Davies,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 86–26810 Filed 11–26–86; 8:45 am]

BILLING CODE 6450–01–M

Office of Energy Research

Basic Energy Sciences Advisory Committee; Open Meeting

Pursuant to the provision of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770), notice is hereby given of the following meeting:

NAME: Basic Energy Sciences Advisory Committee (BESAC).

DATE AND TIME: December 17, 1986—9:00 a.m.—5:00 p.m.; December 18, 1986—9:00 a.m.—3:00 p.m.

PLACE: Conference Room 6E–069, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

CONTACT: Louis C. Ianniello, Department of Energy, Office of Basic Energy Sciences (ER–11), Office of Energy Research, Washington, DC 20545, Telephone: 301/353/3081.

PUPPOSE OF THE COMMITTEE: To provide a advice on a continuing basis to the Secretary of the Department of Energy (DOE), through the Director of Energy Research, on the many complex scientific and technical issues that arise in the development and implementation of the Basic Energy Sciences (BES) program.

TENTATIVE AGENDA: Briefings and discussions of:

December 17, 1986

- Presentations by staff of the Basic Energy Sciences Program
- Discussions of Major facilities
- Public Comment (10 minute rule)

December 18, 1986

- New Research Directions
- Organization of BESAC
- Next meeting
- Public Comment (10 minute rule)

PUBLIC PARTICIPATION: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact: Louis C. Inniello at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation on the agenda. The Chairperson of the Committee is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

TRANSCRIPTS: The transcript of the meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC., between 9:00 a.m. and 4:00 P.M., Monday through Friday, except Federal holidays.

Issued at Washington, DC, on November 24, 1986.

J. Robert Franklin,

Deputy Advisory Committee Management Officer.

[FR Doc. 86–26837 Filed 11–26–86; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket No. TA87–2–32–000, 001]

Colorado Interstate Gas Co.; Proposed Change in FERC Gas Tariff

November 24, 1986.

Take notice that on November 14, 1986, Colorado Interstate Gas Company (CIG) filed Twenty-Seventh Revised Sheet No. 7, Twenty-Eighth Revised Sheet No. 8, Alternate Twenty-Seventh Revised Sheet No. 7 and Alternate Twenty-Eighth Revised Sheet No. 8 to its FERC Gas Tariff, Original Volume No. 1.

According to § 381.103(b)(2)(iii) of the Commission's regulations (18 CFR 381.103(b)(2)(iii)), the date of filing is the date on which the Commission receives the appropriate filing fee, which in the instant case was not until November 19, 1986. CIG states that these revised sheets reflect the 15.2 mills per Mcf Gas Research Institute (GRI) charge authorized by Commission Opinion No. 252 issued on September 19, 1986, in Docket No. RP86–117–000. CIG requests that the proposed tariff sheets be made effective on January 1, 1987. CIG further states that pursuant to Paragraph 24 of CIG's FERC Gas Tariff, Original Volume No. 1, said GRI charge applies only to sales and transportation deliveries to and for distributors for resale, to pipelines which are not members of GRI, and for any parties receiving a sales or transportation service who are not members of GRI.

CIG respectfully requests the Commission to grant any waivers of the Commission's regulations as it may deem necessary to accept this filing.

Copies of the filing have been served upon CIG's jurisdictional customers and other interested public bodies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before December 1, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86–26821 Filed 11–26–86; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP86–170–001]

Mississippi River Transmission Corp.; Compliance Filing

November 24, 1986.

Take notice that on November 14, 1986, Mississippi River Transmission Corporation (MRT) submitted for filing Substitute Eighteenth Revised Sheet No. 4 to its FERC Gas Tariff, Second Revised Volume No. 1 to be effective April 1, 1987. According to § 381.103(b)(2)(iii) of the Commission's regulations (18 CFR 381.103(b)(2)(iii)), the date of filing is the date on which the Commission receives the appropriate filing fee, which in the instant case was not until November 18, 1986.

This revised tariff sheet was filed in compliance with Ordering Paragraph (F) of the Commission Order issued October 31, 1986 in the captioned proceeding. MRT states that its filing does not constitute a waiver of any legal right MRT has to challenge the Commission's October 31, 1986 disposition of the advance payment issue.

Copies of the filing have been served upon MRT's jurisdictional customers, the state commissions of Arkansas, Illinois, and Missouri, and all parties to this proceeding.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before December 1, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86–26823 Filed 11–26–86; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. G–2570–003, etc.]

Phillips 66 Natural Gas Company et al., Applications for Abandonment and Blanket Limited-Term Certificate With Pre-Granted Abandonment

November 21, 1986.

Take notice that each of the applicants listed herein have filed applications pursuant to section 7 of the Natural Gas Act for authorization to abandon service or for a blanket limited-term certificate with pre-granted abandonment to sell natural gas for resale in interstate commerce, as described herein.

The circumstances presented in the applications meet the criteria for consideration on an expedited basis, pursuant to § 2.77 of the Commission's rules as promulgated by Order No. 436 and 436–A, issued October 9, and December 12, 1985, respectively, in Docket No. RM85–1–000, all as more fully described in the applications which are on file with the Commission and open to public inspection.

Accordingly, any person desiring to be heard or to make any protest with reference to said applications should on or before 15 days after the date of publication of this notice in the **Federal Register**, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to the proceeding herein must file a petition to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,

Secretary.

Docket No. and date filed	Applicant	Purchaser and location	Price per Mcf	Pressure base
G–2570–003, CI64–612–003, A, Oct. 10, 1986 [1].	Phillips 66 Natural Gas Company, 336 Home Savings & Loan Building, Bartlesville, Oklahoma 74004.	Neches Gas Distribution Company, Fox Graham Plant, Carter County, Oklahoma.	([2])	
G–2570–004, B, Oct. 10, 1986 [1].	.....do.....	Northwest Central Pipeline Corporation, Fox Graham Plant, Carter County, Oklahoma.	([3])	

Docket No. and date filed	Applicant	Purchaser and location	Price per Mcf	Pressure base
G16367-001, B, Nov. 3, 1986.	Mobil Texas & New Mexico Inc., Nine Greenway Plaza, Suite 2700, Houston, Texas 77046.	Transwestern Pipeline Company, Olive T. Jones #6, #7, #8 and #9 Wells, Hemphill and Lipscomb Counties, Texas.	(4)	
CI64-612-004, B, Oct. 10, 1986 [1].	Phillips 66 Natural Gas Company	Northwest Central Pipeline Corporation, Fox Graham Plant, Carter County, Oklahoma.	(3)	
CI64-1079-000, B, Oct. 30, 1986 [5].	Mobil Oil Corporation, Nine Greenway Plaza, Suite 2700, Houston, Texas 77046.	Colorado Interstate Gas Company, Hugoton and Panoma Fields, Kearny Haskell and Grant Counties, Kansas.	(6)	
CI65-1355-003, B, Oct. 30, 1986 [18].	Mobil Producing Texas & New Mexico Inc., Nine Greenway Plaza—Suite 2700, Houston, Texas 77046.	El Paso Natural Gas Company, Coyanosa, Waha and Worsham Bayer Fields, Pecos and Reeves Counties, Texas.	(19)	
CI86-740-000, B, Sept. 22, 1986 [7].	Wm. T. Burton Industries, Inc., P.O. Box 100, Sulphur, Louisiana 70663.	United Gas Pipe LIne Company, Bayou Des Allemands Field, Lafourche and St. Charles Parishes, Louisiana.	(8)	
CI87-61-000, B, Oct. 14, 1986.	Steven Johnson d/b/a AGCO Petroleum, c/o Porter & Clements, 3500 Republic Bank Center, Houston, Texas 77002.	Tennessee Gas Pipeline Company, a Division of Tenneco Inc., North Rincon Field, Starr County, Texas.	(20)	
CI87-67-000, B, Oct. 17, 1986 [9].	Davis Gas Processing, Inc., 211 North Colorado, Midland, Texas 79701.	El Paso Natural Gas Company, Big Lake Gas Processing Plant, Reagan County, Texas.	(10)	
CI87-83-000, B, Oct. 29, 1986 [27].	Reynolds Metals Company, 6601 West Broad Street, Richmond, Virginia 23230.	Arkla Energy Resources, a division of Arkla, Inc., Gregg Field, Sebastian County, Arkansas.	(28)	
CI87-86-000, B, Oct. 28, 1986 [12].	Jack L. Burrell, *et al.*, 2301 Cedar Springs, Suite 400, Dallas, Texas 75201.	El Paso Natural Gas Company, Peyton Field Area, Ward County, Texas.	(13)	
CI87-87-000, B, Oct. 28, 1986 [12].	do	Transwestern Pipeline Company, Reeves and Pecos Counties, Texas.	(14)	
CI87-90-000, B, Oct. 30, 1986 [5].	Osborn Heirs Company, *et al.*, [15] P.O. Box 17968, San Antonio, Texas 78286.	Colorado Interstate Gas Company, Hugoton and Panoma Fields, Kearny, Haskell and Grant Counties, Kansas.	(6)	
CI87-91-000, B, Oct. 30, 1986.	Rosewood Resources, Inc., Suite 300, 200 Crescent Court, Dallas, Texas 75201.	United Gas Pipe Line Company, Iowa Field, Calcasieu and Jefferson Davis Parishes, Louisiana.	(16)	
CI87-92-000, A, Oct. 30, 1986.	Mobil Producing Texas & New Mexico Inc.	Various Purchasers, Coyanosa, Waha and Worsham Bayer Fields, Pecos and Reeves Counties, Texas.	(21)	
CI87-94-000, B, Oct. 31, 1986.	Jerome P. McHugh, 650 S. Cherry, Suite 1225, Denver, Colorado 80222.	Northwest Pipeline Corporation, Various Fields, Rio Arriba and San Juan Counties, New Mexico.	(22)	
CI87-95-000, B, Oct. 31, 1986.	do	El Paso Natural Gas Company, Various Fields, San Juan County, New Mexico, and La Plata County, Colorado.	(23)	
CI87-97-000, A, Nov. 3, 1986.	Mobil Texas & New Mexico Inc.	Various Purchasers, Olive T. Jones #6, #7, #8 and #9 Wells, Hemphill and Lipscomb Counties, Texas.	(17)	
CI87-99-000, B, Nov. 3, 1986.	Big Run Production Company, 313 West Rusk, Tyler, Texas 75701.	United Gas Pipe Line Company, Joaquin Field, Shelby and Panola Counties, Texas.	(24)	
CI87-102-000, B, Nov. 6, 1986.	Delaware Royalty Company, Inc., 1212 Main Street, Suite 1400, Houston, Texas 77002.	United Gas PIpe LIne Company, Red Fish Bay/Mustang Island Field, Nueces County, Texas.	(25)	
CI87-116-000, B, Nov. 17, 1986.	Vernon E. Faulconer, P.O. Box 7995, Tyler, Texas 75711.	Tennessee Gas Pipeline Company, a Division of Tenneco Inc., San Salvador Field, Hidalgo County, Texas.	(26)	

[1] Additional information received October 17 and 23, 1986, and November 12, 1986.

[2] Applicant has requested authorization to extend for an additional two year limited-term its certificates with pre-granted abandonment to sell gas to Neches for which abandonment authorization is requested in Docket No. G-2570-004 and CI64-612-004.

[3] Applicant requests authorization to extend for an additional term of 2 years from October 2, 1986, the partial abandonment of its sale of gas to Northwest and its limited-term certificates as requested in Docket Nos. G-2570-003 and CI64-612-003 for resale of the gas to Neches. A limited-term abandonment was issued in Docket No. G-2569-001 and CI64-612-001 and certificates were issued in Docket No. G-2569-001 and CI64-612-001 and certificates were issued in Docket No. G-2569-002 and CI64-612-002 to Applicant's predecessor, Aminoil, Inc., by order issued October 2, 1984. Applicant states that it is incurring substantially reduced takes without payment, the deliverability is 11 MMcf per day, and

the gas is categorized under NGPA sections 103, 104, 106, and 108. Applicant states that the conditions which existed at the time the first limited-term partial abandonment and limited-term certificates were approved are still present and Applicant desires to continue to sell gas to Neches. Applicant requests that its rate schedule under which it sells gas to Neches on file with the Commission as Phillips Petroleum Company FERC Gas Rate Schedule No. 813 be redesignated to Phillips 66 Natural Gas Company FERC Gas Rate Schedule No. 82.

[4] Applicant requests a three-year partial limited-term abandonment of sales to Transwestern from the Olive T. Jones #6, #7, #8 and #9 wells. Applicant states that sales were made under a rollover contract dated August 14, 1980, on file as Applicant's FERC Gas Rate Schedule No. 67. Applicant states that the contract term was subject to termination by Transwestern which notified Applicant that the contract expired on January 1, 1985, and currently Applicant has an interim contract with Transwestern which is effective October 1, 1986, and is cancelable by either party on 10 days notice. Applicant states that the subject gas is NGPA section 104 post-1974 gas and that the estimated deliverability is approximately 2.4 MMcf/d. Applicant states that Transwestern has shut in the subject gas without payment since March 1986 except for four days in August. Applicant requests that the abandonment not contain conditions permitting any interruption or first call by Transwestern during the limited period. Applicant proposes to sell the gas to another purchaser at market clearing prices.

[5] Additional information received October 31 and November 18, 1986.

[6] Mobil in Docket No. CI64-1079-000 requests authorization for a limited-term abandonment of certain sales of gas to Colorado Interstate for a period of three years. Osborn in Docket No. CI87-90-000 requests similar authorization for its interest under the same contract and under five other contracts and seeks pre-granted abandonment authorization for sales to third parties of this gas. Osborn is the operator of the property covered by all six contracts. Mobil and Osborn state that they are subject to substantially reduced takes without payment and that the wells are capable of a deliverability of 14 MMcf per day. Applicant states that the wells, contracts, NGPA categories, and percentage interests are as follows:

Contract	Well Name	NGPA	County	State	Field	Owners
A	Burnett 1	104C	Kearny	Kansas	Hugoton	OHC (100%).
A	Hawk 1	104C	Kearny	Kansas	Hugoton	OHC (100%).
A	Krehbiel 1	104C	Kearny	Kansas	Hugoton	OHC (50%).
A	Swank 1	104C	Kearny	Kansas	Hugoton	OHC (100%.
A	Vickers 1	104C	Kearny	Kansas	Hugoton	OHC (100%).
A	Vickers 2	104C	Kearny	Kansas	Hugoton	OHC (100%).
A	Wiatt-Bakke 1	104C	Kearny	Kansas	Hugoton	OHC (100%).
A	Wilson 1	104C	Kearny	Kansas	Hugoton	OHC (100%).
B	Gropp 1	104C	Kearny	Kansas	Hugoton	OHC (49.45%); Koch (37.91%); Texaco (12.64%).
B	Gropp 1-A	104D	Kearny	Kansas	Panoma	OHC (27.62%); P-L (21.83%); Koch (37.91%); Texaco (12.64%).
B	Helen Hoover C	104C	Kearny	Kansas	Hugoton	OHC (100%).
B	Helen Hoover 1-A	104D	Kearny	Kansas	Panoma	OHC (56.25%); P-L (43.75%).
C	Bless 1	104C	Kearny	Kansas	Hugoton	OHC (100%).
C	Burnett-Wiatt 1	108C	Kearny	Kansas	Hugoton	OHC (100%).
C	Burnett-Wiatt 1-A	104D	Kearny	Kansas	Panoma	OHC (53.72%); P-L (46.88%).
C	Davis 1	104C	Kearny	Kansas	Hugoton	OHC (100%).
C	Modie 1	104C	Kearny	Kansas	Hugoton	OHC (75%); Koch (25%).
C	Modie 1-A	104D	Kearny	Kansas	Panoma	OHC (37.5%); P-L (37.5%); Koch (25%).
D	Finnup 1	104C	Kearny	Kansas	Hugoton	OHC (100%).
D	Finnup 1-A	104D	Kearny	Kansas	Panoma	OHC (56.25%); P-L (43.75%).
E	Applegate 1	104C	Kearny	Kansas	Hugoton	OHC (43.75%); Mobil (43/75%).
E	Applegate 1-A	104D	Kearny	Kansas	Panoma	OHC (43.75%); P-L (43.75%).
E	Burnett 1-A	104D	Kearny	Kansas	Panoma	OHC (25%); P-L (25%).
E	Coke 1	104C	Kearny	Kansas	Hugoton	OHC (48.4375%); Mobil (48.4375%).
E	Collingwood 1-A	104D	Kearny	Kansas	Panoma	OHC (50%); P-L (50%).
E	Collingwood 1	104C	Kearny	Kansas	Hugoton	OHC (50%); Mobil (50%).
E	Hawk 1-A	104D	Kearny	Kansas	Panoma	OHC (50%); P-L (50%).
E	Finkelstein 1	104C	Kearny	Kansas	Hugoton	OHC (37.5); Mobil (37.5%).
E	Finkelstein 1-A	104D	Kearny	Kansas	Panoma	OHC (37.5%); P-L (37.5%).
E	Hickok 1	104C	Grant	Kansas	Hugoton	OHC (50%); Mobil (50%).
E	Hickok 2	104C	Grant	Kansas	Hugoton	OHC (50%); Mobil (50%).
E	Hoover 1-A	104D	Kearny	Kansas	Panoma	OHC (50%); P-L (50%).
E	Jarvis 1	104C	Grant	Kansas	Hugoton	OHC (43.75%); Mobil (43.75%).
E	Jarvis 1-A	104E	Grant	Kansas	Panoma	OHC (87.5%).
E	Johnson 1	104C	Kearny	Kansas	Hugoton	OHC (50%); Mobil (50%).
E	Johnson 1-A	104E	Kearny	Kansas	Panoma	OHC (50%); P-L (50%).
E	Johnson 2	104C	Kearny	Kansas	Hugoton	OHC (50%); Mobil (50%).
E	Johnson 2-A	104E	Kearny	Kansas	Panoma	OHC (50%); P-L (50%).
E	Johnson 3	104C	Kearny	Kansas	Hugoton	OHC (37.46%); Mobil (37.46%).
E	Johnson 4	104C	Kearny	Kansas	Hugoton	OHC (25%); Mobil (25%).
E	Johnson 4-A	104E	Kearny	Kansas	Panoma	OHC (25%); P-L (25%).
E	Johnson 5	104C	Kearny	Kansas	Panoma	OHC (74.93%).
E	Krehbiel 1-A	104D	Kearny	Kansas	Panoma	OHC (25%); P-L (25%).
E	Pemberton 1	104C	Kearny	Kansas	Hugoton	OHC (50%); Mobil (50%).
E	Pemberton 1-A	108D	Kearny	Kansas	Panoma	OHC (50%); P-L (50%).
E	Phelps 1	104C	Grant	Kansas	Hugoton	OHC (50%); Mobil (50%).
E	Phelps 1-A	104E	Grant	Kansas	Hugoton	OHC (100%).
E	Sauer 1	104C	Kearny	Kansas	Hugoton	OHC (50%); Mobil (50%).
E	Sauer 1-A	104D	Kearny	Kansas	Panoma	OHC (50%); P-L (50%).
E	Tate 1	104C	Kearny	Kansas	Hugoton	OHC (50%); Mobil (50%).
E	Tate 1-A	104E	Kearny	Kansas	Panoma	OHC (50%); P-L (50%).
E	Vickers 1-A	104D	Kearny	Kansas	Panoma	OHC (37.632%); P-L (37.5%).

Contract	Well Name	NGPA	County	State	Field	Owners
E	Vickers 2-A	104D	Kearny	Kansas	Panoma	OHC (50%); P-L (50%).
E	Wiatt 1	104C	Kearny	Kansas	Hugoton	OHC (50%); Mobil (50%).
E	Wiatt 1-A	104D	Kearny	Kansas	Panoma	OHC (50%); P-L (50%).
E	Wilson 1-A	104D	Kearny	Kansas	Panoma	OHC (50%); P-L (50%).
F	Martin 1-A	104D	Kearny	Kansas	Panoma	OHC (50%); P-L (50%).
F	Rinehart 1	108D	Kearny	Kansas	Hugoton	OHC (66.67%); M. Mace (25%); W. Mace (8.33%).
F	Williams 1-A	104D	Kearny	Kansas	Panoma	OHC (50%); P-L (50%).

Contract Code: A=Gas purchase Agreement Dated September 9, 1953, B =Gas Purchase Agreement Dated August 31, 1954, C=Gas Purchase Agreement Dated December 12, 1955, D=Gas Purchase Agreement Dated January 27, 1959, E=Gas Purchase Agreement Dated March 1, 1961, F=Gas Purchase Agreement Dated February 5, 1976.
NGPA Classification Code: C=Flowing Gas, D=Post-1974 Gas, E=1973-74 Biennium Gas.

[7] Additional information received November 4, 1986.

[8] Applicant, a small producer certificate holder in Docket No. CS71-643, requests authorization to permanently abandon a sale of gas to United which is covered under a contract dated October 3, 1983, due to expire September 1, 1988. Applicant states that United informed Applicant that it would no longer be able to purchase gas from the following wells:

Well	Reservoir	NGPA Category
Simoneaux No. 2	CIB OP RA SUA	#104—Recompletion.
Simoneaux No. 10	CIB OP RA SUA	#104—Recompletion.

Applicant states that it is subject to substantially reduced takes without payment and that the wells have a potential deliverability of 1,200 Mcf per day. Applicant states that it has entered into negotiations to sell the gas to a third party.

[9] Additional information received November 6, 1986.

[10] Applicant, a small producer certificate holder in Docket No. CS80-7-000, requests authorization to permanently abandon its sale of gas to El Paso at the outlet of the Big Lake Gas Processing Plant. Applicant states that El Paso recently notified Applicant that it intends to terminate the subject contract dated December 1, 1953, effective January 1, 1987. Applicant states the gas subject to the Commission's NGA jurisdiction is NGPA section 104, 106(a), 108 and 109 gas and that the average price of all the gas is $1.67 per Mcf based on August 1986 residue gas sales of 132,866 Mcf. Applicant requests abandonment authorization on behalf of itself and on behalf of 54 producer suppliers who sell to applicant under percentage-of-proceeds contracts. Applicant states that it is contractually authorized to seek abandonment on behalf of such behind-the-plant producers. Applicant further states that El Paso has given Applicant the unconditional release of all gas subject to the December 1, 1953, contract.

[11] Not used.

[12] Additional information received November 6, and 12, 1986.

[13] Applicant, a small producer certificate holder in Docket No. CS72-46, requests authorization to permanently abandon a sale of gas to El Paso, and requests pre-granted abandonment for future sales of said gas for resale in interstate commerce for a 3-year limited term. Applicant states that the May 18, 1953 contract expired on January 1, 1985, and that by letter dated October 6, 1985, El Paso states that it planned to shut in the Brictson B No. 1 well. Applicant states that it is subject to substantially reduced takes without payment. Applicant states that the well produces NGPA section 104 recompletion gas, the deliverability of the well is 75 Mcf per day, and Applicant desires to make sales for resale of said gas in interstate commerce as well as sales to nonjurisdictional purchasers.

[14] Applicant, a small producer certificate holder in Docket No. CS72-46, requests authorization effective December 31, 1986, to permanently abandon a sale of gas to Transwestern, and requests pre-granted abandonment for all future sales of said gas for resale in interstate commerce for three year limited-term. Applicant states that the September 1, 1981, contract had a primary term of five years and that by letter dated September 17, 1986, Transwestern gave notice to terminate effective December 31, 1986. Applicant states that its gas wells are being shut-in and that it will be receiving no cash flow from the wells. Applicant states that its wells produce NGPA section 106(a) gas with a deliverability of 305 Mcf per day and section 108 gas with a deliverability of 395 Mcf per day. Applicant states that it desires to make sales for resale of said gas in interstate commerce as well as sales to non-jurisdictional purchasers.

[15] The parties to be covered by this application are:

Party	Sells under
Osborn Heirs Company	CS71-126
Koch Industries, Inc	CS76-73
Mervyn M. Mace	CS79-95
Wanda Mace	CS79-95
Mobil Oil Corporation	CI64-1079
Partnership Properties Co	CS73-158

Et al. parties each own fractional interests in some of the wells sold under the subject contracts.

[16] Rosewood a small producer certificate holder in Docket No. CS84-72-000, requests a two-year limited-term abandonment of its sales of NGPA 106 gas to United from Iowa Field, Calcasieu and Jefferson Davis Parishes, Louisiana. Rosewood states that eighteen wells within Iowa Field are currently producing oil and gas with average total production of 1,105 Mcf per day, over 50% of which is used as lease fuel or in gas lift operations. The remaining production is sold to United. Average monthly sales from the field are 13,000 Mcf per month. Sales are made in accordance with a contract dated May 1, 1979, as amended, between Shell Western Exploration Production, Inc. ("SWEPI"), (to whose rights and obligations thereunder Rosewood Resources, Inc., as Seller, has succeeded) and United Gas Pipe Line Company, as Buyer. The contract expired on January 1, 1986. Rosewood and United have not been able to reach a satisfactory renewal agreement, United has informed Rosewood that it will soon be unable to take delivery of this gas. Rosewood has requested that United continue takes until permission for abandonment can be obtained and, to date, deliveries have continued. Producing wells dedicated to United in the Iowa Field are listed below: A.O. Fontenot No. 9, F. Heyd No. 18, F. Heyd No. 22, F. Heyd No. 41, F. Heyd No. 43, F. Heyd No. 55A, F. Heyd No. 56, F. Heyd No. 63, F. Heyd No. 64, E.O. Stafford No. 1, E.O. Stafford No. 11.

The shut-in wells listed below are also dedicated to United. Rosewood has not completed its evaluation of these wells during the time since they were acquired from Shell and has not, as yet, determined whether or not they are capable of future production. Rosewood respectfully requests that future production from any of these wells be included in the limited-term abandonment requested.

Shut In Wells: A.O. Fontenot #10, F. Heyd #2, F. Heyd #6, F. Heyd #7, F. Heyd #11, F. Heyd #13, F. Heyd #19, F. Heyd #20, F. Heyd #23, F. Heyd #25, F. Heyd #27, F. Heyd #29, F. Heyd #35, F. Heyd #36, F. Heyd #39, F. Heyd #48, F. Heyd #50, F. Heyd #51, F. Heyd #58, F. Heyd #59, F. Heyd #61, F. Heyd #62, F. Heyd #66, E.O. Stafford #10, Wait-Heyd #1.

Rosewood's interest in these wells is 100%. Rosewood states that authorization for limited-term abandonment is in the public interest because it will allow gas which otherwise would be shut in to enter the market place for consumption.

[17] Applicant requests in Docket No. CI87-97-000 a three-year limited-term certificate with pre-granted abandonment to make sales for resale in interstate commerce of gas which is subject to the limited-term abandonment in Docket No. G-16367-001. Applicant requests that the requirements of Part 154 of the Commission's Regulations be waived.

[18] Additional information filed November 13, 1986.

[19] Applicant requests limited-term abandonment authorization for a three-year period for a sale to El Paso being made under an expired contract dated June 14, 1965, on file with the Commission as Applicant's FERC Gas Rate Schedule No. 94. Applicant states that El Paso has shut-in the subject gas without payment since June, 1986. Applicant indicates that the subject application covers NGPA section 108 and section 104 flowing gas and that the average daily delivery prior to June, 1986, was 12,850 Mcf per day of section 104 gas and 3 Mcf per day of section 108 gas. Applicant requests that the Commission not impose any conditions permitting any interruption or first call by El Paso during the three-year term.

[20] Applicant requests authorization to abandon a sale to Tennessee previously covered by Texaco Inc.'s FERC Gas Rate Schedule No. 138. Applicant has acquired all of Texaco's interest in the subject property. Applicant indicates that it is subject to substantially reduced takes without payment. Applicant states that deliverability is approximately 50 Mcf per day but Tennessee has only been taking an average of 50 Mcf per month. Applicant has advised that the gas from the two wells involved is NGPA section 108 gas. In addition Applicant states that the AGCO-Davenport No. 1-B Well cannot be produced without compression and both the AGCO-Davenport No. 1-B Well and the AGCO-Davenport No. 22 Well cannot be produced without a low pressure line being laid to the wells. Under the terms of the contract, if neither Seller nor Buyer elects to install compression, Buyer shall release the gas. Applicant indicates that neither Buyer nor Seller is willing to install compression or lay a low pressure gathering line.

[21] Applicant requests blanket limited-term certificates with pre-granted abandonment authorization to authorize the sale of the gas proposed to be abandoned in Docket No. CI65-1355-003 to other purchasers for a three-year period. Applicant also requests waiver of the requirements of Part 154 of the Commission's regulations requiring the establishment of rate schedules and the filing of blanket affidavits in accordance with § 154.94(h) and, to the extent applicable, § 154.94(k).

[22] Applicant requests authorization to abandon sales to Northwest Pipeline from certain wells authorized under its small producer certificate in Docket No. CS72-365. Applicant advises that the wells have been totally or substantially shut-in since March 1986 and that it is not being paid for gas not taken. Applicant states that, upon issuance of an order granting the requested authorization, it will terminate sales to Northwest Pipeline and Northwest Pipeline will be relieved of any take-or-pay obligation it might have. The subject wells, their estimated deliverability and the NGPA category of the gas are as follows:

Name of well	Estimated daily deliverability (Mcf)	NGPA category
Tribal #3	130	104
Apache #1	100	104
Apache #3	50	108
Apache #4		108
Apache #5	20	108
Apache #6	84	104
Tribal #4		104
Chris #1	70	104
Erin #1	500	104

[23] Applicant requests authorization to abandon sales to El Paso from certain wells authorized under its small producer certificate in Docket No. CS72-365. Applicant advises that the wells have been totally or substantially shut-in since March 1986 and that it is not being paid for gas not taken. Applicant states that upon issuance of an order granting the requested authorization, it will terminate sales to El Paso from the subject wells and El Paso will be relieved of any take-or-pay obligation it might have. The subject wells, their estimated deliverability and the NGPA category of the gas are as follows:

Name of well	Estimated daily deliverability (Mcf)	NGPA category
Oneda #1	150	104
Allen #1	20	108
Hardie #1	60	104
Roelofs #1	20	108
Hardie #4	15	104
Roelofs #2	115	104
Hardie #5	67	104
Nassau #1	10	108
Nassau #2	66	104
Florance #1	60	108
Ute #2	20	108
Ute #3	200	104
Nassau #3	100	104
Bengal A #2	10	108
Colket #1	300	104
Nassau #7	40	104
Clay #1	400	104
Nassau #6	500	104

[24] Applicant requests authorization to abandon sales to United from certain wells previously sold under American Petrofina Company of Texas' (now Fina Oil and Chemical Company) FERC Gas Rate Schedule No. 11. Applicant states that it purchased the subject wells from American Petrofina Company of Texas. Applicant has advised that the subject wells are shut-in and that it is subject to substantially reduced takes without payment. Applicant has filed a release agreement dated August 25, 1986, by which United releases that portion of the gas deliverable from the subject wells which United does not desire to purchase on any day during the term of the release agreement and Applicant agrees to release United from its obligations under the subject contract including take-or-pay for the term of the release agreement. Applicant also agrees that United or any of its affiliates may credit against any take-or-pay obligations under any contracts with Applicant volumes released and sold pursuant to the release agreement. The subject wells, their estimated deliverability and the NGPA category of the gas are as follows:

Name of well	Estimated daily deliverability (Mcf)	NGPA category
O.B. Siler #1	100	104-flowing.
Bertha Brantley #1	100	104-flowing.
Hanson 1-C	100	104-flowing.
Hanson 1-T	100	104-flowing.
J.T. Carroll "A" #1	100	104-biennium.

Applicant indicates that it is negotiating with Eastex Gas Transmission Company, an intrastate purchaser, to purchase released gas from the subject wells.

[25] Applicant requests authorization to abandon sales to United from the State Tract 426 & 441—S10 No. 1 Well. Applicant states that United has not taken any gas since November 1985 and has not paid for gas not taken. Applicant indicates that the deliverability from its 50% interest in the well is approximately 325 Mcf per day. Applicant has advised that the well is subject to NGPA section 104.

[26] Applicant, a small producer certificate holder in Docket No. CS74-147, requests authorization to permanently abandon sales to Tennessee from four wells subject to a contract dated April 1, 1952, which expired on December 31, 1983. Applicant states that Tennessee has not taken any gas from the subject wells since July 1986 and that Tennessee has advised that it can neither purchase nor receive any of the gas from the subject wells and that future purchases, if any, will be on a best efforts basis. Applicant states that it is subject to substantially reduced takes without payment. The subject wells, their estimated daily deliverability and the NGPA category of the gas are as follows:

Well name	Estimated daily deliverability (Mcf)	NGPA category
Santa Cruz-Hendrix No. 1	400	108.
Weinfield No. 1	300	108.
Weinfield No. 2	70	104-recompletion.
Wilcox No. 1	400	108.

Applicant states that it is presently negotiating with Corpus Christi Gas Fathering Company and Valero Transmission Company for the purchase of this gas.

[27] Applicant, which operates under a small producer certificate in Docket No. CS72-541, requests limited-term partial abandonment authorization of certain sales of excess gas to Arkla, covered by a rollover contract dated February 1, 1985. Applicant states that Applicant and Arkla have entered into a temporary release from contractual commitment (and corresponding take-or-pay obligations) of dedicated gas produced in excess of Arkla's system requirements. Applicant states that the primary term for this release extends through September 30, 1987, and month to month thereafter unless terminated by either party upon 30 days' notice. Applicant requests that its limited-term authorization expire with the primary term of its release, September 30, 1987. Applicant states that the wells and NGPA pricing categories are as follows:

Well name	NGPA category
Basham	Section 108.
Boyd	Section 108.
Cochran	Section 108.
Craig 1	Section 108.
Nichols 1	Section 108.
Boyd	Section 106(a).
Cochran	Section 106(a).
McGee	Section 106(a).
Synaground	Section 106(a).
Turner	Section 106(a).
Ware	Section 106(a).

Applicant states that takes of gas under the subject contract have been substantially reduced without payment, that the wells involved are capable of 3,118 MMcf per day, and that Applicant proposes to market the gas to third parties and/or to transport it to its own gas-consuming facilities.

[28] Additional information received November 19, 1986.

Filing Code: A—Initial Service—B—Abandonment—C—Amendment to add acreage—D—Amendment to delete acreage—E—Total Succession—F—Partial Succession.

[FR Doc. 86-26818 Filed 11-26-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP85-805-001]

Texas Eastern Transmission Corp. Proposed Changes in FERC Gas Tariff

November 24, 1986.

Take notice that Texas Eastern Transmission Corporation (Texas Eastern) on 11-14, 1986 tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1 the following sheet:

Second Revised Eighty-first Revised Sheet No. 14

By Commission orders issued March 20, 1981, July 24, 1981 and May 10, 1982 in Docket Nos. CP81-4, CP81-291, and CP82-2 respectively, Texas Eastern was granted authorization to render a firm daily withdrawal service under its Rate Schedule SS-II that was designated as Phase I, II, and III Firm Expansions. Such service is currently reflected in Volume No. 1 of Texas Eastern's tariff. By Commission order issued June 4, 1986 in Docket No. CP85-805, Texas Eastern was granted further authorization to render additional firm daily withdrawal service under its Rate Schedule SS-II and to construct and operate pipeline facilities designated as Phase IV Firm Expansion. The above designated tariff sheet is being filed pursuant to section 4.G. of Rate Schedule SS-II and the Commission's authorization in the June 4, 1986 order for the sole purpose of incorporating in Texas Eastern's tariff the Firm Demand Charge of $9.766 per dekatherm of firm service for the composite facilities (Phase I, II, III, IV).

The above tariff sheet also reflects the reinstatement of the Contract Adjustment—Demand rate for the 1985 Contract Adjustment sales level (102,893 dth) and the deletion of rates for Rate Schedule CTS that were filed on November 7, 1986 in Docket No. CP84-429-023 both of which have not yet been approved by the Commission. In the event the sheets filed on November 7, 1986 are not approved or are revised in any way, Texas Eastern will refile the above listed tariff sheet to reflect the final determination on Texas Eastern's November 7, 1986 filing.

The proposed effective date of the above listed tariff sheet is November 15, 1986, the commencement date of the firm daily withdrawal service in Rate Schedule SS-II Phase IV.

Copies of the filing were served on Texas Eastern's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before December 2, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-26822 Filed 11-26-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. EF87-1021-000 etc.]

Alaska Power Administration et al.; Electric Rate and Corporate Regulation Filings

November 21, 1986.

Take notice that the following filings have been made with the Commission:

1. Alaska Power Administration

[Docket No. EF87-1021-000]

Take notice that on October 31, 1986, the Under Secretary of the Department of Energy, by Rate Order No. APA-7, did confirm and approve, on an interim basis, to be effective with the beginning of the November billing period, firm energy rate schedule SN-F3 for 28.8 miles per kilowatthour for power from the Alaska Power Administration's Snettisham Project. The new firm energy rate increases the amount of revenue 15 percent over the existing rate.

The new rate will be in effect pending the Commission's approval of it, or a substitute rate, on a final basis, or until superseded. The Under Secretary states that the rate schedule is submitted for confirmation and approval on a final basis pursuant to authority vested in the Commission by Delegation Order No. 0204108 and requests the rate schedule be effective for a period of five years.

Comment date: December 5, 1986, in accordance with Standard Paragraph E at the end of this notice.

2. Boston Edison Company

[Docket No. ER87-84-000]

Take notice that on November 5, 1986, Boston Edison Company (Edison) tendered for filing a supplemental Exhibit A to a Service Agreement for Braintree Electric Light Department (Braintree), under its FERC Electric Tariff, Original Volume No. III, Non-Firm Transmission Service (the Tariff). The Exhibit A specifies the amount and duration of transmission service required by Braintree under the Tariff.

Edison requests waiver of the Commission's notice requirements to permit the Exhibit A to become effective as of the commencement date of the transaction to which it relates, November 1, 1986.

Edison states that it has served the filing on Braintree Electric Light Department and the Massachusetts Department of Public Utilities.

Comment date: December 5, 1986, in accordance with Standard Paragraph E at the end of this notice.

3. Carolina Power & Light Company

[Docket No. ER87-100-000]

Take notice that Carolina Power and Light Company on November 13, 1986, tendered for filing an executed Exhibit A for the Laurel Hill 23 kv Point of Delivery, with an in-service date of August 1, 1986, as part of its agreement with Pee Dee EMC. The load served from this point of delivery was formerly served by Laurel Hill Electric Company (FPC No. 51), a private distribution utility which was dissolved on March 20, 1986. The Laurel Hill 23 kv point of delivery is currently being served at 4 kv but will be converted to 23 kv by Mid-October 1986. It is respectfully requested that the supplement filed herewith become effective prior to the normal 60-day notice period in order that Pee Dee EMC can take advantage of a lower rate under the Resale Service Schedule.

Comment date: December 5, 1986, in accordance with Standard Paragraph E at the end of this notice.

4. Centel Corporation

[Docket No. ER87-83-000]

Take notice that Centel Corporation (Centel), on November 4, 1986, tendered for filing an Interconnection Contract between Centel and the City of Ashland, Kansas. Included with this filing are Agreements between Centel and the City of Ashland covering Service Schedule 85-D-1, Supplement Power Service, Service Schedule 85-A-1, Firm Power Service, and Service Schedule B, Emergency Service, which are attachments to the Interconnection Contact dated October 6, 1986.

Copies of the filing were serveds upon the City of Ashland, Kansas, and the Utilities Division, Kansas Corporation Commission, Topeka, Kansas.

Comment date: December 5, 1986, in accordance with Standard Paragraph E at the end of this notice.

5. Idaho Power Company

[Docket No. ER87-99-000]

Take notice that on November 12, 1986, the Idaho Power Company tendered for filing in compliance with the Federal Energy Regulatory Commission's Order of October 7, 1978, a summary of sales made under the Company's 1st Revised FERC Electric Tariff, Volume No. 1 (Supersedes Original Volume No. 1) during September 1986, along with cost justification for the rate charged. This filing includes the following supplements:

Utah Power & Light Company—Supplement No. 58
Sierra Pacific Power Company—Supplement No. 55
Washington Water Power Company—Supplement No. 42

Comment date: December 5, 1986, in accordance with Standard Paragraph E at the end of this notice.

6. Southwestern Public Service Company

[Docket No. ER87-98-000]

Take notice that Southwestern Public Service Company (Southwestern) on November 12, 1986, tendered for filing an initial rate schedule consisting of the "Agreement for Economy Interchange Between City of Farmington and Southwestern Public Service Company".

The agreement provides for interchanges of Economy Energy between the electrical systems of City of Farmington (Farmington) and Southwestern.

Both Southwestern and Farmington can realize substantial benefits for their customers by the interchange of Economy Energy between two systems. Such benefits include being able to purchase and sell energy in amounts and at prices best determined by the parties on the day of the transaction and desire by this agreement to facilitate such flexibility in the exchange of Economy Energy. It is anticipated that this Economy energy interchange will provide substantial fuel cost savings to both parties.

Copies of this filing were served upon the City of Farmington, the Public Utility Commission of Texas and the New Mexico Public Service Commission.

Comment date: December 5, 1986, in accordance with Standard Paragraph E at the end of this document.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE. Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-26817 Filed 11-26-86; 8:45am]

BILLING CODE 6717-01-M

[Docket No. CI87-59-000]

Winchester Oil Co.; Application for Abandonment

November 24, 1986.

Take notice that the Applicant listed herein has filed an application pursuant to section 7 of the Natural Gas Act for authorization to abandon service as described herein.

The circumstances presented in the application meet the criteria for consideration on an expedited basis, pursuant to § 2.77 of the Commission's rules as promulgated by Order No. 436 and 436-A, issued October 9, and December 12, 1985, respectively, in Docket No. RM85-1-000, all as more fully described in the application which is on file with the Commission and open to public inspection.

Accordingly, any person desiring to be heard or to make any protest with reference to said application should on or before 15 days after the date of publication of this notice in the **Federal Register**, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 385.211, .214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to the proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Kenneth F. Plumb,

Secretary.

Docket No. and date filed	Applicant	Purchaser and location	Price per Mcf	Pressure base
CI87-59-000, B, Oct. 9, 1986.	Winchester Oil Co., 300 W. Austin St., Marshall, Texas 75670	United Gas Pipe Line Co., Waskom Field, Harrison County, Texas	[1]	

Filing code: A—Initial Service; B—Abandonment; C—Amendment to add acreage; D—Amendment to delete acreage; E—Total Succession; F—Partial Succession.

[1] Applicant, which operates under a small producer certificate in Docket No. CS87-9-000, requests authorization to permanently abandon certain sales to United. United has released the subject gas pursuant to supplemental agreements dated September 30, 1986. The gas involved is NGPA sections 104 flowing and 1973-1974 Biennium, 106(a) and 108 gas. Estimated deliverability is 445 Mcf/d. Applicant proposes to make spot or other short-term sales of the subject gas in the interstate market and requests pre-granted abandonment therefor. Applicant states since the properties were acquired from Tenneco Oil Company by assignment dated July 2, 1986, Applicant has been subjected to extended periods of complete shut-in of production by United without payment. Applicant states it runs the risk of losing its lease interest if it cannot sell the gas to other parties. Applicant requests expedited approval for an unlimited term, or in the alternative, for a two-year term.

[FR Doc 86-26810 Filed 11-26-86; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL-3119-9]

Environmental Impact Statements; Availability

Responsible agency: Office of Federal Activities, General Information (202) 382-5073 or (202) 382-5075.

Availability of Environmental Impact Statements Filed November 17, 1986 Through November 21, 1986 Pursuant to 40 CFR 1506.9.

EIS No. 860477, Final FHW, MT, Bozeman Arterials Development, North 19th Avenue Construction, Durston Road to Oak Street; Oak Street Construction, North 19th Avenue to North 7th Avenue; and Kagy Boulevard Construction, South 3rd Avenue to South 19th Avenue, Gallatin County, Due: December 29, 1986, Contact: William Dunbar (406) 449-5310.

EIS No. 860478, Draft, FHW, OR, North Marine Drive/Swift Highway Improvement, I-5 to Rivergate Industrial District, Multnomah County, Due: January 23, 1986, Contact: Dale Wilken (503) 399-5749.

EIS No. 860479, Draft, FHW, OR, US 101/Oregon Coast Highway Improvement, Rogue River Bridge to Gold Beach, Curry County, Due: January 23, 1987, Contact: Dale Wilken (503) 399-5749.

EIS No. 860480, Draft, COE, PA, Lehigh River Basin Hydroelectric Power Study, Development, Carbon County, Due: January 12, 1987, Contact: Roy Denmark (215) 597-4833.

EIS No. 860481, Final, AFS, UT, CO, Manti-LaSal National Forest, Land and Resource Management Plan, Due: December 29, 1986, Contact: Lee Foster (801) 637-2817.

EIS No. 860482, Draft, FHW, MD, Warren Road Extension, MD-45/York Road to I-83/Harrisburg Expressway, Baltimore County, Due: January 16, 1987, Contact: Edward Terry (301) 962-4010.

EIS No. 860483, Draft, EPA, GA, Brunswick Harbor, Ocean Dredged Material Disposal Site, Designation, Due: January 12, 1987, Contact: Chris Provost (404) 347-2126.

EIS No. 860484, Draft, AFS, WA, Olympic National Forest, Land and Resource Management Plan, Due: February 27, 1987, Contact: George Pozzuto (206) 753-9516.

EIS No. 860485, Report, COE, LA, Mississippi River Enlargement, Deep Draft Navigation Access, Gulf of Mexico to Baton Rouge, Dredging of Fairview Crossing at Mile 116, Contact: David Carney (504) 838-2528.

EIS No. 860486, Legislative Draft, FWS, AK, Arctic Nnational Wildlife Refuge, Coastal Plain Resource Management, Oil and Gas Exploration, Development and Production, Leasing or Wilderness Designation, Due: January 23, 1987, Contact: Don Ciccone (202) 343-2590.

EIS No. 860487, Report, COE, LA, Mississippi River Ship Channel, Deep Draft Navigation Access, Gulf of Mexico to Baton Rouge, Test Prototype Sill Construction at Mile 47.4, Contact: David Carney (504) 838-2528.

EIS No. 860488, Report, COE, LA, Mississippi River Ship Channel, Deep Draft Navigation Access, Gulf of Mexico to Baton Rouge, Submarine Barrier or Sill Construction at Mile 64.1, Contact: Suzanne Hawes (504) 862-2518.

EIS No. 860489, Report, COE, LA, Mississippi River Ship Channel, Deep Draft Navigation Access, Gulf of Mexico to Baton Rouge, Marsh Creation, Venice to the Gulf Reach, Contact: Suzanne Hawes (504) 838-2518.

Amended Notice

EIS No. 860410, Draft, COE, IL, MO, Mississippi River Locks and Dam 26 (Replacement) Construction, Second Lock, Upper Mississippi and Illinois Rivers Due: December 9, 1986, Published FR: 10-10-86—Review period extended.

Dated: November 24, 1986.

David G. Davis,

Acting Director, Office of Federal Activities.

[FR Doc. 86-26833 Filed 11-26-86; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-3120-1]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared November 10, 1986 through November 14, 1986 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act (CAA) and section 102(2)(c) of the National Environmental Policy Act (NEPA) as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 382-5076/73. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated February 7, 1986 (51 FR 4804).

Draft EISs

ERP No. DS-IBR-J34009-UT, Rating EC2, Bonneville Unit, Central Utah Project, Municipal and Industrial Water System, Construction and Modifications, 404 Permit Issuance, Updated Information, UT. SUMMARY: EPA's major concerns include insufficient wetland mitigation and lack of progress on certain 1979 Bureau of Reclamation commitments resulting from the previous final EIS. EPA provided recommendations to ensure adequate wetland replacement and achievement of the 1979 commitments to implement instream flows in the Uinta Basin. EPA also recommended language necessary to insure the 1979 commitments, to develop conservation plans, would meet the conservation goals of project development in the least environmentally damaging manner.

ERP No. D-NPS-K61086-CA, Rating LO, Sequoia-Kings Canyon Nat'l Parks, Grant Grove and Redwood Mtn. Areas, Development and Use, CA. SUMMARY: EPA expresed a lack of objections to the proposal, but requested information on: (1) Whether Clean Water Act Sect. 404 permits for road construction are needed; (2) air and water quality construction impacts; and (3) sewage treatment requirements due to increased overnight visitor use.

ERP No. D-USA-G10001-NM, Rating LO, White Sands Missile Range Ground Based Free Electron Laser Technology Integration Experiment Facility, Construction and Operation, Possible Sect. 10 and 404 Permit, NM. SUMMARY: EPA expressed no objection to the implementation of the low power phase of the GBFEL-TIE. EPA's rating is conditioned upon the Army fully complying with the requirements under Sect. 1508.28(b) of the CEQ Regulations regarding "Tiering". Tiering will require preparation of a supplemental EIS fully addressing the associated impacts of the high power phase. At this planning stage, EPA concludes that the Orogrande site is an appropriate candidate to be recommended for selection as the preferred siting location.

DS-USN-K11027-CA, Rating EO2, Treasure Island Naval Station, Hunters Pt. Naval Shipyard, San Francisco Bay Region Ship Homeporting, Basing Additional Ships and Constructing Support Facilities, CA. SUMMARY: EPA's principal concern is whether the proposed dredging will degrade San Francisco

Bay water quality through the re-introduction of toxic contaminants. EPA has agreed to review recent sampling data. A second concern is whether onshore construction will overlap with possible hazardous waste sites. Finally, EPA raised questions about the relationship of this supplemental EIS to an upcoming Navy Homeporting EIS for the San Francisco Bay Region.

Final EISs

F-AFS-K01004-AZ, Canyon Uranium Mining Development, Kaibab Nat'l Forest, AZ. SUMMARY: The final EIS adequately addressed the concerns EPA raised on the draft EIS.

ERP No. F-BLM-J70008-UT, Warm Springs Resource Area, Resource Mgmt. Plan, UT. SUMMARY: EPA did not identify potential environmental impacts which would require changes in the preferred alternative.

ERP No. F1-BLM-K65040-CA, Eastern San Diego Co. Planning Unit, Sawtooth Mtn. B, Carrizo Gorge and San Felipe Hills Wilderness Study Areas, Wilderness Recommendations, CA. SUMMARY: The final EIS addressed the concerns EPA had raised on the draft EIS.

ERP No. F-FHW-K40115-CA, CA-4 Freeway Construction, Wilson Way to CA-99, CA. SUMMARY: The final EIS adequately addressed the concerns EPA had raised on the draft EIS, however, EPA noted its continuing concern with ozone violations in the Stockton area.

ERP No. F-SCS-G36134-LA, Upper Vermilion Bayou Watershed Protection, Flood Prevention and Drainage Plan, 404 Permit, LA. SUMMARY: EPA has no objections to the proposed action as described.

Regulations

ERP No. R-NRC-A22108-00, 10 CFR Part 40, Uranium Mill Tailings Regulation, Ground-Water Protection and Other Issues (51 FR 24697). SUMMARY: EPA does not believe that the proposed rules adequately incorporate EPA's groundwater protection requirements into NRC's regulations. EPA stated that the proposal does not satisfy section 84 (a)(3) of the Atomic Energy Act, does not conform to EPA standards under the Solid Waste Disposal Act, authorizes alternate standards rather than alternate site-specific compliance mechanisms, and improperly considers irrelevant mine waste regulations.

Dated: November 24, 1986.

David G. Davis,

Acting Director, Office of Federal Activities.

[FR Doc. 86-26834 Filed 11-26-86; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-3115-8]

Intent To Prepare a Supplemental Environmental Impact Statement (EIS); City of Los Angeles Wastewater Treatment Facilities, CA

AGENCY: U.S. Environmental Protection Agency (EPA) Region IX.

ACTION: Preparation of a draft supplemental Environmental Impact Statement.

Purpose: To fulfill the requirements of section 102(2)(c) of the National Environmental Policy Act, EPA has identified a need to prepare an EIS and therefore issues this Notice of Intent pursuant to 40 CFR 1501.7.

FOR FURTHER INFORMATION CONTACT: Mr. Paul Helliker, California Branch, Water Management Division, U.S. Environmental Protection Agency, Region IX, 215 Fremont Street, San Francisco, California 94105, Telephone (415) 974-8283.

SUMMARY

1. *Description of the Proposed Action:* The EPA action would be the approval of a facilities plan and the issuance of grant monies pursuant to section 201 of the Clean Water Act for the design and construction of wastewater treatment facilities at a site in the City of Los Angeles, California.

2. *Public and Private Participation in the EIS Process:* Full participation by interested Federal, State and local agencies as well as other interested private organizations and parties is invited. The public will be encouraged to participate in the planning process.

3. *Scoping:* The final EIS for the City of Los Angeles wastewater facilities plan, issued in October of 1982, studied alternatives for the treatment of municipal wastewater generated in the City of Los Angeles. The preferred alternative identified in that EIS was "Inland-Coastal Split Treatment (B4C)."

The final EIS for sludge management in the Los Angeles/Orange County Metropolitan Area, issued in December of 1980, identified sludge dehydration and combustion as the best alternative for the City of Los Angeles. Major portions of the chosen alternatives from both of the EISs have been constructed in the City of Los Angeles.

The focus of the supplemental EIS will be on alternatives to treat wastewater to secondary effluent requirements from current and projected flows in the City of Los Angeles. EPA Region IX will be holding meetings to discuss alternatives for providing this wastewater treatment and disposal. For additional information, contact the person indicated above. Public notice will be given prior to all subsequent meetings.

4. *Timing:* EPA estimates the draft supplemental EIS will be available for public review and comment around April, 1987.

5. *Requests for Copies of the Draft Supplemental EIS:* All interested parties are encouraged to submit their name and address to the person indicated above for inclusion on the distribution list for the draft supplemental EIS and related public notices.

Dated: November 18, 1986.

David G. Davis,

Acting Director, Office of Federal Activities.

[FR Doc. 86-26835 Filed 11-26-86; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

Applications for Consolidated Hearing; Bott Communications Inc., et al.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant and city/state	File No.	MM Docket No.
A. Bott Communications, Inc.; Ukiah, CA.	BPH-850314MA	86-407
B. Claudia Clarke and Theodore S. Storck, d/b/a Redwood Empire Broadcasting; Ukiah, CA.	BPH-850529MB	
C. Joseph M. Perez; Ukiah, CA.	BPH-850529MD	
D. Marilyn J. Johnson; Ukiah, CA.	BPH-850531MB	
E. Sound Sense, a California Limited Partnership; Ukiah, CA.	BPH-850531MK	

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading and Applicant(s)

1. Air Hazard, A, B, C, D, E
2. Comparative, A, B, C, D, E
3. Ultimate, A, B, C, D, E

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington DC. The complete text may also be purchased from the Commission's duplication contractor, International Transcription Services, Inc., 2100 M Street NW., Washington, DC 20037. (Telephone (202) 857–3800).

W. Jan Gary,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 86–26789 Filed 11–26–86; 8:45 am]

BILLING CODE 6712-01-M

Applications for Consolidated Hearing; Jesus Is Lord Ministries International et al.

1. The Commission has before it the following mutually exclusive applications for a new AM station:

Applicant and city/state	File No.	MM Docket No.
A. Jesus is Lord Ministries International; Cashtown, PA.	BP–84102AH	86–432
B. Lighthouse Broadcasting Co.; Dalton, MA.	BP–850729AA	
C. Lighthouse Broadcasting Co.; Falmouth, VA.	BP–850729AC	
D. Solvay Radio; Solvay, NY.	BP–850729AE	
E. Greater Virginia Broadcasters Stafford, VA; Stafford, VA.	BP–850729AL	
F. Upstate Broadcasters; Fayetteville, NY.	BP–850729AM	
G. Central Pennsylvania Broadcasters; Shickshinny, PA.	BP–850729AN	
H. Family Stations, Inc. Nicholson, PA.	BP–850729AP	

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading and Applicant(s)

1. Air Hazard, B, D, E, F, H
2. City Coverage—AM, B, C, D
3. 307(b), All Applicants
4. Contingent Comparative, All Applicants
5. Ultimate, All Applicants

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Docket Branch (Room 230), 1919 M Street NW., Washington DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street NW., Washington, DC 20037. (Telephone (202) 857–3800).

Larry D. Eads,

Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 86–26790 Filed 11–26–86; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL HOME LOAN BANK BOARD

Federal Saving and Loan Advisory Council Meeting

AGENCY: Federal Home Loan Bank Board.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the proposed agenda of a forthcoming meeting of the Federal Savings and Loan Advisory Council. Notice of the meeting is required under the Federal Advisory Committee Act.

DATE(S): December 17, 1986, 9:00 a.m.–4:30 p.m.; December 18, 1986, 9:00 a.m.–11:30 a.m.

ADDRESS: Federal Home Loan Bank Board, Board Room, 6th Floor, 1700 G Street NW., Washington, DC 20552.

FOR FURTHER INFORMATION CONTACT: John M. Buckley, Jr. (202/377–6577); Debra J. Ahearn (202/377–6924).

SUPPLEMENTARY INFORMATION:

Proposed agenda:

1. What additional Service Corporation activities should be sought for federally chartered thrift institutions?

2. What should the Board's legislative priorities be for 1987 session of Congress?

3. Review effect of REMICs on the thrift industry's mortgage lending activities and overall profitability.

No. 11, November 24, 1986.

Jeff Sconyers,

Secretary.

[FR Doc. 86–26765 Filed 11–26–86; 8:45 am]

BILLING CODE 6720-01-M

Federal Maritime Commission

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 202–007540–046.

Title: U.S. Atlantic & Gulf/ Puerto Rico Maritime Shipping Authority
Sea-Land Service, Inc.
Shipping Corporation of Trinidad and Tobago, Ltd.

Synopsis: The proposed amendment would expand the scope of the agreement to include U.S. Atlantic coast ports from West Palm Beach, Florida to Key West, Florida and intermodal service via such ports. Additionally, the number of rate-making sections would be increased from three to four.

Agreement No.: 203–010664–003.

Title: Pan-Atlantic Carrier Trade Agreement.

Parties:

Hapag-Lloyd AG
Intercontinental Transport (ICT) BV
Atlantic Container Line GIE
Dart-ML Limited
Trans Freight Lines
Lykes Bros. Steamship Company, Inc.
United States Lines, Inc.
Johnson Scanstar
Nedlloyd Lijnen B.V.

Synopsis: The proposed amendment would admit Nedlloyd Lijnen B.V. as a party to the agreement.

Agreement No.: 203–010977–001.

Title: Hispaniola Discussion Agreement.

Parties:

United States Atlantic and Gulf/ Hispaniola Steamship Freight Association.
Zim Israel Navigation Co.
Overseas Transport International Corp.

Synopsis: The proposed amendment would admit Overseas Transportation International Corp. as a party to the agreement.

Agreement No.: 224–011032.
Title: Seattle Terminal Agreement.
Parties:

Port of Seattle (Post)
Stevedoring Services of America (SSA)

Synopsis: The proposed agreement would permit the Port to lease approximately twenty-five acres of paved land at the Port's Terminal 42 and to provide preferential use of berthing space and container handling equipment to SSA for a period of five years with an option to extend the agreement for an additional five year period.

Agreement No.: 224–011033.
Title: Seattle Terminal Agreement.
Parties:

Port of Seattle (Post)
Nippon Yusen Kaisha, Ltd.
Showa Line, Ltd.

Synopsis: The proposed agreement would permit the Port to lease land and office space at the Port's Terminal 37 to the remaining agreement parties and to provide those parties preferential berthing rights and preferential use of certain container handling equipment for an initial period of five years with an option to extend the agreement for a period of three years.

Agreement No.: 224–011034.
Title: Seattle Terminal Agreement.
Parties:

Port of Seattle (Post)
Dovex Corporation (Dovex)

Synopsis: The proposed agreement would permit the Port to provide preferential use of chill warehouse space to Dovex for an initial period of ten years.

By Order of the Federal Maritime Commission.

Dated: November 24, 1986.

Joseph C. Polking,

Secretary.

[FR Doc. 86–26756 Filed 11–26–86; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Citizens of Hardeman County Financial Services, Inc., Application To Engage de Novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 17, 1986.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Citizens of Hardeman County Financial Services, Inc.*, Whiteville, Tennessee; to engage *de novo* in acting as agent in the sale of credit insurance directly related to extensions of credit made by Applicant's wholly-owned subsidiary, The Whiteville Savings Bank, Whiteville, Tennessee, and will be limited to assuring the repayment of the outstanding balance due on such extensions of credit in the event of the death, disability, or involuntary unemployment of the debtor pursuant to § 225.25(b)(8)(i)(A) and (B) of the Board's Regulation Y. These activities will be conducted in the State of Tennessee.

Board of Governors of the Federal Reserve System, November 21, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86–26726 Filed 11–26–86; 8:45 am]

BILLING CODE 6210–01–M

Change in Bank Control Notices; Acquisitions of Banks or Bank Holding Companies

The notifications listed below have applied for the Board's approval under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than December 12, 1986.

A. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *Jess Correll, Vincent Correll, and Ward Correll,* all of Somerset, Kentucky; to acquire 100 percent of the voting shares of Nabanco, Inc., Lancaster, Kentucky.

B. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Vice President) 925 Grand Aveue, Kansas City, Missouri 64198:

1. *C. Dennis Reese* and C. Dennis and/or Joyce Reese, Lenexa, Kansas; to retain ownership of 10.56 percent of the voting shares of Louisburg Bancshares, Inc., Louisburg, Kansas, and thereby indirectly acquire Bank of Louisburg, Louisburg, Kansas.

Board of Governors of the Federal Reserve System, November 21, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86–26727 Filed 11–26–86; 8:45 am]

BILLING CODE 6210–01–M

Financial Institutions, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding

Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than December 17, 1986.

A. **Federal Reserve Bank of New York** (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *Financial Institutions, Inc.*, Warsaw, New York; to acquire 54.95 percent of the voting shares of the Pavilion State Bank, Pavilion, New York.

2. *First National Bancorp, Inc.*, Norfolk, New York; to become a bank holding company by acquiring 100 percent of the voting shares of The First National Bank of Norfolk, Norfolk, New York.

B. **Federal Reserve Bank of Philadelphia** (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. *National Penn Bancshares, Inc.*, Boyertown, Pennsylvania; to acquire 20 percent of the voting shares of Penncore Financial Services Corporation, Camp Hill, Pennsylvania, and thereby indirectly acquire Commonwealth State Bank, Newton, Pennsylvania. Comments on this application must be received by December 18, 1986.

C. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *ICNB Financial Corporation*, Ionia, Michigan; to become a bank holding company by acquiring 100 percent of the voting shares of The Ionia County National Bank of Ionia, Ionia, Michigan. Comments on this application must be recieved by December 18, 1986.

D. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *Founders Bancorp, Inc.*, Scottsdale, Arizona; to become a bank holding company by acquiring 80 percent of the voting shares of Founders Bank of Arizona, Scottsdale, Arizona.

Board of Governors of the Federal Reserve System, November 21, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-26728 Filed 11-26-86; 8:45 am]

BILLING CODE 6210-01-M

[Docket No. R-0575]

Format for Wire Transfer of Funds

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Approval of format for wire transfer of funds.

SUMMARY: The Board of Governors of the Federal Reserve System ("Board") has approved a two-part program to require depository institutions sending funds transfers over Fedwire to provide third-party payments information in a structured message format. Specifically, a two-phased program has been approved which involves:

(1) A $0.25 surcharge for Fedwire funds transfers not conforming to a standard format, beginning April 1, 1988; and

(2) Mandatory use of the standard message format beginning April 3, 1989.

EFFECTIVE DATES: Phase one (surcharge, effective April 1, 1988; Phase two (mandatory use), effective April 3, 1989.

FOR FURTHER INFORMATION CONTACT: Julius F. Oreska, Manager, (202/452-3878) or Peggy Weimer, Senior Analyst, Division of Federal Reserve Bank Operations (202/452-3544); or Telecommunications Device for the Deaf ("TDD") users, Earnestine Hill or Dorothea Thompson (202/452-3544), Board of Governors of the Federal Reserve System, Washington, DC 20551.

SUPPLEMENTARY INFORMATION: On June 6, 1986, the Board issued for public comment a proposal to encourage use of a structured format for transmission of third-party payment information over Fedwire. (51 FR 21246, June 11, 1986) It was proposed that implementation of the standard Fedwire format would be phased in over a two-year period. Beginning in January 1988, a $0.25 surcharge would be assessed for each message that did not conform to the standard format. The standard format would become mandatory for Fedwire payments in January 1989, with nonconforming messages being rejected and returned to originators.

Background

The current Fedwire format for a funds transfer message consists of two parts. The first part contains precisely structured information that identifies the sending and receiving depository institution and the dollar amount of the transfer. The second part of the message contains information in an unstructured form about the customers of the depository institution involved in the transfer and the purpose of the transfer. The lack of structure in the second part of the message requires depository institutions receiving the messages to review payment instructions manually in order to post the payments to the customers' accounts.

In 1982, the American Bankers Association issued a report that recommended a format convention for Fedwire third-party payments. The convention requires that the third-party information be identified using standard three character identifiers, called field tags, for each field of information and that the fields of information be provided in a specific sequence. Although the Federal Reserve has supported this convention since its introduction, less than 11 percent of third-party messages processed on Fedwire are in the structured form.

Comments

Seventy-four comments were received in response to the request for public comment. Of the seventy comments which addressed the proposal, 58 supported the concept or parts of the concept, while 12 respondents opposed it.

One reason given by commenters in favor of the proposal was that use of the standard format would facilitate timely processing and posting of funds transfer messages, regardless of the institution's size or whether the posting was done automatically or manually. Some commenters believed that the use of standardized field tags to designate third-party information would enhance risk reduction efforts by facilitating more timely monitoring of customer accounts. In addition, some commenters stated that implementation of the proposal would allow institutions to reduce delays, errors, and uncertainties associated with messages received in the present free text format.

Reasons given by commenters for opposition to the proposal included: The current method of processing Fedwire payments was not time consuming, costly, or error-prone; the proposal would not facilitate timely or accurate posting of funds transfers; and the

proposal catered to the needs of the large depository institutions.

Mandatory usage of the standard format beginning January 1, 1989, was supported by all but one of the commenters, but fifteen respondents commented on the unresolved status of a transferee depository institution's legal liability related to posting of a transfer on the basis of an account number rather than on the basis of account name. To realize the full benefits of the format by automatically posting payments to customers' accounts, these commenters suggested that certain legal questions concerning reliance on account numbers when posting transactions could be clarified by the Federal Reserve. this is a separate issue from standardizing the Fedwire format, and it will be studied further by the Board. The effectiveness of this proposal is not negated by failure to achieve immediate resolution of this legal issue.

Several commenters questioned the equity of the proposal that the Federal Reserve would provide software support to institutions with personal computer connections to the Reserve Banks.[1] These commenters believed that the personal computer ("PC") software modification should not be provided without charge to the institutions with PC connections to Fedwire, if the large computer interface ("CI") institutions were required to pay for their own software changes.

The Federal Reserve had three options available for handling the issue of providing software support to depository institutions. One option was not to provide software support to any institutions. This option, although equitable, would not foster use of the structured format, especially by small and medium size institutions who do not have the capacity to develop their own software. A second option was to provide application software to institutions with PC connections and those with CI connections. Due to the variety of software used by the CI banks it is impractical for the Reserve Banks to meet the software needs of the CI institutions. In addition, the CI institutions are much more capable of making the software changes needed to use the structured format. The third option, and the one the Board adopted, was to provide software to institutions with PC connections and technical advice to assist the CI institutions. Besides benefiting small- and medium-sized institutions with PC connections, this option benefits large institutions through technical assistance in meeting the target requirements and by smaller institutions originating messages in the standard format. The cost of providing the software is minimal, on the order of $175,000.

Several commenters questioned the cost basis for charging the $0.25 surcharge for nonstandard messages. Specifically, they believe that such a charge would more than recover the Federal Reserve's development costs and would then subsidize the basic Fedwire service.

The Board believes that the surcharge is necessary to recover costs and to encourage depository institutions to expend the resources to originate payments using the standard format. The surcharge will affect only depository institutions who fail to use the standard format. While it is difficult to predict the amount of revenue that might result, it is believed that the income from the surcharge should be relatively insignificant because of the long lead time before the surcharge policy becomes effective.

Some questions were raised by commenters concerning the standard format specifications as outlined in the technical document supplied by the Reserve Banks, including the length of the message and certain required fields. Many commenters believe that certain third-party beneficiary information (e.g., beneficiary account number) should be required for receivers to achieve full automation benefits.

Those suggestions have not been adopted, because originators of transfers do not always have access to information related to the beneficiary's account. Further, since the Federal Reserve cannot edit for the accuracy of the information contained in the field, the sending institution may include inaccurate information to pass mandatory edits. Technical constraints prohibit lengthening the Fedwire format beyond its present eight lines at the present time. Discussions with industry representatives and individual depository institutions indicate that the present eight line Fedwire format provides sufficient space for the large majority of present Fedwire payments. Optional fields included in the recommended message format can be utilized for additional text, if required by originators. Therefore, beneficiary information will remain an optional field.

Implementation

The majority of the commenters who discussed the implementation schedule believe that the proposed schedule of January 1, 1988, for the surcharge for nonconforming messages and January 1, 1989, for mandatory usage of the standard format was reasonable. Some commenters qualified their responses, stating that their implementation readiness is dependent upon the Federal Reserve providing the detailed technical specifications by the end of the third quarter of 1986, as specified in the request for public comment. This would provide a reasonable time period to prepare for implementation.

A preliminary document detailing the technical specifications of the format was available from the Reserve Banks upon request during the comment period. As a result of questions raised by commenters, the technical specifications have undergone some minor revision to address these issues.

Final format specifications have been completed and are now available from the Reserve Banks. Since many commenters expressed concern about having ample time to implement changes, the Board has changed the implementation dates to April 1, 1988, and April 3, 1989, respectively.

For the foregoing reasons, Reserve Banks will assess a $0.25 surcharge for all messages not conforming to the format beginning April 1, 1988. Use of the format will be mandatory beginning April 3, 1989.

By order of the Board of Governors of the Federal Reserve System, November 21, 1986.

William W. Wiles,

Secretary.

[FR Doc. 86-26725 Filed 11-26-86; 8:45 am]

BILLING CODE 6210-01-M

[1] Approximately 6,300 depository institutions are electronically connected to the Fedwire network. The Reserve Banks' intelligent terminal application software is made available free of charge to the estimated 4,800 institutions with PC connections to the Fedwire network. Institutions connected to the Fedwire network pay either terminal leasing fees or, if they own their terminals, electronic connection fees.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Department of Health and Human Services (HHS) publishes a list of information collection packages it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). The following are those packages submitted to OMB since the

last list was published on November 7, 1986.

Public Health Service

(Call Reports Clearance Officer on 202–245–2100 for copies of packages)

National Institutes of Health

Subject: High frequency Hearing Sensitivity.

——NEW——

Respondents: Individuals or households.

Health Resources and Services Administration

Subject: Application to Participate in the Public Health Capitation Program—Extension—(0915–0089).

Respondents: Non-profit institutions.

Office of the Assistant Secretary for Health

Subject: Addendum to Financial Status Report—Reinstatement—(0937–0155).

Respondents: State or local governments; Non-profit institutions.

Subject: National Nursing Home Survey Followup.

——NEW——

Respondents: Individuals or households; Businesses or other for-profit; Non-profit instititions; Small businesses or organizations.

Subject: Laboratory Research on Response Error on Health Survey Questions.

——NEW——

Respondents: Individuals or households.

OMB Desk Officer: Bruce Artim.

Health Care Financing Administration

(Call Reports Clearance Officer on 301–594–8650 for copies of package)

Subject: State Agency Sheets for Verifying Exclusions from the Prospective Payment System—Extension—(0938–0358)—HCFA–437.

Respondents: State or local governments; Non-profit institutions; Small businesses or organizations.

OMB Desk Officer: Fay S. Iudicello.

Social Security Administration

(Call Reports Clearance Officer on 301–594–5706 for copies of package)

Subject: Earnings Statement Interview Guide.

——NEW——

Respondents: Individuals or households.

Subject: Statement for Determining Continuing Eligibility for Supplemental Security Income Payments—Revision—(0960–0131)

Respondents: Individuals or households.

Subject: Request for Worker's Compensation/Public Disability Benefit Information—Revision—(0960–0098)

Respondents: State or local governments; Businesses or other for-profit.

Subject: Statement for Determining Continuing Eligibility for Supplemental Security Income Payments—Revision—(0960–0145)

Respondents: Individuals or households.

Subject: Statement for Determining Continuing Eligibility for Supplemental Security Income Payments—Revision—(0960–0416)

Respondents: Individuals or households.

OMB Desk Officer: Judy A. McIntosh.

Office of the Secretary

(Call Reports Clearance Officer on 202–245–0509 for copies of package)

Subject: Implementation of the Equal Access to Justice Act in Agency Proceedings—Subpart B—Reinstatement—(0990–0118)

Respondents: Individuals or households; Businesses or other for-profit; Non-profit institutions; Small businesses or organizations.

OMB Desk Officer: Judy A. McIntosh.

Copies of the above information collection clearance packages can be obtained by calling the Reports Clearance Officer on the number shown above.

Written comments and recommendations for the proposed information collections should be sent directly to the appropriate OMB Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, Room 3208, Washington, DC 20503.

ATTN: (name of OMB Desk Officer)

Dated: November 24, 1986.

Barbara S. Wamsley,

Acting Deputy Assistant Secretary for Management Analysis and Systems.

[FR Doc. 86–26866 Filed 11–26–86; 8:45 am]

BILLING CODE 4150-04-M

National Institutes of Health

Consensus Development Conference on Diet and Exercise in Noninsulin-Dependent Diabetes Mellitus; Meeting

Notice is hereby given of the NIH Consensus Development Conference on "Diet and Exercise in Noninsulin-Dependent Diabetes Mellitus," sponsored by the National Institute of Diabetes and Digestive and Kidney Diseases and the NIH Office of Medical Applications of Research, in collaboration with INSERM, Institut National de la Sante et de la Recherche Medicale, France. The conference will be held December 8–10, 1986, in the Masur Auditorium of the Warren G. Magnuson Clinical Center (Building 10) at the National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892.

Noninsulin-dependent diabetes (also called adult-onset or type II diabetes) is the most common form of diabetes, affecting an estimated 10 million Americans. The cornerstone of treatment for this type of diabetes is not insulin or other drug therapy but, rather, the adoption of certain healthy living habits. Two of the most prominent lifestyle components are diet and exercise.

The conference will address the significance and recommended use of dietary modification and exercise in the treatment and prevention of this disease. Key questions that will be addressed are: (1) What is the significance of excess body fat in the patient with noninsulin-dependent diabetes mellitus? How can weight reduction best be achieved and maintained? (2) What are the appropriate components of the dietary prescription for patients with noninsulin-dependent diabetes mellitus? (3) What are the benefits and risks of exercise in patients with noninsulin-dependent diabetes mellitus? How should exercise be prescribed? (4) What is the evidence that weight control, diet, and/or exercise can prevent noninsulin-dependent diabetes mellitus? (5) What are the directions for future research?

This conference will bring together biomedical investigators, practicing physicians, other health professionals, and representatives of the public. . Following 2 days of presentations by medical experts and discussion by the audience, a consensus panel will weigh the scientific evidence and formulate a draft statement in response to the questions above. On the morning of the third day, Consensus Panel Chairman George Cahill, M.D., Professor of Medicine, Harvard Medical School, and Director of Research, Howard Hughes Medical Institute, Boston, will read this preliminary Consensus Statement before the conference audience and invite comments and questions.

Information on the program may be obtained from Ms. Sharon Feldman, Prospect Associates, Suite 500, 1801 Rockville Pike, Rockville, Maryland 20852, phone (301) 468–6555.

Dated: November 21, 1986.

William F. Raub,

Acting Director, NIH.

[FR Doc. 86-26825 Filed 11-26-86; 8:45 am]

BILLING CODE 4110-01-M

National Institute of Environmental Health Sciences; Superfund Hazardous Substance Basic Biomedical Research & Training Grant Program; Meeting

Notice is hereby given of a meeting to be held at the National Institute of Environmental Health Sciences, Main Conference Facility, Building 101, Research Triangle Park, North Carolina, on December 15, 1986. The meeting will begin at 9 a.m. and end at approximately 4:00 p.m. The meeting is open to the public.

Background

The Superfund Amendments and Reauthorization Act of 1986 establishes a basic university research and education program within the Department of Health and Human Services. The law authorizes the Secretary, acting through the National Institute of Environmental Health Sciences (NIEHS), to conduct basic research including epidemiologic and ecologic studies in a broad range of areas related to understanding and attenuating the potential health effects resulting from exposure to hazardous substances. NIEHS is also authorized to allocate up to 10 percent of funds appropriated for this purpose to provide grants for training of state and local and other workers at Superfund sites and for long-term, post-graduate training in the biomedical sciences and the geo-sciences for professionals working in the hazardous waste field. Congress authorized funds for this program for a five-year period beginning in October 1986. The total amounts reserved for research, development, demonstration and training are $3 million in Fiscal Year 1987, $10 million in 1988, $20 million in 1989, $30 million in 1990, and $35 million in 1991. These dollar amounts are budget ceilings and actual amounts will be appropriated each year consistent with the Federal budget process.

The purpose of this meeting is to describe the new research programs assigned to NIEHS under the new Superfund Amendments and Reauthorization Act of 1986, legislation and to receive oral and written comments and suggestions regarding these new research initiatives. These comments will be considered by NIEHS staff in the development of a program announcement for appropriate biomedical research areas.

Topics to be discussed in the morning session may include but are not limited to: Overview of section 311a, Superfund Amendments and Reauthorization Act of 1986 legislation; Superfund biomedical research program—some possible approaches; NIEHS grants process and implementation plan. Those wishing to make oral presentations on the research program will be given that opportunity in the afternoon session. These presentations must be limited to 7 minutes. Oral presentations should be supported by written documents that can be left with Ms. Riley at the meeting.

A draft program description to be summarized at the meeting is described below. Written comments are encouraged and it is requested that they be received by close of business on December 10, 1986. Every effort will be made to consider comments received through December 19. In order to accommodate as many people wishing to speak as possible, persons wishing to make oral presentations should contact Ms. Riley at the address below no later than December 10, 1986.

Ms. Janet A. Riley, Administrative Office, OD, NIEHS, P.O. Box 12233, Research Triangle Park, NC 27709

Attendance is limited only by space available. For further information regarding the meeting, please contact Ms. Riley at the above address or telephone 919-541-7621 or FTS 629-7621. The official Government representative for this meeting will be Dr. Anne P. Sassaman.

Dated: November 24, 1986.

David P. Rall,

Director.

Program Background and Description

This NIEHS hazardous substance basic biomedical research and training complements a broader research and development component of Superfund managed by three Federal agencies.

The Environmental Protection Agency (EPA), the principal manager of the Superfund program, has specific mandated research responsibilities in the areas of assessment of the environmental impact of hazardous substances at sites, hazardous waste containment and destruction technologies, and environmental transport and fate. Protection of public health and welfare is the primary goal of EPA, and thus it also has authority to conduct and support research to monitor and test for hazardous substances in the environment and for health effects and health risks of hazardous substances.

The Agency for Toxic Substances and Disease Registry (ATSDR) in the U.S. Public Health Service was established by the original Superfund law in December 1980. ATSDR provides site specific, public health assessments and advisories to EPA and to state and local agencies, citizens, and health care providers. In addition, ATSDR supports applied research activities such as the development and evaluation of toxicologic profiles for hazardous substances found at Superfund sites, the initiation (in cooperation with the HHS's National Toxicology Program and EPA's Toxic Substances Control Act and Federal Insecticide, Fungicide, and Rodenticide Act programs) of toxicologic testing where necessary for these substances. ATSDR also supports research into improved clinical laboratory methods to assess human exposure in communities affected by Superfund sites and may establish exposure registries, health surveillance systems, and epidemiologic studies.

NIEHS's basic hazardous substances biomedical research and training responsibilities are a new facet of the Superfund program and are intended to provide a wide range of research to address the broad public health concerns arising from the release of hazardous substances and hazardous wastes during catastrophic incidents and from uncontrolled, leaking waste disposal sites. NIEHS is an institute of the National Institutes of Health and for 20 years has been the Federal focus for basic environmental health and related research. The Superfund reauthorization builds on the NIEHS's history of conducting in-house research and supporting grants for environmental health sciences research, and specifically requires that NIEHS Superfund basic biomedical research and training grants be awarded in accordance with Section IV of the PHS Act. Under Section IV, NIEHS is required to follow the grants procedures established by the National Institutes of Health. NIEHS must outline research opportunities and promising areas of inquiry relevant to a particular field of biomedical science (in this instance, the broad field of hazardous substance health effects), and publicize the Program Announcement in the *NIH Guide to Grants and Contracts.*

Applications for grants for specific research projects are solicited from institutions and organizations through publication of Program Announcements or Requests for Applications in the *NIH Guide.* (Under the Superfund

Reauthorization Act these are limited to universities.) All applications for research programs must be evaluated for scientific merit by a peer review panel of eminent, primarily non-Federal scientists, taking into account the training and experience of the researchers, and the facilities and equipment of their institutions. A second level review is conducted by the National Advisory Environmental Health Sciences Council.

Grants are awarded by NIEHS on the basis of the recommendations from the peer reviewers and the Council, programmatic priorities of the Institute, and the availability of funds. This mechanism maximizes the strengths of these interrelated groups. The NIEHS staff (in collaboration with their colleagues in EPA and ATSDR, and the broader scientific community) define broad areas of research opportunities; the academic research community conceives specific research inquiries related to the broad public health problem; and the scientific peer review system identifies the best applications for funding support.

NIEHS intends to initiate this process quickly to avoid delays and to capitalize on the enthusiasm arising from enactment of the Superfund reauthorization. However, it is recognized that coordination and communications are vital to the eventual success of this program. Accordingly, NIEHS will schedule annual meetings to facilitate exchange of information among grantees and to foster communication and coordination among the relevant Federal agencies. Internal NIEHS scientific staff discussions and conversations with other scientists already have resulted in a draft outline of some representative avenues of research opportunity relevant to the health concerns associated with hazardous waste transport, storage and release of hazardous substances into the environment. This draft follows an outline and uses headings taken from the language pertaining to the NIEHS responsibilities in the Superfund reauthorization act.

NIEHS interprets the act to permit NIEHS to fund grants for engineering, ecologic, and hydrogeologic research. The draft outline, however, focuses on biomedical research opportunities. NIEHS plans to support engineering, ecologic, and hydrogeologic research insofar as they are integral parts of a larger, broad-based biomedical research program grant. Because of the press of time and the need to follow prescribed NIH grants procedures, NIEHS will focus on biomedical research grant applications in the first fiscal year of the program. Applicants preparing grants for first year funding will be encouraged to develop supplemental applications in subsequent years if they wish to expand their research to include engineering and/or ecologic components. Applicants for funding in the first year who plan to add engineering/ecologic research components should so indicate at the time of their initial application, if at all possible. Any information the applicant can provide indicating ways these components would be linked to the biomedical research would be useful. Applicants for grants in the second and third years are encouraged to develop multidisciplinary basic biomedical research program proposals with supporting engineering and/or ecologic components. NIEHS also recognizes the importance of prevention in the protection of public health. Consequently, applicants are asked to consider basic research into methods to attenuate the toxicity or other hazards associated with hazardous substances or to mitigate the effects of exposure on populations at risk.

An opportunity exists to integrate the research training grants into institutions receiving grants of basic research. Universities may include proposals either for education and training in the biomedical and geosciences or for training state and local or other workers in applications to NIEHS. Universities with programs which emphasize research can enter into contracts with public or private entities and state or local agencies to provide education and training or for any other purpose which might strengthen their research projects. Certain of these long-term training programs may be carried out in conjunction with the National Institute for Occupational Safety and Health.

The research and development section of the Superfund reauthorization provides a unique opportunity for the creation of university based biomedical research program with close ties to engineering and hydrogeologic sciences and to the field of ecology. These broad programs have great potential for improving the understanding of the relationships between human exposures to hazardous substances and adverse health effects.

NIEHS plans to take advantage of this opportunity to solicit and support from Superfund monies basic biomedical research grants which will ultimately become multi-disciplinary centers in universities.

Draft Outline of Some NIEHS Superfund Hazardous Substance Basic Biomedical Research and Development Opportunities

A. Methods/Technologies to Detect Hazardous Substances in the Environment

1. New methods should be developed to detect and determine the chemcials/agents present at/near dump sites. These methods should have the sensitivity and specificity needed to detect the lowest concentrations of hazards which could post toxic threats to humans.

The development of these new methods for detection and quantification of chemicals present at/near dump sites should be linked to the study/review of the toxicity of those chemicals present at the site in order to have guidelines as to the sensitivity/specificity needed in the new methods.

Special attention needs to be paid to the fact that most chemicals/hazards at dump sites will occur in complex mixtures—that is, with chemicals of many kinds, as well as with soil, water, and air. Interfering substances, or changes in the chemical/toxic material being analyzed, can occur in the process of sample collection (on air filters for example) and need to be considered. New approaches are needed for the analysis and toxicologic evaluation of chemicals/agents in such mixtures.

2. Improved techniques are needed for measuring and modeling movement and alteration of chemicals through the media surrounding the waste dump in order to increase the reliability of measurements for risk assessment at such sites.

Investigations as to presence/spread of toxic materials away from dumpsites should consider and attempt to measure the presence of these materials in many places/sources. This would at least include wells providing water to area homes; streams/surface waters in the neighborhood (especially waters providing fish, bath water); air in the neighborhood where people move/live; ground; dust/particulates in these same areas (and in all parts of the household including pets, rodents). Multiple samples should be taken since variation over time in pollutant presence and concentration are likely in each of these vectors.

Animals living in/near dump sites might be sampled to detect the presence/spread of chemicals from the dump. These animals might be feral (rats, mice, rabbits, fish, reptiles, birds) or domestic (pets of households close to the dump). Multiple samples (e.g. blood

might be taken from living animals, but more complete analysis might be possible only on dead/sacrificed animals. Animals (e.g. rodents, rabbits, etc.) might be added to the dump site (in cages/defined areas?) for sampling at definite intervals (to detect spread of chemicals, etc.).

B. Advanced Techniques for the Detection, Assessment, and Evaluation of the Effects on Human Health of Hazardous Substances

1. Methods should be developed for human dosimetry, e.g., by sampling blood, urine, tissues. Specific and sensitive methods to detect and quantify toxic chemicals in human tissues (including blood) at the concentrations likely to occur after environmental exposures are needed for almost all chemicals likely to occur at dump sites. The application of newer analytical techniques to biological samples often requires extensive adaptation and validation. When this is done, these methods may give reliable estimates of exposure of humans to chemicals and also give some idea of time of exposure (if analysis is done on samples taken at different times in the same person, and this study is coupled with pharmacokinetic expertise.).

This dosimetry must be coupled with accurate and sensitive measure in exposed persons of the biological actions of the specific chemicals contacted.

In these ways carefully designate epidemiological and risk assessment studies of persons exposed to dump site chemicals may be carried out (either at the dump site or at the site of an industrial accident).

2. Methods to detect and quantify chemical metabolites, and adducts of chemicals with human/animal tissue macromolecules (enzymes, other tissue proteins, and DNA/RNA) may also be useful in detecting and quantifying exposure and estimating times of exposure to hazardous materials/chemicals. Some metabolites or stable adducts may give estimates of cumulative exposures to chemicals. These approaches need to be applied and validated in studies of exposures to hazards from dump sites. The detection and qualification of chemical adducts in biological samples are especially difficult and in need of new approaches (e.g., some of these adducts are present in very small amounts and many are also short-lived; adduct reference standards are frequently unavailable).

The research here should also be communicated to those working to develop methods for detection/quantification of chemicals in water, soil and air around dump sites (see A.1., above)—since many chemicals also form adducts/methabolites in passage from the dump site to the various sampling points.

3. Methods are needed to "fingerprint" the biological effects of specific hazardous chemicals/pollutants so that exposures to such chemicals can be more easily/clearly defined and set apart from effects produced by other chemicals/causes. These methods should be applicable to humans, and to the levels of (and perhaps intermittent exposures to) hazardous chemicals likely to be contacted in environmental/dump sites.

Exposures to toxic chemicals may result in different gene expressions and these might be detected by gene products—different enzymes or proteins or different amounts of these. Both repression and depression are possible. Oncogenes and anti-oncogenes would be a subset of these phenomena and marking their activation/repression could also mark exposures to toxic chemicals.

(a) One example here might be the peculiar cytrochrome P–450 isozymes produced in both animals and humans and in several tissues by some pollutants. The presence of these specific P–450 isozymes and their amounts (e.g., in a biopsy/autopsy sample) might then be used to detect and quantify the exposure of the person so sampled to things like PCBs or TCDD.

(b) New enzyme formation following pollutants exposure may be detected by measuring enzyme activity. Newer techniques for such measurements can be applied to humans and animals—and may be done with non-radioactive labeled "substrates"—e.g., ^{13}C-labeled caffeine, antipyrine.

(c) Another example here might be the use of specific induction of sets of genetic changes to distinguish between different mutagens/chemicals. Effects of different polycyclic hydrocarbons (PCHC) can be so distinguished in cultured human cells. An example here is the change in sister chromatid exchanges (increase) in cultured lymphocytes from animals exposed to some PCHC. Such effects need additional testing/validation.

(d) If a hazardous chemical induced the production of an antibody in persons exposed to it, then detection of this antibody might prove exposure of the person so tested to this chemical. Such antibody detection could be very sensitive and specific for such toxic chemical exposures. Highly reactive chemicals (forming adducts with proteins, etc.) might be more likely to produce these kinds of reactions than chemicals which did not form such adducts.

4. Behavioral/neurological effects of low-level exposures to toxic chemicals should be investigated as possible early indicators of pollutants contacts around dump sites.

(a) An example here is the possible use of learning tests or video games which seem to measure small decrements in integrated CNS functions produced by things like exposure to lead. The specificity (differences between toxic chemicals) of the changes in such measures is unknown at present.

5. Possible effects of dump-site chemicals on all aspects of the reproduction process should be assessed. In humans, both male and female effects can now be studied.

(a) In males, semen and sperm analysis is possible (e.g., measure chemicals there, and also study effects on sperm biochemistry, morphology, activity, ability to fertilize hamster eggs, etc.)

(b) In females, present tests are probably inadequate and new tests are needed, but menstrual cycle irregularities, time to menopause, and failure to conceive are now used.

(c) Pregnancy rates and outcomes need to be monitored, and studies on fetuses and newborns of animals/people living near dump sites could be very valuable. Maternal exposures to chemicals can be indicated by changes in maternal, fetal, and placental enzymes; or if there is actual presence of chemicals/metabolites/adducts in amniotic fluid, maternal, placental, and fetal/newborn tissues (sampled before or at birth, and when amniocentesis is done, or when there is a miscarriage etc.).

(d) Teratology as an outcome of animal (feral or domestic pets) or human pregnancy and its relation to chemical exposures needs study (both by laboratory testing of dump site chemicals, and in the field by careful epidemiology). Early tests for pregnancy (hCG assays) may be helpful for both diagnosis and prevention strategies.

6. Immunological studies of exposed populations might be useful. Many pollutants change immune reactions (TCDD, PBBs depress immune response to viruses, etc.) and such changes may be indicators of exposure. This needs better methodology and validation for low level exposures.

December 15—Open meeting to discuss scientific content of biomedical research program. Incorporate comments/suggestions into final biomedical research planning document. Finalize RFQ/PA.

January 26–27—Discussion of research plan, concept, clearance by National Advisory Environmental Health Sciences Council.

January 30— Announcement in NIH Guide describing program, soliciting applications for FY 87 awards.

February—Open meeting to discuss engineering/ecology plans.

March—Second NIH Guide describing full programs, including engineering/ecology; announce fall receipt date.

*?

May 1—Receipt date for applications (cleared with DRG).

*?

July—Review committees meet (no site visits).

September 15—Proposed receipt date for FY 88 applications.

September 14–15—Review of applications by National Advisory Environmental Health Sciences Council.

September 30—Start date for FY 87 awards.

*? Superfund Research and Development Advisory Committee meets to review research plan. Date dependent upon appointments.

[FR Doc. 86-26826 Filed 11-26-86; 8:45 am]
BILLING CODE 4140-01-M

National Heart, Lung, and Blood Institute; Notice of Meeting of the Arteriosclerosis, Hypertension and Lipid Metabolism Advisory Committee

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Arteriosclerosis, Hypertension and Lipid Metabolism Advisory Committee, National Heart, Lung, and Blood Institute, January 14–15, 1987, Federal Building, Conference Room B119, 7550 Wisconsin Avenue, Bethesda, Maryland 20892. The entire meeting will be open to the public from 8:30 a.m. to approximately 5:00 p.m. on Wednesday, January 14, and from 8:30 a.m. to adjournment on Thursday, January 15, to evaluate program support in Arteriosclerosis, Hypertension and Lipid Metabolism. Attendance by the public will be limited on a space available basis.

Ms. Terry Bellicha, Chief, Public Inquiry and Reports Branch, National Heart, Lung and Blood Institute, Building 31, Room 4A21, National Institutes of Health, Bethesda, Maryland 20892, (301) 496-4236, will provide a summary of the meeting and a roster of the committee members.

Dr. G.C. McMillan, Associate Director, Arteriosclerosis, Hypertension and Lipid Metabolism Program, NHLBI, Room 4C12, Federal Building, National Institutes of Health, Bethesda, Maryland 20892, (301) 496-1613, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program No. 13.837, Heart and Vascular Diseases Research, National Institutes of Health)

Dated: November 24, 1986.

Betty J. Beveridge,

NIH Committee Management Officer.

[FR Doc. 86-26828 Filed 11-26-86; 8:45 am]
BILLING CODE 4140-01-M

National Heart, Lung, and Blood Institute; Notice of Meeting of the National High Blood Pressure Education Program Coordinating Committee

Notice is hereby given of the meeting of the National High Blood Pressure Education Program Coordinating Committee sponsored by the National Heart, Lung, and Blood Institute on January 16, 1987, from 8 a.m. to 1 p.m., Bethesda Hyatt Regency, One Bethesda Metro Center, Bethesda, Maryland 20814, (301) 657-1234.

The entire meeting is open to the public. The Coordinating Committee is meeting to define the priorities, activities, and needs of the participating groups in the National High Blood Pressure Education Program. Attendance by the public will be limited to space available.

For the detailed program information, agenda, list of participants, and meeting summary, contact: Dr. Edward J. Roccella, Coordinator, National High Blood Pressure Education Program, Office of Prevention, Education and Control, National Heart, Lung, and Blood Institute, National Institutes of Health, Building 31, Room 4A05, Bethesda, Maryland 20892, (301) 496-0554.

Dated: November 21, 1986.

William F. Raub,

Acting Director, NIH.

[FR Doc. 86-26827 Filed 11-26-86; 8:45 am]
BILLING CODE 4140-01-M

Public Health Service

National Toxicology Program; Availability of Technical Report on Toxicology and Carcinogenesis Studies of Methyl Methacrylate

The HHS' National Toxicology Program today announces the availability of the Technical Report describing the toxicology and carcinogenesis studies of methyl methacrylate, which is used primarily as a chemical intermediate in the plastics industry. Toxicology and carcinogenesis studies were conducted by exposing groups of 50 male rats to atmospheres containing methyl methacrylate at 0, 500, or 1,000 ppm; female rats at 0, 250 or 500 ppm; and male and female mice at 0, 500, or 1,000 ppm for a period of two years.

Under the conditions of these 2-year inhalation studies, there was no evidence of carcinogenicity [1] of methyl methacrylate for male F344/N rats exposed at 500 or 1,000 ppm, for female F344/N rats exposed at 250 or 500 ppm, or for male and female B6C3F$_1$ mice exposed at 500 or 1,000 ppm. Inhalation of methyl methacrylate was associated with inflammation of the nasal cavity and degeneration of the olfactory sensory epithelium in male and female rats and mice; epithelial hyperplasia of the nasal cavity was also observed in exposed mice.

Copies of *Toxicology and Carcinogenesis Studies of Methyl Methacrylate in F344/N Rats and B6C3F$_1$ Mice* (Inhalation Studies) (TR 314) are available without charge from the NTP Public Information Office, MD B2-04, P.O. Box 12233, Research Triangle Park, NC 27709. Telephone (919) 541-3991, FTS: 629-3991.

Dated: November 19, 1986.

David P. Rall,

Director.

FR Doc. 86-26829 Filed 11-26-86; 8:45 am]
BILLING CODE 4140-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID-943-07-4220-11; I-15071]

Idaho; Proposed Continuation of Withdrawal

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Reclamation proposes that a portion of a withdrawal for the Boise Reclamation Project be continued for an additional 100 years, which is the estimated remaining life of the improvements with which it would be associated. Under the proposal, the 16,925 acres involved would remain closed to surface entry and the mining

[1] The NTP uses five categories of evidence of carcinogenicity to summarize the strength of the evidence observed in each animal study: two categories for postive results ("clear evidence" and "some evidence"), one category for uncertain findings ("equivocal evidence"), one category for no observable effect ("no evidence"), and one category for studies that cannot be evaluated because of major flaws ("inadequate study").

laws, but have been and would remain open to the mineral leasing laws.

DATE: Comments should be received within 90 days of the date of publication of this notice.

ADDRESS: Comments should be sent to: Idaho State Director, Bureau of Land Management, 3380 Americana Terrace, Boise, ID 83706.

FOR FURTHER INFORMATION CONTACT: William E. Ireland, Idaho State Office, 208–334–1597.

The Bureau of Reclamation proposes that a portion of the land withdrawal made by the Secretarial Order of November 9, 1937, be continued for a period of 100 years pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714. The land are located within the following-described townships:

Boise Meridian, Idaho

T. 5 N., R. 7 E.
T. 8 N., Rs. 4 and 5 E.
T. 9 N., Rs. 5 and 6 E.
T. 10 N., Rs. 4 and 5 E.
T. 11 N., R. 4 E.
T. 19 N., R. 1 W.

The total area involved contains 16,925 acres, more or less, in Elmore, Boise, Valley and Adams Counties. Most of the lands involved are located in the vicinity of the South and Middle Forks of the Payette River near Garden Valley. Additional acreages are located around Lost Valley Reservoir west of McCall and along the North Fork of the Boise River southeast of Idaho City.

The purpose of the withdrawal is to protect the lands for use as potential irrigation storage, power generation and flood control facilities. No change is proposed in the purpose for segragative effect of the withdrawal.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with the proposed withdrawal continuation may present their views in writing to the Idaho State Director at the address indicated above.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the land and its resources. A report will also be prepared for consideration by the Secretary of the Interior, the President and Congress, who will determine whether or not the withdrawals will be continued, and if so, for how long. The final determination of the withdrawals will be published in the **Federal Register**. The existing withdrawals will continue until such final determination is made.

Dated: November 19, 1986.

William E. Ireland

Chief, Realty Operations Section.

[FR Doc. 86–26720 Filed 11–26–86; 8:45 am]

BILLING CODE 4310–GG–M

[AZ–020–7–4212–13; AR–034183]

Public Land Exchange in Mohave County, AZ

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of termination and opening order.

SUMMARY: Notice is hereby given that the Notice of Realty Action published in the **Federal Register** on April 10, 1985 (50 FR 14165) for public land exchange AR–034183 is to be terminated. Upon termination of the Notice of Realty Action, the public lands described therein will be subject to appropriation under the public land laws and the mining laws.

DATE: This action is effective at 10:00 a.m. on December 15, 1985.

FOR FURTHER INFORMATION CONTACT: Mike Berch, Realty Specialist, Kingman Resource Area, 2475 Beverly Avenue, Kingman, Arizona 86401, (602) 757–3161.

Dated: November 19, 1986.

Marlyn V. Jones,

District Manager.

[FR Doc. 86–26737 Filed 11–26–86; 8:45 am]

BILLING CODE 4310–32–M

[NV–030–07–4333–12]

Camping Limits on Public Lands Within the Carson City District

AGENCY: Bureau of Land Management, Interior.

ACTION: Establishment of Special Camping Rules on Public Lands Administered by the Carson City District, Nevada.

Special Recreation Management Areas

The following rules apply to lands administered by the Bureau of Land Management (BLM) within the Indian Creek-East Fork, Walker Lake, and Churchill County Special Recreation Management Areas:

1. Persons may occupy any one site or sites open to camping within a special recreation management area (SRMA) for not more than fourteen (14) days during any twenty-one (21) day period. Following the 14 days, persons may not relocate on BLM lands within the same SRMA until completion of the 21-day period. Exceptions will be made to accommodate campground volunteers.

2. An exception to Rule 1 will be made to allow certain long-term camping within the Walker Lake SRMA. With permission from the Area Manager's field representative, long-term camping of up to 30 continuous days will be permitted. Long-term campers may be assigned to specific sites to reduce conflicts with other users. Long-term camping will not be permitted for residential purposes, where a member of the camping party leaves the camping area to maintain employment.

3. Camping is not permitted at the Hangman's Bridge launch and Ruhenstroth Dam takeout sites within the Indian Creek-East Fork SRMA from April 5 through July 15.

4. Parking areas at the Grimes Point and Cold Springs sites within the Churchill County SRMA may be used for overnight resting. The length of stay shall not exceed 14 hours.

5. The following is prohibited within all special recreation management areas:

(a) Failing to have at least one person occupy a camping area during the first night after camping equipment has been set up.

(b) Leaving personal property unattended for more than 24 hours without permission from the Area Manager.

Extensive Recreation Use Areas

The following rules apply to all other lands administered by the Carson City District, Nevada.

1. Persons may camp on public lands not closed or otherwise restricted to camping for a total period of not more than twenty-one (21) days during any one twenty-eight (28) day period. Following the 21-day period, persons may not relocate to other District lands until completion of the 28-day period. Under special circumstances and upon request, the Area Manager may give written permission for extension beyond the 21-day limit.

2. Camping overnight is not permitted in the Steamboat Geyser Basin, Washoe County, Nevada, on lands described as the SW1/4SW1/4, Sec. 28, and NE1/4NW1/4, Sec. 33, T. 18 N., R. 20 E., Mount Diablo Mer.

3. Persons may not camp on public lands near Carson City, Nevada, residential areas for more than (3) days during any fourteen (14) day period.

This includes all public lands in T. 15 N., R. 19 E.; T. 15 N., R. 20 E.; T. 14 N., R. 19 E.; and Sections 2 through 8, T. 14 N. R. 20 E., Mount Diablo Mer.

4. Persons shall not leave personal property unattended within extensive recreation use areas for more than 72

hours without permission of the Area Manager.

SUPPLEMENTARY INFORMATION: These camping limits are established to reduce the incidence of long-term occupancy trespass conducted under the guise of camping; to allow the general public equitable access to desired recreation sites; to reduce competition with private developments that offer sites for temporary and long-term residential uses; and to protect certain sensitive public resources.

Authority for these rules is contained in CFR Title 43, Chapter II, Part 8365, Subpart 8365.1–2, 8365.1–6, and 8365.2–3.

DATE: These rules will be effective immediately upon publication in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: District Manager, Carson City District Office, 1535 Hot Springs Road, Suite 300, Carson City, Nevada 89701. Telephone (702) 882–1631.

Dated: November 14, 1986.

James W. Elliott,

District Manager, Carson City District.

[FR Doc. 86–26718 Filed 11–26–86; 8:45 am]

BILLING CODE 4310–HC–M

[ID–050–07–4920–10–7887]

Intent to Amend the Monument Resource Management Plan

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice of intent to prepare a planning amendment for public land in Jerome County, Idaho.

SUMMARY: The Shoshone District, Bureau of Land Management, has received a request to sell North Side Canal Company a parcel of public land on which to build a hydro-electric generation project. The parcel identified is the only location suitable for the project and Federal Energy Regulatory Commission regulatons restrict the proposed development to privately owned land. Since the Monument Resource Management Plan decision for the parcel is retention in public ownership, a planning amendment is required to allow disposal.

DATE: Comments should be submitted by December 31, 1986.

ADDRESS: Shoshone District Office, P.O. Box 2–B, Shoshone, Idaho 83352.

FOR FURTHER INFORMATION CONTACT: Robert D. Cordell or Joseph Aitken, Telephone (208) 886–2206.

SUPPLEMENTARY INFORMATION:

1. *Description of the Proposed Planning Action:* The Shoshone District, Bureau of Land Management, proposes to prepare a planning amendment which will consider changing the designation of a specific parcel of public land from retention to disposal.

2. *Geographic Area:* The legal description of the public land is: Township 9 South, Range 19 East, Boise Meridian, Section 24: SE¼NE¼, 40.00 acres. The land is located 1½ miles west and 2 miles north of Hazelton, Idaho. At the Wilson Lake Dam in Jerome County. The 40 acre parcel includes the existing Wilson Lake Dam and Ditch Rider Station.

3. *Anticipated Issues:* The only anticipated issues is that of land disposal. This is considered a non-controversial action and no oppositon is anticipated from existing users or the public.

4. *Disciplines Represented and Used to Prepare The Planning Amendment:* The following resources will be considered in preparing the planning amendment: Lands, wildlife, range, minerals, cultural, watershed/soils, and threatened/endangered plant and animal species. Staff members representing each resource will make up the planning team.

5. *Scheduled Public Meeting:* No public meetings are scheduled at this time.

6. *Location and Availability of Documents Relevant to the Planning Process:* All documents are located at the Shoshone district Office. The hours of availability are 7:45 a.m. to 4:30 p.m. Monday through Friday, except holidays.

Dennis D. Schufe,

Acting District Manager.

[FR Doc. 86–26719 Filed 11–26–86; 8:45 am]

BILLING CODE 4310–GG–M

Fish and Wildlife Service

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget (OMB) for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed information collection requirement and related forms and explanatory material may be obtained by contacting the Service'ss clearance officer at the phone number listed below. Comments and suggestions on the requirement should be made directly to the Service clearance officer and the OMB Interior Desk Officer, Washington, DC 20503, telephone 202–395–7313.

Title: North American Woodcock Singing-Ground Survey.

Abstract: Data is used to assess the population status of the woodcock. Such data is used by Federal, State, and Canadian conservation agencies in the evaluation and formulation of annual hunting and shooting regulations.

Frequency: Annually.

Description of Respondents: Individuals and households and Federal, State and local governments

Annual Responses: 1

Annual Burden Hours: 580

Service Clearance Officer: James E. Pinkerton, 202–653–7499, Room 859, Riddell Building, U.S. Fish and Wildlife Service, Washington, DC 20240.

Dated: November 3, 1986.

Walter O. Stieglitz,

Assistant Director—Refuges and Wildlife.

[FR Doc. 86–26739 Filed 11–26–86; 8:45 am]

BILLING CODE 4310–55–M

Minerals Management Service

Development Operations Coordination Document

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the Receipt of a Proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Champlin Petroleum Company has submitted a DOCD describing the activities it proposes to conduct on Lease OCS–G 5553, Block 184, Ship Shoal Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from onshore bases located on Fourchon and Patterson, Louisiana.

DATE: The subject DOCD was deemed submitted on November 19, 1986.

ADDRESSES: A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Wholesalers Pkwy., Room 114, New Orleans, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Michael J. Tolbert; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Phone (504) 736–2867.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979, (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: November 21, 1986.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 86-26722 Filed 11-26-86; 8:45 am]

BILLING CODE 4310-MR-M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 30940]

D&I Railroad Company; Operation; Between Hawarden, IA, and Beresford, SD; Modified Rail Certificate

November 18, 1986.

D&I Railroad Co. (D&I) filed for a modified certificate of public convenience and necessity under 49 CFR 1150 Subpart C on October 31, 1986, and supplemented it on November 12, 1986. D&I is now authorized to provide serivce over the line of the former Chicago, Milwaukee, St. Paul and Pacific Railroad Company (MICW), between Hawarden, IA and Beresford, SD.[1]

The State of South Dakota acquired this line following an order of abandonment issued by the United States District Court for the Northern District of Illinois, Eastern Division, in proceedings for the reorganization of MILW.

D&I will operate this line pursuant to agreements between the State of South Dakota, the Sioux Valley Regional Authority and itself, and between the Burlington Northern Railroad Company and itself.

A copy of this modified certificate notice shall be served on the Association of American Railroads (Car Service Division) as agent of all railroads subscribing to the car-service and car-hire agreement, and on the American Short Line Railroad Association.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 86-26754 Filed 11-26-86; 8:45 am]

BILLING CODE 7035-01-M

[1] Applicant questions whether it must specifically seek general common carrier authority in its modified certificate. It notes that, in the original modified certificate issued in Finance Docket No. 29910, *D&I R. Co.—Operation Betw. Sioux Falls, SD, and Sioux City, IA* (not printed), served May 4, 1982, involving service between Sioux Falls and Sioux City, IA, it has only requested authority to transport aggregate materials. Amendments to modified certificates to expand commodity authority is unnecessary. The certificates grant general commodity authority without any commodity restriction. Therefore, no additional authority is required to transport general commodities between Sioux Falls and Sioux City. As a result, this modified certificate is limited to authoritzing operations between Howarden and Beresford.

Intent To Engage in Compensated Intercorporate Hauling Operations; Ajax Energy Partners et al.

This is to provide notice as required by 49 U.S.C. 10524(b)(1) that the named partnership and subsidiary corporations intend to provide or use compensated intercorporate hauling operations as authorized in 49 U.S.C. 10524(b).

A. 1. Parent partnership and address of principal office: Ajax Energy Partners, c/o DJ Resources, Inc., 225 West 34th Street-Suite 1107, New York, New York 10122.

2. Wholly-owned subsidiaries which will participate in the operations, and States of incorporation:

Ajax Hudson Petroleum, Inc., New York
Best Petroleum, Inc., New York
Ajax Energy Trucking Co., Inc., New York
Heather Trucking, Ltd., New York
Petro Chemical Trucking, Ltd., New York

B. 1. Parent Corporation and address of principal office: Vogel Paint and Wax Co., Inc., Industrial Airpark, Orange City, Iowa 51041—State of Incorporation—Iowa.

2. Wholly-owned subsidiaries which will participate in the operations and State(s) of incorporation:

	State of incorporation
Previous Notice: (9/13/83)	
Master Products	Iowa.
Quad States Industries, Inc	Iowa.
Diamond Vogel Paint Company	Iowa.
Diamond Products Company	Illinois.
Vogel Paint Mfg. Co., Inc	Nebraska.
Van Sickle Paint Mfg. Co	Nebraska.
Tretiak's Inc	Nebraska.
Marwin Paint, Inc	Minnesota.
Mile Hi Paints & Equipment Co	Colorado.
Komac Paint, Inc	Colorado.
Diamond Vogel of Wisconsin, Inc	Wisconsin.
Addition: (10/8/86)	
Franklin Enterprises Limited	Iowa.

C. 1. Parent corporation and address of principal office: Gifford-Hill & Company, Inc., P.O. Box 47127, Dallas, Texas 75247; Physical Address: 300 E. John Carpenter Freeway, Irving, Texas 75062. Incorporated—Delaware.

2. Wholly-owned subsidiaries which will participate in the operations and address of their respective principal offices:

(i) ConAgg Transportation, Inc., P.O. Box 47127, Dallas, Texas 75247; Physical Address: 300 E. John Carpenter Freeway, Irving, Texas 75062. Incorporated—Texas.

(ii) Gifford-Hill Concrete Company, P.O. Box 47127, Dallas, Texas 75247; Physical Address: 300 E. John Carpenter Freeway, Irving, Texas 75062. Incorporated—Texas.

D. 1. Parent corporation and address of principal office: INTERCO INCORPORATED, 101 South Hanley Rd., St. Louis, Missouri 63105.

2. Wholly-owned subsidiaries which will participate in the operations and states of incorporations:

Delmar Sportswear, Inc., Maryland
Big Yank Corporation, Delaware
Patriot Investment Company, Missouri
Fine's Men's Shops, Inc., Virginia
Converse, Inc., Delaware
United Shirt Distributors, Inc., Delaware
Golde's Department Stores, Inc., Missouri
QCS, Inc., Missouri
Cowden Manufacturing Company, Kentucky
Stuffed Shirt, Inc., Delaware
Queen Casuals, Inc., Delaware
Northeast Factory Outlet, Pennsylvania
Londontown Corporation, Delaware
Matthew Manufacturing Company, Maryland
Star Sportswear Manufacturing, Corp., Delaware
The Scranton Outlet Corporation, Delaware
Washington Holding Company, Georgia
Milford Sportswear, Inc., Delaware
Sky City, Stores, Inc., Delaware
Broyhill Furniture Industries, Inc., North Carolina
Highland House, Inc., North Carolina
Furniture Craftsmen of Hickory, Inc., North Carolina
Highland Transport, Inc., North Carolina
Grand Entry Hat Corp., New York
Central Hardware Company, Missouri
Witte Hardware Corporation, Missouri
TA Whitney Ltd., Delaware
INTERCO Export, Ltd., Missouri
Lease Management, Inc., Missouri
Abe Schrader Corporation, Delaware
SS Advertising Associates, Inc., New York
The Biltwell Company, Inc., Missouri
Ace Sweater Mills, Inc., South Carolina

Campus Sweater & Sportswear Export Company, Ohio
Carolina Sportswear Company, North Carolina
Central Sportswear Company, North Carolina
Chester Sportswear Company, South Carolina
Creedmoor Sportswear Company, South Carolina
Ellwood Knitting Mills, Inc., Pennsylvania
Warren Shirt Company, Pennsylvania
St. Paul Sportswear Company, Virginia
Label Corp., South Carolina
Kenbridge Sportswear Company, Virginia
H & H Manufacturing Corp., Georgia
Nationwide-Penncraft, Inc., Georgia
Rogin, Inc., Georgia
LaCrosse Sportswear Corporation, Virginia
Factory Outlet Company, Delaware
Lexington Sportswear Company, South Carolina
Louisburg Sportswear Company, North Carolina
Morgan Sportswear Company, Georgia
Olympic Sweater & Sportswear Company, Ohio
Southampton Sportswear Corporation, Ohio
Swainsboro Sportswear Company, Georgia
Campus Far East Company, Ohio
Flat Rock Manufacturing Company, Georgia
The Florsheim Shoe Store Company of Fairfield, Alabama
The Florsheim Shoe Store Company of Hollywood, California, California
The Florsheim Shoe Store Company of Santa Barbara, California
The Florsheim Shoe Store Company of Merle Hay Mall, Iowa
The Florsheim Shoe Store Company of San Diego, Ltd., California
The Florsheim Shoe Store Company of California, California
Thayer McNeil Shoe Company of San Mateo, California
The Florsheim Shoe Store Company of Tremont, Colorado
The Florsheim Shoe Store Company of Waterbury, Connecticut
The Florsheim Shoe Store Company of Clarence, N.Y. Inc., New York
The Florsheim Shoe Store Company of Dadeland, Florida, Florida
The Florsheim Shoe Store Company of Georgia, Georgia
Thayer McNeil of Miami, Inc., Florida
The Florsheim Shoe Store Company of Miami Beach, Florida, Florida
The Chicago Florsheim Shoe Store Company, Illinois
The Florsheim Shoe Store Company of Lafayette Square, Inc., Indiana
The Florsheim Shoe Store Company of Brantree, Inc., Massachusetts
The Florsheim Shoe Store Company of Woodland, Michigan
The Florsheim Shoe Store Company of Brookdale, Minnesota, Minnesota
The Florsheim Shoe Store Company of Oxmoor, Kentucky
The Florsheim Shoe Store Company of Southdale, Minesota
The Florsheim Shoe Store Company of New Orleans, Inc., Louisiana
The Florsheim Shoe Store Company of Baltimore, Maryland
The Florsheim Shoe Store Company of West County, Missouri
L. J. O'Neill Shoe Company, Missiouri
The Florsheim Shoe Store Company of Moorestown, New Jersey
The Florsheim Shoe Store Company of Inc., New York
The Florsheim Shoe Store Company of Livingston, New Jersey
The Florsheim Shoe Store Company of Sunrise Mall, Inc., New York
The Florsheim Shoe Store Company of Akron, Ohio, Ohio
The Florsheim Shoe Store Company of of Canton, Ohio
The Florsheim Shoe Store Company, Ohio
The Florsheim Shoe Store Company of Cincinnati, Ohio
The Florsheim Shoe Store Company of Southwyck, Ohio
The Florsheim Shoe Store Company of Cleveland, Heights, Ohio, Ohio
The Florsheim Shoe Store Company of Cleveland, Ohio, Ohio
The Florsheim Shoe Store Company of Eastland, Ohio
The Cleveland Florsheim Shoe Company Ohio
The Florsheim Shoe Store Company of Fairview, Ohio
The Florsheim Shoe Store Company of Mentor, Ohio
The Florsheim Shoe Store Company of Franklin Park, Ohio
The Florsheim Shoe Store Company of Shepard Mall, Oklahoma
The Florsheim Shoe Store Company of Alder Street, Oregon
The Florsheim Shoe Store Company of Lloyd Center, Oregon
The Florsheim Shoe Store Company of Neshaminy, Pennsylvania
The Florsheim Shoe Store Company of Monroeville, Pennsylvania
The Florsheim Shoe Store Company of Pittsburgh, Pennsylvania, Pennsylvania
Thayer McNeil Shoe Company of Pittsburgh, Pennsylvania
The Florsheim Shoe Store Company of Warwick, Rhode Island
The Florsheim Shoe Store Company of Whitehaven, Tennessee, Tennessee
The Florsheim Shoe Store Company of North Park, Texas
The Florsheim Shoe Store Company of Philadelphia, Pennsylvania, Pennsylvania
The Philadelphia Florsheim Shoe Store Company, Pennsylvania
The Florsheim Shoe Store Company of Houston, Texas, Texas
The Florsheim Shoe Store Company of Memorial City, Texas
The Florsheim Shoe Company, Utah
The Florsheim Shoe Store Company Incorporated of Richmond, Virginia, Virginia
The Florsheim Shoe Store Company of Cloverleaf, Virginia
The Florsheim Shoe Store Company of SouthCenter, Washington
The Florsheim Shoe Store Company of Brookfield, Inc., Wisconsin
Duane's East, Inc., New York
Thompson, Boland & Lee, Inc., Delaware
The Florsheim Shoe Store Company of Hawaii, Delaware
Miller Taylor Shoe Company, Georgia
Senack Shoes Inc., Missouri
Senack Shoes of Alabama, Inc., Alabama
Senack Shoes of Arkansas, Inc., Arkansas
Senack Shoes of Illinois, Inc., Illinois
Senack Shoes of Central States, Inc., Wisconsin
Senack Shoes of Iowa, Inc., Iowa
Senack Shoes of Kansas, Inc., Kansas
Senack Shoes of Kentucky, Inc., Kentucky
Senack Shoes of Louisiana, Inc., Louisiana
Senack Shoes of Mississippi, Inc., Mississippi
Senack Shoes of Missouri, Inc., Missouri
Senack Shoes of Nebraska, Inc., Nebraska
Senack Shoes of New Mexico, Inc., New Mexico
Senack Shoes of Connecticut, Inc., Connecticut
Senack Shoes of Northeast, Inc., Missouri
Senack Shoes of Oklahoma, Inc., Oklahoma
Senack Shoes of Tennessee, Inc., Tennessee
Senack Shoes of Texas, Inc., Texas
Idaho Department Store Company, Colorado
Keith O'Brien Stores Inc., Oregon
Keith O'Brien Investment Company, Idaho
Ethan Allen Inc., Delaware
Andover Wood Products, Inc., Maine
EA Enterprises, Inc., Florida
Ethan Allen Adco, Inc., New York
Lake Avenue Associates, Inc., Connecticut
Northeast Consolidated, Inc., Vermont
Riverside Water Works, Inc., Vermont
KEA International Inc., New York

Geneal Furniture Corporation, Delaware

E. 1. Parent corporation and address of principal office: Kilsby-Roberts Co., Suite 300, 140 South State College Boulevard, Brea, CA 92621.

2. Wholly-owned subsidaries which will participate in the operations, and State(s) of incorporation: A.B. Murray Co., Inc., State of Delaware.

F. 1. Parent Corporation and address of principal office: Kraft, Inc., Kraft Court, Glenview, Il 60025.

2. Wholly-owned subsidaries which will participate in the operations and State(s) of incorporation:

A. Duracell, Inc. (Delaware)
B. Duracell International, Inc. (Delaware)
C. Celestial Seasonings, Inc. (Delaware)
D. Celestial Transport, Inc. (Colorado)
E. Consolidated Distribution Center, Inc. (Delaware)
F. Pollo Diary Products Corporation (New York)
G. Sagecoach Express, Inc. (Illinois)
H. Tombstone Pizza Corporation (Wisconsin)
I. Westman Commission Company (Colorado).

Noreta R. McGee,

Secretary.

[FR Doc 86-26752 Filed 11-26-86; 8:45 am]

BILLING CODE 7035-01-M

[Ex Parte No. 395 (Sub-1)]

Keokuk Northern Real Estate Co. & Keokuk Junction Railway Co., Notice of Election of Exemption

AGENCY: Interstate Commerce Commission.

ACTION: Notice of election of exemption.

SUMMARY: Pursuant to 49 U.S.C. 10910(g)(2), the Keokuk Northern Real Estate Company and Keokuk Junction Railway Company elect exemption from all provisions of Title 49, United States Code. This notice broadens a prior election of exemption at 46 FR 45220, September 10, 1981.

DATES: This exemption is effective December 3, 1986.

ADDRESSES: Send pleadings referring to Ex Parte No. 395 (Sub-No. 1) to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423
(2) Petitioner's representative: Susan M. Milligan, Suite 1100, 1133 Fifteenth Street NW., Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275-7245.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. InforSystems, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call 289-4357 (DC Metropolitan area), or toll-free (800) 424-5403.

Decided: November 10, 1986.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Sterrett, Andre, and Lamboley. Commissioner Lamboley dissented with a separate expression.

Noreta R. McGee,

Secretary.

[FR Doc. 86-26753 Filed 11-26-86; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 30937]

Chicago and North Western Transportation Co. and Western Railroad Properties, Inc.; Exemption of Operating Agreement

Chicago and North Western Transportation Company (C&NW) and its wholly-owned subsidiary Western Railroad Properties, Inc. (WRPI) have filed a Notice of Exemption to amend a railroad operating agreement in order to permit C&NW to conduct operations as agent for WRPI over a 9.5-mile line of railroad between Coal Creek Jct. and Caballo Jct. in the Powder River Basin of Wyoming.[1] The operating agreement will be consummated on or about December 15, 1986, and operations by C&NW on behalf of WRPI will commence on or about January 1, 1987.

This is a transaction within a corporate family of the type specifically exempted from the necessity of prior review and approval under 49 CFR 1180.1(d)(3). It will not result in adverse changes in service levels, significant operational changes, or a change in the competitive balance with carriers outside the corporate family.

Use of this exemption is subject to the employee protective conditions in *Norfolk & W. Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified by *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980). *See* Finance Docket No. 30833, *supra*, n.1.

Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction. Pleadings must be filed with the Commission and served on: James P. Daley and Christopher A. Mills, One North Western Center, 165 North Canal Street, Chicago, IL 60606, and Fritz R. Kahn, L. John Osborne, and Thomas E. Acey, Jr. Verner, Liipfert, Bernhard, McPherson and Hand, Chartered, Suite 1000, 1660 L Street, NW., Washington, DC 20036.

Dated: November 24, 1986.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 86-26901 Filed 11-26-86; 8:45 am]

BILLING CODE 7035-01-M

[1] Both the acquisition [from Burlington Northern Railroad Company (BN)] of an undivided one-half interest in the line and operation over the line by WRPI were exempted from prior Commission review under 49 U.S.C. 11343 in Finance Docket No. 30833, *et al., Chicago & N.W. Transp. Co., Western R.R. Prop., Inc., and B.N.R.R. Co.* (not printed), served August 12, 1986, as revised November 17, 1986.

DEPARTMENT OF LABOR

Employment and Training Administration

[TA-W-17,836]

Buckeye, Inc. Midland, TX; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18 an application for administrative reconsideration was filed with the Director of the Office of Trade Adjustment Assistance for workers at the Buckeye, Incorporated, Midland, Texas. The review indicated that the application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA-W-17,836; Buckeye, Incorporated, Midland, Texas (November 4, 1986).

Signed at Washington, DC, this 18th day of November 1986.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 86-26791 Filed 11-26-86; 8:45am]

BILLING CODE 4510-30-M

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 November 3, 1986-November 7, 1986 and November 10, 1986—November 14, 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–17,471; Holiday Apparel, Inc., Hollidaysburg, PA

TA–W–17,523; United Metal Fabricators, Inc., Johnstown, PA

TA–W–17,606; River Weaving Corp., Esmond, RI

TA–W–17,556; Material Handling Systems Div., Colmar, PA

TA–W–17,663; Spargo Wire Co., Rome, NY

TA–W–17,809; Fansteel, Inc., Electronic Products Div., North Chicago, IL

TA–W–17,989; Champion International Corp., Kilickitat, WA

TA–W–17,992; Champion International Corp., Morton, WA

In the following cases the investigation revealed that criterion (3) has not been met for the reasons specified.

TA–W–17,560; Columbian Hancock Development Center, Swartz, LA

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–17,857; Vulcan Mold & Iron Co., Lansing, IL

Aggregate U.S. Imports of ingot molds are negligible.

TA–W–17,634; Heinemann Electric, Trenton, NJ

Aggregate U.S. imports of molded case circuit breakers did not increase as required for certification.

TA–W–17,405; C.E., Natco, Williston, ND

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–17,557; RPI Colorado, Inc., Boulder, CO

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–17,966; Stemco-Engler (Stemco Instruments), Jersey City, NJ

Worker separations were attributable to a transfer of production to another domestic facility.

TA–W–17,763; Federal Cartridge Corp. (Currently Known as Federal Ammunition Div.), Federal-Hoffman, Inc., Anoka, MN

Imports did not contribute importantly to worker separations at the firm.

TA–W–17,808; Wellman Industries, Longview, TX

Aggregate U.S. imports of oil storage tanks are negligible.

TA–W–18,250; Baker Production Technology, Houston, TX

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–18,251; Baker Service Tools, Snyder, TX;

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–18,872; LTV Steel Co., Jennings Road, Cleveland, OH

Aggregate U.S. imports of carbon steel sheet and strip did not increase as required for certification.

TA–W–18,071; Harkins & Company, Alice, TX

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–18,092; Reed tool Co., Houston, TX

Aggregate U.S. imports of oilfield equipment are negligible.

TA–W–18,413; UGI, Reading PA

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–17,939; Bremco Industries, Bremen, OH

Aggregate U.S. imports of storage tanks are negligible.

Affirmative Determinations

TA–W–17,473; Magic Marker Industries, Inc., Trenton, NJ

A certification was issued covering all workers of the firm separated on or after May 21, 1985.

TA–W–17,536; Sandy Lee Manufacturing Co., Menomonie, WI

A certification was issued covering all workers of the firm separated on or after May 1, 1985 and before June 5, 1986.

TA–W–17,501; Zeller Corp., Defiance, OH

A certification was issued covering all workers of the firm separated on or after May 9, 1985.

TA–W–17,598; Beverly Rose Sportswear, Boston, MA

A certification was issued covering all workers of the firm separated on or after May 19, 1985 and before May 17, 1986.

TA–W–17,485; Armstrong Rubber Co., Madison, TN

A certification was issued covering all workers of the firm separated on or after May 14, 1985.

TA–W–17,582; UID Switches, Division of Illinois Tool Works, Irvington, NJ

A certification was issued covering all workers of the firm separated on or after May 29, 1985.

TA–W–17,546; Rockwell International Axle Division, New Castle, PA

A certification was issued covering all workers of the firm separated on or after May 29, 1985.

TA–W–17,648; Ladd Petroleum Corp., Billing, MT

A certification was issued covering all workers of the firm separated on or after January 1, 1986.

TA–W–17,528; Capitol Steel Corp., Oklahoma City, OK

A certification was issued covering all workers of the firm separated on or after May 21, 1985.

TA–W–17,396; E & W of Monterey, Inc., Monterey, TN

A certification was issued covering all workers of the firm separated on or after April 25, 1985 and before July 1, 1986.

TA–W–17,585; Boston Gear, Quincy, MA

A certification was issued covering all workers of the firm separated on or after June 6, 1985.

TA–W–17,477; General Brewing Co., Vancouver, WA

A certification was issued covering all workers of the firm separated on or after May 16, 1985.

TA–W–17,630; Ranco, Inc., Automotive Div., Delaware, OH

A certification was issued covering all workers of the firm separated on or after June 24, 1985.

TA–W–17,484; Macwhyte Wire Rope Co., Kenosha, WI

A certification was issued covering all workers of the firm separated on or after May 14, 1985.

TA-W-17,510; Strippit/Di-Arco Houdaille, Inc., Department 20 Electronic Assemblers, Akron and Clarence, NY

A certification was issued covering all workers of the firm separated on or after May 22, 1985.

TA-W-17,520; Jumping Jack Shoes, Inc., Factory #1, Monett, MO

A certification was issued covering all workers of the firm separated on or after May 22, 1985.

TA-W-17,527; Abelo Sportswear, Tamaqua, PA

A certification was issued covering all workers of the firm separated on or after May 5, 1985 and before June 30, 1986.

TA-W-17,978; North American Philips Lighting Corp., Owensboro, KY

A certification was issued covering all workers of the firm separated on or after August 26, 1985.

TA-W-17,507; Manhattan-Miami Corp., Hialeah, FL

A certification was issued covering all workers of the firm separated on or after May 20, 1985.

TA-W-17,604; General Houseware Corp., Leyse Aluminum Div., Kewaunee, WI

A certification was issued covering all workers of the firm separated on or after June 3, 1985.

TA-W-17,642; Ontario Forge Corp., Muncie, IN

A certification was issued covering all workers of the firm separated on or after July 2, 1986.

TA-W-17,465; Spicer Transmission Div., Dana Corp., Toledo, OH

A certification was issued covering all workers of the firm separated on or after May 16, 1985.

TA-W-17,554A Cadillac Textile, Inc., New York, NY

A certification was issued covering all workers of the firm separated on or after May 29, 1985.

TA-W-17,990; Champion International Corp., Libby, MT

A certification was issued covering all workers of the firm separated on or after November 8, 1985.

TA-W-17,991; Champion International Corp., Bonner, MT

A certification was issued covering all workers of the firm separated on or after November 7, 1985.

TA-W-17,554; Cadillac Textile, Inc., Cumberland, RI

A certification was issued covering all workers of the firm separated on or after May 29, 1985.

TA-W-17,936; Fox Technology, Inc., (Comgen Technology, Inc.), Dayton OH

A certification was issued covering all workers of the firm separated on or after August 15, 1985.

TA-W-1/,942; Pico Products, Inc., Liverpool, NY

A certification was issued covering all workers of the firm separated on or after December 31, 1985.

TA-W-17,932; FMC Corp., Construction Equipment Group, Bowling Green, KY

A certification was issued covering all workers of the firm separated on or after January 1, 1986.

TA-W-18,177; Allegretti Rowe, Inc., El Paso, TX

A certification was issued covering all workers of the blower bag sewing department of the firm separated on or after August 25, 1985.

TA-W-17,898; Callon Petroleum Co., Natchez, MS

A certification was issued covering all workers of the firm separated on or after August 19, 1985.

TA-W-17,899; Callon Petroleum Co., Oklahoma City, OK

A certification was issued covering all workers of the firm separated on or after August 25, 1985.

TA-W-17,900; Callon Petroleum Co., Lafayette, LA

A certification was issued covering all workers of the firm separated on or after August 19, 1985.

TA-W-17,901; Wilcox Energy Co., Natchez, MS

A certification was issued covering all workers of the firm separated on or after August 19, 1985.

TA-W-17,731; Santa Fe Energy Co., Midland, TX

A certification was issued covering all workers of the firm separated on or after July 13, 1985.

I herby certify that the aforementioned determinations were issued during the period November 3, 1986–November 7, 1986 and November 10, 1986–November 14, 1986. Copies of these determinations are available for inspection in Room 6434, U.S. Department of Labor, 601 D Street N.W., Washington, DC 20213 during normal business hours or will be mailed to persons to write to the above address.

Dated: November 18, 1986.

Marvin M. Fooks

Director, Office of Trade Adjustment Assistance.

[FR Doc. 86-26792 Filed 11-26-86; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-18,241]

Simonds Cutting Tools Newcomerstown, OH; Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, and investigation was initiated on September 30, 1986 in response to a worker petition received on September 23, 1986 which was filed on behalf of workers at Simonds Cutting Tools, Newcomerstown, Ohio.

The petitioning group of workers are subject to an ongoing investigation for which a determination has not yet been issued (TA-W-18,165). Consequently, further investigation in this case would serve no purpose; and the investigation has been terminated.

Signed at Washington, DC, this 18th day of November 1986.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 86-26793 Filed 11-26-86; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-17,475]

Xco of Colorado, Inc., Denver, CO; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18 an application for administrative reconsideration was filed with the Director of the Office of Trade Adjustment Assistance for workers at the Xco of Colorado, Incorporated, Denver, Colorado. The review indicated that the application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued. TA-W-17,475; Xco of Colorado, Incorporated, Denver, Colorado (November 4, 1986).

Signed at Washington, DC, this 18th day of November 1986.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 86-26794 Filed 11-26-86; 8:45 am]

BILLING CODE 4510-30-M

Federal Committee on Apprenticeship; Public Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. 1) of October 6, 1972, notice is hereby given that the Federal Committee on Apprenticeship (FCA) will conduct an open meeting on December 3, 1986, from 9:00 a.m.–4:30 p.m.; December 4, from 9:00 a.m.–12 noon at the Frances Perkins Building, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N–5437 A&B, Washington, DC.

The agenda for the meeting on December 3 will include:

1. Swearing in New Members.
2. Welcoming Remarks.
3. Status Report on BAT by Director.
4. Status Report on NASTAD (National Association of State and Territorial Directors).
5. Discussion of Clearinghouse, Lane Community College.
6. Report on Plans for Fiftieth Anniversary of the National Apprenticeship Act.
7. Report of FCA Marketing Subcommittee.

The agenda for the meeting on December 4 will include:

8. Discussion by FCA members on their Recommendations to the Secretary of Labor.

Agenda is subject to change due to time constraints and priority items which may come before the Committee between the time of this publication and the scheduled date of the FCA meeting.

Members of the public are invited to attend the proceedings. Any member of the public who wishes to file written data, views or arguments pertaining to the agenda may do so by furnishing it to the Executive Secretary at any time prior to the meeting. Thirty duplicate copies are needed for the members and for inclusion in the minutes of the meeting.

Any member of the public who wishes to speak at this meeting should so indicate the nature of intended presentation and the amount of time needed by furnishing a written statement to the Executive Secretary at any time prior to the meeting. The Chairperson will announce at the beginning of the meeting the extent to which time will permit the granting of such requests.

Communications to the Executive Secretary should be addressed as follows: Mrs. M.M. Winters, Bureau of Apprenticeship and Training, ETA, U.S. Department of Labor, 200 Constitution Ave., Room N–4649, Washington, DC 20210.

Note.—The 15 day requirement could not be met because of scheduling problems.

Signed at Washington, DC, this 24th day of November 1986.

Roger D. Semerad,

Assistant Secretary of Labor.

[FR Doc. 86–26795 Filed 11–26–86; 8:45 am]

BILLING CODE 4510-30-M

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register** or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue NW., Room S–3504, Washington, DC 20210.

Modifications to General Wage Determination Decisions

The numbers of the decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume, State, and page number(s). Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

Alabama:
AL86–4 (Jan. 3, 1986) ..... p. 8.
AL86–6 (Jan. 3, 1986) ..... p. 13.
Connecticut:
CT86–1 (Jan. 3, 1986) ..... p. 64, pp. 67–76.
Florida:
FL86–17 (Jan. 3, 1986) ..... p. 144.
Maryland:
MD86–11 (Jan. 3, 1986) ..... pp. 411–412.
New York:
NY86–3 (Jan. 3, 1986) ..... p. 661.

NY86–11 (Jan. 3, 1986) ..... pp. 736–738.
NY86–16 (Jan. 3, 1986) ..... p. 769.
NY86–18 (Jan. 3, 1986) ..... p. 784.

Volume II

Arkansas:
AR86–1 (Jan. 3, 1986) ..... p. 4.
AR86–3 (Jan. 3, 1986) ..... p. 11.
Indiana:
IN86–2 (Jan. 3, 1986) ..... p. 237, pp. 243–244.
IN86–3 (Jan. 3, 1986) ..... p. 253, pp. 256–257.
IN86–4 (Jan. 3, 1986) ..... p. 262–272.
IN86–5 (Jan. 3, 1986) ..... pp. 275–276, p. 279.
Minnesota:
MN86–7 (Jan. 3, 1986) ..... p. 511, pp. 517–523a.
MN86–8 (Jan. 3, 1986) ..... pp. 529–530, pp. 536–538b.
Missouri:
MO86–1 (Jan. 3, 1986) ..... pp. 540–542, pp. 548, 551.
Nebraska:
NE86–2 (Jan. 3, 1986) ..... pp. 621–622.
Wisconsin:
WI86–10 (Jan. 3, 1986) ..... p. 990.

Volume III

California:
CA86–1 (Jan. 3, 1986) ..... pp. 35–42.
Colorado:
CO86–1 (Jan. 3, 1986) ..... pp. 97–98.
CO86–4 (Jan. 3, 1986) ..... pp. 373–376.
Montana:
MT86–1 (Jan. 3, 1986) ..... p. 153.

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts". This publication is available at each of the 80 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783–3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. The subscription cost is $277 per volume. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC, this 21st day of November 1986.

James L. Valin,

Assistant Administrator.

[FR Doc. 86–26699 Filed 11–26–86; 8:45 am]

BILLING CODE 4510–27–M

Mine Safety and Health Administration

[Docket No. M–86–157–C]

Golden Oak Mining Co.; Petition for Modification of Application of Mandatory Safety Standard

Golden Oak Mining Company, Route 2, Box 177, Whitesburg, Kentucky 41858 has filed a petition to modify the application of 30 CFR 75.1710 (cabs and canopies) to its Black Oak II Mine (I.D. No. 15–07139) located in Knott County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that cabs or canopies be installed on the mine's electric face equipment.

2. Petitioner states that application of the standard would result in a diminution of safety to the miners affected because the cab or canopy would impair the operator's visibility, and the cramped position would result in operator fatigue, creating a hazard. The cab or canopy would also hinder the operator from making a rapid escape if necessary and could strike and dislodge roof bolts leaving unsupported roof.

3. For these reasons, petitioner requests a modification of the standard in mining heights of 50 inches or less.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before December 29, 1986. Copies of the petition are available for inspection at that address.

Dated: November 20, 1986.

Patricia W. Silvey,

Associate Assistant Secretary for Mine Safety and Health.

[FR Doc. 86–26804 Filed 11–26–86; 8:45 am]

BILLING CODE 4510–43–M

[Docket No. M–86–143–C]

Jim Walter Resources, Inc.; Petition for Modification of Application of Mandatory Safety Standard

Jim Walter Resources, Inc., P.O. Box C–79, Birmingham, Alabama 35283 has filed a petition to modify the application of 30 CFR 75.1105 (housing of underground transformer stations, battery-charging stations, substations, compressor stations, shops, and permanent pumps) to its No. 5 Mine (I.D. No. 01–01322) located in Tuscaloosa County, Alabama. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follow:

1. The petition concerns the requirement that underground transformer stations, battery-charging stations, substations, compressor stations, shops, and permanent pumps be housed in fireproof structures.

2. Petitioner has a compressor station which is located in a crosscut near an intake air shaft. All entries close to the compressor station are maintained as intake airways and there are no return airways available for ventilating the compressor station.

3. As an alternate method, petitioner proposes to install a heat activated fire suppression system. The compressor station will be housed in a fireproof structure with self-closing doors.

4. Petitioner states that the proposed alternative method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Person interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before December 29, 1986. Copies of the petition are available for inspection at that address.

Dated: November 20, 1986.

Patricia W. Silvey,

Associate Assistant Secretary for Mine Safety and Health.

[FR Doc. 86–26805 Filed 11–26–86; 8:45 am]

BILLING CODE 4510–43–M

[Docket No. M-86-148-C]

Nowacki Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Nowacki Coal Company, Box 1308, R.D. #1, Tamaqua, Pennsylvania 18252 has filed a petition to modify the application of 30 CFR 75.1400 (hoisting equipment; general) to its Nowacki Slope (I.D. No. 36-07592) located in Schuylkill County, Pennsylvania. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follow:

1. The petition concerns the requirement that cages, platforms or other devices which are used to transport persons in shafts and slopes be equipped with safety catches or other approved devices that act quickly and effectively in an emergency.

2. Petitioner states that no such safety catch or device is available for the steeply pitching and undulating slopes with numerous curves and knuckles present in the main haulage slopes of this anthracite mine.

3. Petitioner further believes that if "makeshift" safety devices were installed they would be activated on knuckles and curves when no emergency existed and cause a tumbling effect on the conveyance.

4. As an alternate method, petitioner proposes to operate the man cage or steel gunboat with secondary safety connections securely fastened around the gunboat and to the hoisting rope, above the main connecting device. The hoisting ropes would have a factor of safety in excess of the design factor as determined by the formula specified in the Ameircan National Standard for Wire Rope for Mines.

5. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before December 29, 1986. Copies of the petition are available for inspection at that address.

Dated: November 20, 1986.

Patricia W. Silvey,

Assistant Associcate Secretary for Mine Safety and Health.

[FR Doc. 86-26806 Filed 11-26-86; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-86-145-C]

Renegade Coal Company, Inc.; Petition for Modification of Application of Mandatory Safety Standard

Renegade Coal Company, Inc., R.D. #1, Box 470A, Barnesville, Pennsylvania 18214 has filed a petition to modify the application of 30 CFR 75.1400 (hoisting equipment; general) to its No. 1 Slope (I.D. No. 36-07528) located in Schuylkill County, Pennsylvania. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that cages, platforms or other devices which are used to transport persons in shafts and slopes be equipped with safety catches or other approved devices that act quickly and effectively in an emergency.

2. Petitioner states that no such safety catch or device is available for the steeply pitching and undulating slopes with numerous curves and knuckles present in the main haulage slopes of this anthracite mine.

3. Petitioner further believes that if "mankeshift" safety devices were installed they would be activated on knuckles and curves when no emergency existed and cause a tumbling effect on the conveyance.

4. As an alternate method, petitioner proposes to operate the man cage or steel gunboat with secondary safety connections securely fastened around the gunboat and to the hoisting rope, above the main connecting device. The hoisting ropes would have a factor of safety in excess of the design factor as determined by the formula specified in the American National Standard for Wire Rope for Mines.

5. Petitioner states that the proposed alternate method will provide the same degee of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before December 29, 1986. Copies of the petition are available for inspection at that address.

Dated: November 20, 1986.

Patricia W. Silvey,

Assistant Associate Secretary for Mine Safety and Health.

[FR Doc. 86-26807 Filed 11-26-86; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-86-103-C]

S. & T. Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

S. & T. Coal Company, R.D. #1, Box 56A, Hegins, Pennsylvania 17938 has filed a petition to modify the application of 30 CFR 75.1714 (self-contained self-rescuers) to its Skidmore Slope (I.D. No. 36-01984) located in Dauphin County, Pennsylvania. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follow:

1. The petition concerns the requirement that each operator make available to each person who goes underground a self-contained self-rescue device approved by the Secretary which is adequate to protect such person for one hour or longer.

2. Petitioner states that the distance from the mine portal to the actual working face is less than 2,000 feet. The mine can be evacuated in less than 15 minutes.

3. Petitioner states that the devices are too heavy, bulky, and cumbersome to be worn while working or in the narrow confines of the slope gun boat which serves as a mantrip at the mine.

4. Sections of the mine are subjected to freezing temperatures making constant availability of the devices questionable. In addition, the wet mine conditions make it difficult to locate a suitable dry storage location for the self-rescuers.

5. For those reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before December 29, 1986. Copies of the

petition are available for inspection at that address.

Dated: November 20, 1986.

Patricia W. Silvey,

Associate Assistant Secretary for Mine Safety and Health.

[FR Doc. 86-26808 Filed 11-26-86; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-86-151-C]

T. & T. Fuels, Inc.; Petition for Modification of Application of Mandatory Safety Standard

T. & T. Fuels, Inc., P.O. Box 206, Bruceton Mills, West Virginia 26525 has filed a petition to modify the application of 30 CFR 75.503 (permissible electric face equipment; maintenance) to its No. 3 Mine (I.D. No. 46-04542) located in Preston County, West Virginia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the use of a locked padlock to secure battery plugs to machine-mounted battery receptacles on permissible, mobile battery-powered machines.

2. As an alternate method, petitioner proposes to use a spring-loaded locking device in lieu of padlocks. The spring-loaded device will be designed, installed and used to prevent the unintentional loosening of the threaded rings that secure the battery plugs to the battery receptacles. In addition, the fabricated metal brackets will be securely attached to the battery receptacles to prevent accidental loss of the device.

3. Petitioner states that the spring-loaded metal locking devices will be easier to maintain than padlocks because there are no keys to be lost and dirt cannot get into the workings as with a padlock.

4. Operators of permissible, mobile, battery-powered machines affected by this modification will be trained in the proper use of the locking device, the hazards of breaking battery-plug connections under load, and the hazards of breaking battery-plug connections in areas of the mine where electric equipment is required to be permissible.

5. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before December 29, 1986. Copies of the petition are available for inspection at that address.

Dated: November 20, 1986.

Patricia W. Silvey,

Associate Assistant Secretary for Mine Safety and Health.

[FR Doc. 86-26809 Filed 11-26-86; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-86-150-C]

B. & B. Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

B & B. Coal Company, 225 Main Street, Joliett-Tremont, Pennsylvania 17981 has filed a petition to modify the application of 30 CFR 75.1400 (hoisting equipment; general) to its Rock Ridge No. 1 Slope (I.D. No. 36-07741) located in Schuylkill County, Pennsylvania. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that cages, platforms or other devices which are used to transport persons in shafts and slopes be equipped with safety catches or other approved devices that act quickly and effectively in an emergency.

2. Petitioner states that no such safety catch or device is available for the steeply pitching and undulating slopes with numerous curves and knuckles present in the main haulage slopes of this anthracite mine.

3. Petitioner further believes that if "makeshift" safety devices were installed they would be activated on knuckles and curves when no emergency existed and cause a tumbling effect on the conveyance.

4. As an alternate method, petitioner proposes to operate the man cage or steel gunboat with secondary safety connections securely fastened around the gunboat and to the hoisting rope, above the main connecting device. The hoisting ropes would have a factor of safety in excess of the design factor as determined by the formula specified in the American National Standard for Wire Rope for Mines.

5. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before December 29, 1986. Copies of the petition are available for inspection at that address.

Dated: November 20, 1986.

Patricia W. Silvey,

Associate Assistant Secretary for Mine Safety and Health.

[FR Doc. 86-26796 Filed 11-26-86; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-86-152-C]

B. & B. Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

B. & B. Coal Company, 225 Main Street, Joliett-Tremont, Pennsylvania 17981, has filed a petition to modify the application of 30 CFR 75.301 (air quality, quantity, and velocity) to its Rock Ridge No. 1 Slope (I.D. No. 36-07741) located in Schuylkill County, Pennsylvania. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that the minimum quantity of air reaching the last open crosscut in any pair or set of developing entries and the last open crosscut in any pair or set of rooms be 9,000 cubic feet a minute, and the minimum quantity of air reaching the intake end of a pillar line be 9,000 cubic feet a minute. The minimum quantity of air in any coal mine reaching each working face shall be 3,000 cubic feet a minute.

2. Air sample analysis history reveals that harmful quantities of methane are nonexistent in the mine. Ignition, explosion, and mine fire history are nonexistent for the mine. There is no history of harmful quantities of carbon monoxide and other noxious or poisonous gases.

3. Mine dust sampling programs have revealed extremely low concentrations of respirable dust.

4. Extremely high velocities in small cross sectional areas of airways and manways required in friable Antracite veins for control purposes, particularly in steeply pitching mines, present a very dangerous flying object hazard to the

miners and cause extremely uncomfortable damp and cold conditions in the mine.

5. As an alternative method, petitioner proposes that:

a. The minimum quantity of air reaching each working face be 1,500 cubic feet per minute;

b. The minimum quantity of air reaching the last open crosscut in any pair or set of developing entries be 5,000 cubic feet per minute; and

c. The minimum quantity of air reaching the intake end of a pillar line be 5,000 cubic feet per minute, and/or whatever additional quantity of air that may be required in any of these areas to maintain a safe and healthful mine atmosphere.

6. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before December 29, 1986. Copies of the petition are available for inspection at that address.

Dated: November 20, 1986.

Patricia W. Silvey,

Associate Assistant Secretary for Mine Safety and Health.

[FR Doc. 86-26797 Filed 11-26-86; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-86-153-C]

B. & B. Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

B. & B. Coal Company, 225 Main Street, Joliett-Tremont, Pennsylvania 17981 has filed a petition to modify the application of 30 CFR 75.1714 (self-contained self-rescuers) to its Rock Ridge No. 1 Slope (I.D. No. 36-07741) located in Schuylkill County, Pennsylvania. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that each operator make available to each person who goes underground a self-contained self-rescue device approved by the Secretary which is adequate to protect such person for one hour or longer.

2. The mine is always damp to wet. The only electrical equipment, which is a pump, is located at the foot of the slope.

3. Petitioner states that the distance from the mine portal to the actual working face is less than 2,000 feet. The mine can be evacuated in less than 15 minutes.

4. Petitioner states that the devices are too heavy, bulky, and cumbersome to be worn while working or in the narrow confines of the slope gun boat which serves as a mantrip at the mine.

5. Sections of the mine are subjected to freezing temperatures making constant availability of the devices questionable. In addition, the wet mine conditions make it difficult to locate a suitable dry storage location for the self-rescuers.

6. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before December 29, 1986. Copies of the petition are available for inspection at that address.

Dated: November 20, 1986.

Patricia W. Silvey,

Associate Assistant Secretary for Mine and Health.

[FR Doc. 86-26798 Filed 11-26-86; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-86-149-C]

Buck Mountain Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Buck Mountain Coal Company, R.D. #4, Box 357B, Pine Grove, Pennsylvania 17963 has filed a petition to modify the application of 30 CFR 75.1400 (hoisting equipment; general) to its Buck Mountain Slope (I.D. No. 36-02053) located in Schuylkill County, Pennsylvania. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that cages, platforms or other devices which are used to transport persons in shafts and slopes be equipped with safety catches or other approved devices that act quickly and effectively in an emergency.

2. Petition states that no such safety catch or device is available for the steeply pitching and undulating slopes with numerous curves and knuckles present in the main haulage slopes of this anthracite mine.

3. Petition further believes that if "makeshift" safety devices were installed they would be activated on knuckles and curves when no emergency existed and cause a tumbling effect on the conveyance.

4. As an alternate method, petitioner proposes to operate the man cage or steel gunboat with secondary safety connections securely fastened around the gunboat and to the hoisting rope, above the main connecting device. The hoisting ropes would have a factor of safety in excess of the design factor as determined by the formula specified in the American National Standard for Wire Rope for Mines.

5. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before December 29, 1986. Copies of the petition are available for inspection at that address.

Dated: November 20, 1986.

Patricia W. Silvey,

Assistant Associate Secretary for Mine Safety and Health.

[FR Doc. 86-26799 Filed 11-26-86; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-86-144-C]

Clinchfield Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Clinchfield Coal Company, P.O. Box 7, Dante, Virginia 24237 has filed a petition to modify the application of 30 CFR 75.1710 (cabs and canopies) to its Lambert Fork No. 2 Mine (I.D. No. 44-06175) located in Dickenson County, Virginia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that cabs and canopies be installed on the mine's electric face equipment.

2. The mine is opened into the Lower Banner coalbed with undulations in the height of the coal seam, which ranges from 24 to 60 inches in thickness, and has very uneven haulage roadways.

3. Petitioner states that if canopies were installed on Joy 21SC end-driven and center-driven shuttle cars it would result in a diminution of safety for the miners affected because they would dislodge roof supports, decrease the operator's visibility, and create discomfort to the operator.

4. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before December 29, 1986. Copies of the petition are available for inspection at that address.

Dated: December 29, 1986.

Patricia W. Silvey,

Associate Assistant Secretary for Mine Safety and Health.

[FR Doc. 86-26800 Filed 11-26-86; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-86-147-C]

Craft Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Craft Coal Company, P.O. Box 16, Monterville, West Virginia 26282 has filed a petition to modify the application of 30 CFR 75.503 (permissible electric face equipment; maintenance) to its Stone Run No. 6 Mine (I.D. No. 46-05720) located in Randolph County, West Virginia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the use of a locked padlock to secure battery plugs to machine-mounted battery receptacles on permissible, mobile battery-powered machines.

2. As an alternate method, petitioner proposes to use a spring-loaded locking device in lieu of padlocks. The spring-loaded device will be designed, installed and used to prevent the threaded rings that secure the battery plugs to the battery receptacles from unintentionally loosening and will be attached to prevent accidental loss. In addition, the fabricated metal brackets will be securely attached to the battery receptacles to prevent accidental loss of the brackets.

3. Petitioner states that the spring-loaded metal locking devices will be easier to maintain than padlocks because there are no keys to be lost and dirt cannot get into the workings as with a padlock.

4. Operators of permissible, mobile, battery-powered machines affected by this modifications will be trained in the proper use of the locking device, the hazards of breaking battery-plug connections under load, and the hazards of breaking battery-plug connections in areas of the mine where electric equipment is required to be permissible.

5. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before December 29, 1986. Copies of the petition are available for inspection at that address.

Dated: November 20, 1986.

Patricia W. Silvey,

Associate Assistant Secretary for Mine Safety and Health.

[FR Doc. 86-26801 Filed 11-26-86; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-86-155-C]

Dunkard Mining Co.; Petition for Modification of Application of Mandatory Safety Standard

Dunkard Mining Company, Box 8, Dilliner, Pennsylvania 15327 has filed a petition to modify the application of 30 CFR 75.1103-4 (automatic fire sensor and warning device systems; installation; minimum requirements) to its Dunkard Mine (I.D. No. 36-01301) located in Greene County, Pennsylvania. The petition is filled under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that automatic fire sensor and warning device systems provide identification of fire within each belt flight.

2. In a separate petition (M-86-156-C), petitioner proposes to use belt air to ventilate the active working places.

3. In lieu of a heat detection system, petitioner proposes to use an early-warning fire detection system using a low-level carbon monoxide detection system. The system will be installed and operated with specific conditions as outlined in the petition in all belt entries used as intake aircourses.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before December 29, 1986. Copies of the petition are available for inspection at that address.

Dated: November 20, 1986.

Patricia W. Silvey,

Associate Assistant Secretary for Mine Safety and Health.

[FR Doc. 86-26802 Filed 11-26-86; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-86-156-C]

Dunkard Mining Co.; Petition for Modification of Application of Mandatory Safety Standard

Dunkard Mining Company, Box 8, Dilliner, Pennsylvania 15327 has filed a petition to modify the application of 30 CFR 75.326 (aircourses and belt haulage entries) to its Dunkard Mine (I.D. No. 36-01301) located in Greene County, Pennsylvania. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that intake and return aircourses be separated from belt haulage entries and that belt haulage entries not be used to ventilate active working places.

2. The present system of restricting air flow in the belt entry can create positive pressure from the belt to the track and

in some cases from the track to the intake escapeway. This creates the situation where a fire and resultant smoke on the belt immediately causes smoke on the track entry and a migration to the intake escapeway negating smoke free escapeways from the section.

3. The use of belt air will increase the capability of the ventilation system to dilute, render harmless and carry away methane gas, coal dust, and other potentially dangerous or harmful gases and or contaminants.

4. As an alternate method, petitioner proposes to use the air in the belt entry to ventilate active working places. In support of this, petitioner states that:

(a) A low-level carbon monoxide detection system will be installed in all belt entries used as intake air courses and at each belt drive and tailpiece and at intervals not to exceed 2,000 feet along each conveyor belt entry. The monitoring devices will be capable of giving warning of a fire for a minimum of four hours after the source of power to the belt is removed. A visual alert signal will be activated when the carbon monoxide level at any sensor is 10 parts per million (ppm) above ambient air and an audible signal will be sounded at 15 ppm above ambient air. All persons will be withdrawn to a safe area at 10 ppm and evaculated at 15 ppm. The fire alarm will be activated at a surface location where there is a two-way communication. The carbon monoxide system will be capable of identifying any activated sensor and the loss of communications to any or all remote units.

(b) The CO system will be visually examined at least once each coal producing shift and tested for functional operation weekly to insure the monitoring system is functioning properly. The monitoring system will be calibrated with known concentrations of CO and air mixtures at least monthly. The belt conveyor will be examined at least once during each coal producing shift while employees are working. A record of all inspections will be maintaining on surface.

(c) If the CO monitoring system is deenergized for routine maintenance or for failure of a sensor unit, the belt conveyor will continue to operate and qualified persons will patrol and monitor the belt conveyor using hand-held CO detecting devices.

5. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before December 29, 1986. Copies of the petition are available for inspection at that address.

Dated: November 20, 1986.

Patricia W. Silvey,

Associate Assistant Secretary for Mine Safety and Health.

[FR Doc. 86-26803 Filed 11-26-86; 8:45 am]

BILLING CODE 4510-43-M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

Advisory Committee on Construction Safety and Health; Appointment of Members

AGENCY: Occupational Safety and Health Administration (OSHA), Department of Labor.

ACTION: Notice of appointment of members.

Notice is hereby given that appointments have been made to fill fifteen (15) vacancies on the Advisory Committee on Construction Safety and Health. The vacancies were created by the expiration of the terms of the fifteen (15) members on June 30, 1986. The new membership of the Committee and the categories represented are as follows:

Employee

Mr. Joe A. Adam, Director, Department of Safety and Health, United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry. (reappointed)

Mr. Robert E.P. Cooney, retired union official. (reappointed)

Mr. Jim E. Lapping, Director, Safety and Health, Building and Construction Trades Department, AFL-CIO. (reappointed)

Mr. Joseph L. Durst, Director, Occupational Safety and Health, United Brotherhood of Carpenters and Joiners of America. (reappointed)

Mr. George E. Smith, Director, Safety Department, International Brotherhood of Electrical Workers. (reappointed)

Employer

Mr. V. Sherwood Kelly, President, Athena Associates, Ltd. (reappointed)

Mr. James Packenham, Safety Manager, Ebasco. (reappointed)

Mr. Larry L. Swanda, Vice President, Jensen Construction Company. (reappointed)

Mr. Thomas J. Reynolds, Corporate Manager of Safety, Morrison Construction Company. (new appointment)

Mr. John A. Ward, Chairman of the Board of Directors, Watco Corporation. (new appointment)

State

Mr. Allen Meier, Commissioner of Labor, State of Iowa. (reappointed)

Mr. Donald D. Owsley, Administrator, Wyoming Occupational Safety and Health Commission. (new appointment)

Public

Mr. Leonard E. Dodson, Consultant. (new appointment—served previously as a member in the employer category)

Mr. Wesley E. Pell, Major General, U.S. Army (Retired), Vice Chancellor for Facilities Planning and Construction, Texas A & M University System (new appointment—to serve as Chairman)

Federal

Mr. John B. Moran, Director, Division of Safety Research, National Institute for Occupational Safety and Health. (reappointment)

Each of these members has been appointed for a term which will end on June 30, 1988.

The Advisory Committee on Construction Safety and Health was established under section 107 of the Contract Work Hours and Safety Standards Act and section 7(b) of the Occupational Safety and Health Act of 1970 to advise the Secretary of Labor on matters pertaining to construction safety and health.

FOR ADDITIONAL INFORMATION CONTACT: Tom Hall, Division of Consumer Affairs, Occupational Safety and Health Administration, Room N3637, 200 Constitution Avenue NW., Washington, DC 20210, telephone: (202) 523-8024.

Signed at Washington, DC, this 21st day of November, 1986.

John A. Pendergrass,

Assistant Secretary of Labor.

[FR Doc. 86-26637 Filed 11-26-86; 8:45 am]

BILLING CODE 4510-26-M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules

AGENCY: National Archives and Records Administration, Office of Records Administration.

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes a notice at least monthly of all agency requests for records disposition authority (records schedules) which include records being proposed for disposal or which reduce the records retention period for records already authorized for disposal. The first notice was published on April 1, 1985. Records schedules identify records of continuing value for eventual preservation in the National Archives of the United States and authorize agencies to dispose of records of temporary value. NARA invites public comment on proposed records disposals as required by 44 U.S.C. 3303a(a).

DATE: Comments must be received in writing on or before January 27, 1987.

ADDRESS: Address comments and requests for single copies of schedules identified in this notice to the Records Appraisal and Disposition Division (NIR), National Archives and Records Administration, Washington, DC 20408. Requesters must cite the control number assigned to each schedule when requesting a copy.

The control number appears in parenthesis immediately after the title of the requesting agency.

SUPPLEMENTARY INFORMATION: Each year U.S. government agencies create billions of records in the form of paper, film, magnetic tape, and other media. In order to control the accumulation of records, Federal agencies prepare records schedules which specify when the agency no longer needs them for current business and what happens to the records after the expiration of this period. Destruction of the records requires the approval of the Archivist of the United States, which is based on a thorough study of their potential value for future use. A few schedules are comprehensive; they list all the records of an agency or one of its major subdivisions. Most schedules cover only one office, or one program, or a few series of records, and many are updates of previously approved schedules.

This public notice identifies the Federal agencies and their appropriate subdivisions requesting disposition authority, includes a control number assigned to each schedule, and briefly identifies the records scheduled for disposal. The complete records schedule contains additional information about the records and their disposition. Additional information about the disposition process will be furnished with each copy of a records schedule requested.

Schedules Pending Approval

1. Department of Energy, Economic Regulatory Administration (NC1–434–82–2). Case files relating to enforcement of petroleum pricing and allocation regulations in effect from 1973 to 1981.

2. Environmental Protection Agency, Office of Information Resources Management (N1–412–86–3). General correspondence and records relating to the development and coordination of the management of information resources within the agency.

3. Department of the Interior, Bureau of Mines (N1–70–86–1). Safety and environmental health records, including those that relate to internal program inspections and evaluations and automated records whose textual copies were previously appraised as disposable.

4. Interstate Commerce Commission, Bureau of Accounts (NC1–134–83–5). Comprehensive schedule for the bureau and its sections.

5. Tennessee Valley Authority, Office of Power, Division of Power System Operations (N1–142–87–1). Substation maintenance records.

6. Department of the Treasury, Office of the Assistant Secretary for Domestic Finance, Office of Revenue Sharing (N1–56–86–4). Civil rights compliance case files and Intergovernmental relations files.

7. Veterans Administration, Department of Medicine and Surgery (N1–15–86–8). Volunteer information cards, time sheets, and ADP printouts.

8. Veterans Administration, Department of Veterans Benefits (N1–15–86–11). Special Evaluation Pension (SEP) Folders. Working files used for agency Field Station administrative purposes.

Dated: November 21, 1986.

Frank G. Burke,

Acting Archivist for the United States.

[FR Doc. 86–26777 Filed 11–26–86; 8:45 am]

BILLING CODE 7515–01–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 86–84]

NASA Advisory Council, Aeronautics Advisory Committee (AAC); 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, Aeronautics Advisory Committee, Ad Hoc Review Team on Aviation Safety Research.

DATE: Date and time: December 18, 1986, 1 p.m. to 4:30 p.m.; December 19, 1986, 8 a.m. to 4:30 p.m.

ADDRESS: Ames Research Center, Building 200, Director's Committee Room, Moffett Field, CA 94035.

FOR FURTHER INFORMATION CONTACT: Mr. Louis J. Williams, Office of Aeronautics and Space Technology, National Aeronautics and Space Administration, Washington, DC 20546, 202/453–2798.

SUPPLEMENTARY INFORMATION: The NAC Aeronautics Advisory Committee was established to provide overall guidance and direction to the aeronautics research and technology activities in the Office of Aeronautics and Space Technology (OAST). Special Ad Hoc Review teams were formed to address specific topics. This Ad Hoc Review Team on Aviation Safety Research, chaired by Mr. Donald Pritchett, is comprised of 9 members. The meeting will be open to the public up to the seating capacity of the room (approximately 25 persons including the team members and other participants). The team will review the aviation safety research efforts being conducted at NASA's Ames and Lewis Research Centers.

Type of Meeting: Open.

Agenda

December 18, 1986

1 p.m.—Opening Remarks.

1:30 p.m.—Briefings by Ames Research Center.

Personnel on Aviation Safety Research.

4:30 p.m.—Adjourn.

December 19, 1986

8 a.m.—Briefings by Ames and Lewis Research.

Centers personnel on Aviation Safety Research Activities.

3 p.m.—Review Team Discussion.

4:30 p.m.—Adjourn.

Richard L. Daniels,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

November 18, 1986.

[FR Doc. 86-26723 Filed 11-26-86; 8:45 am]

BILLING CODE 7510-01-M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards, Subcommittee on Safety Philosophy, Technology, and Criteria; Meeting

The ACRS Subcommittee on Safety Philosophy, Technology, and Criteria will hold a meeting on December 10, 1986, Room 1167, 1717 H Street NW., Washington, DC.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Wednesday, December 10, 1986—9:00 A.M. until the conclusion of business

The Subcommittee will: (1) Discuss the implications of the Chernobyl Accident, (2) continue its review of USI A-17, "Systems Interactions in Nuclear Power Plants," and (3) review the status of the NRC's work on steam generator overfill, and (4) discuss the NRC's proposed policy for reviewing reactivated license application for deferred or canceled nuclear power plants, and (5) discuss the status of the EDO's work on the implementation of the Commission's Safety Goal Policy.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and quesitons may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, its consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Dr. Richard Savio (telephone 202/634-3267) between 8:15 A.M. and 5:00 P.M. Persons planning to attend this meeting are urged to contract the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Dated: November 24, 1986.

Thomas G. McCreless,

Assistant Executive Director for Technical Activities.

[FR Doc. 86-26816 Filed 11-26-86; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-389-OLA; ASLBP No. 87-544-01-LA]

Florida Power and Light Co. et al.; Establishment of Atomic Safety and Licensing Board

Pursuant to delegation by the Commission dated December 29, 1972, published in the **Federal Register**, 37 FR 28710 (1972), and §§ 2.105, 2.700, 2.702, 2.714, 2.714a, 2.717 and 2.721 of the Commission's Regulations, all as amended, an Atomic Safety and Licensing Board is being established in the following proceeding to rule on petitions for leave to intervene and/or requests for hearing and to preside over the proceeding in the event that a hearing is ordered.

Florida Power and Light Company, et al.
St. Lucie Plant, Unit No. 2
Facility Operating License No. NPR-16

This Board is being established pursuant to a notice published by the Commission on October 20, 1986, in the **Federal Register** (51 FR 37242-45) entitled, "Consideration of Issuance of Amendment to Facility Operating License and Proposed no Significant Hazards Consideration Determination and Opportunity for Hearing." The amendment would permit the licensee to transfer Unit No. 1 spent fuel from the Unit No. 1 spent fuel pool to the Unit No. 2 spent fuel pool.

The Board is comprised of the following Administrative Judges:

Charles Bechhoefer, Chairman, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555

Gustave A. Linenberger, Jr., Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555

Richard F. Cole, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555

Issued at Bethesda, Maryland, this 20th day of November 1986.

B. Paul Cotter, Jr.,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 86-26815 Filed 11-26-86; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-293]

Boston Edison Co.; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of a schedular exemption from certain requirements of 10 CFR Part 50, Appendix J, to the Boston Edison Company (BECo/licensee) for the Pilgrim Nuclear Power Station located at the licensee's site in Plymouth County, Massachusetts.

Environmental Assessment

Identification of the Proposed Action

The proposed action would grant temporary relief from the 18-month frequency part of Section III.A.6(b) of Appendix J which requires, under certain circumstances, that Type A overall primary containment leakage tests be performed at each plant shutdown or approximately every 18 months, whichever occurs first.

Need for the Proposed Action

To meet the "approximately every 18-months" requirement of Section III.A.6(b), a Type A test will have to be performed upon completion of the ongoing Type B and C testing of airlocks and valves. However, performing the Type A test at this time is unnecessary since the Pilgrim Station is shut down and will remain so until after the reactor has been refueled and a Type A test is performed in the spring of 1987.

Environmental Impact of the Proposed Action

Type A testing is performed to assure that primary containment leakage is within acceptable limits during plant operation. Since that purpose will be served by the test to be performed after the reactor is refueled, and the reactor will not be operated prior to that time, any earlier Type A testing is unnecessary. Eliminating the earlier testing may, in fact, reduce occupational

exposures. The proposed exemption does not affect plant nonradiological effluents and will have no other environmental impact. Therefore, the Commission concludes that there are no measurable radiological or nonradiological environmental impacts associated with the proposed exemption.

Alternatives to the Proposed Action

Since the Commission has concluded there is no measurable environmental impact associated with the proposed exemption, other alternatives need not be evaluated. The principal alternative to the exemption would be to require rigid compliance with the Section III.A.6(b) requirements. Such action would not enhance the protection of the environment and would result in unjustified costs for the licensee.

Alternative Use of Resources

This action does not involve the use of resources not considered previously in the Final Environmental Statement related to the operation of Pilgrim Station.

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 environmental assessment, the NRC staff concludes that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this proposed action, see the licensee's letter dated August 29, 1986. This letter is available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC and at the Plymouth Public Library, 11 North Street, Plymouth County, Massachusetts.

Dated at Bethesda, Maryland this 21st day of November 1986.

For the Nuclear Regulatory Commission.

Rajender Auluck,

Acting Director, BWR Project Directorate #1, Division of BWR Licensing.

[FR Doc. 86-26831 Filed 11-26-86; 8:45 am]

BILLING CODE 7590-01-M

Draft Finding of No Significant Impact; Cleveland Cliffs Iron Co.

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of finding of no significant impact.

SUMMARY:

(1) Proposed Action. The proposed administrative action is to terminate Cleveland Cliffs Iron Company's Source Material License SUA-1352 for the Collins Draw In-Situ Leach Research and Development site, at which complete ground-water restoration has not been achieved.

(2) Reasons for Finding of No Significant Impact. An Environmental Assessment was prepared by the staff of the U.S. Nuclear Regulatory Commission (NRC) and issued by the Commission's Uranium Recovery Field Office, Region IV. Based on this assessment, the Commission has determined that no significant impact will result from the proposed action, and therefore, an environmental impact statement is not warranted.

The following statements support the finding of no significant impact and summarize the conclusions from the environmental assessment:

(a) After solution mining, the licensee, using a combination of reverse osmosis, ground-water sweep, air stripping and clean water injection conducted several episodes of restoration which partially improved ground-water quality. The utilization of an ammonium carbonate lixiviant in the A-1 and B well fields as well as the dissolution of precipitates from the production zone continue to maintain elevated levels of chemical, metallic and radionuclide species.

Alternatives considered for removing or containing the remaining contamination included additional ground-water restoration involving recirculation with reverse osmosis treatment, ground-water sweep, open pit or underground mining of the production zone, isolation of the production zone by grout or chemical substances and oxidative destruction of residual ammonia by chlorine. Evaluation of these alternatives follows.

Additional restoration utilizing recirculation of production zone water with reverse osmosis treatment would be costly. Previous utilization of the reverse osmosis unit maintained at the site indicates that, without the construction of an appropriately sized evaporation pond (estimated to cost $400,000+), such an effort would have little or no effect on the elevated ground-water parameters. The data on ground-water restoration in the A-1 well field, where reverse osmosis was utilized, indicates that 13 ground-water parameters are elevated. Ground-water data in the B well field, where reverse osmosis was not utilized, shows elevated levels of the same 13 constituents as in the A-1 well field, as well as three additional parameters. Based upon this data, the utilization of reverse osmosis restoration would probably have only minimal improvements on ground-water quality.

Ground-water sweep may cause temporary improvements in ground-water quality. However, the relative differences between water qualities in the production zone and the unmined portions of the formation indicate the circulation restoration option would not be successful to any measureable extent.

Actual mining of the production zone as well as chemically isolating the area would be extremely costly and have unacceptable environmental impacts associated with them. Furthermore, chemically isolating the production zone is not a proven technology and could result in large financial inputs with marginal success.

Oxidative destruction of residual ammonia by chlorine is technology that has not been utilized on a field scale. Due to this, its success is questionable. Additionally, the utilization of this method would lower the production zone aquifer pH and potentially increase concentrations of heavy metals, resulting in overall degradation of the existing water quality.

Due to the above restoration options and potential problems associated with their implementation, natural restoration or dilution of the remaining ground-water contaminants appears to be the best method of reducing elevated levels of chemical, metallic and radionuclide constituents.

(b) Prior to mining at the Collins Draw project, baseline water quality sampling showed water quality to be high in total dissolved solids and radium. Although these concentrations were high, they did not preclude the water usage as a domestic water source; however, no domestic usage was known to exist in the area. Current use of water from wells adjacent to the production zone consists of using the water for oil well drilling. Due to this, contaminated water from the production zone is being drawn towards these wells where it is utilized during drilling operations. Utilization of water for drilling purposes is a consumptive use which effectively "uses up" the contaminated water. Furthermore, due to the pumping that is taking place, a ground-water sweep of the production zone is being performed. The ultimate effect of this process is to dilute the remaining ground water which has been contaminated due to prior uranium mining operations.

Overall, the production zone covers approximately 0.5 acre and consists of approximately 3.6 million gallons of water in an aquifer system which covers thousands of acres. Due to this, the incremental contamination caused by the Collins Draw Research and Development project is not significant when considering the overall quality and utilization of this ground water in this area. Furthermore, the current ground-water uses of stock watering and oil well servicing have not been precluded due to uranium recovery operations.

(c) Decommissioning and decontamination of the facility will cause minor surface disturbances of the well field areas and process site. Upon completion of these tasks, the site will be returned to its premining land use of open range.

In accordance with 10 CFR 51.32, the Director, Uranium Recovery Field Office has made the determination to issue this draft finding of no significant impact to further the purposes of NEPA and to accept comments on the draft finding for a period of 30 days after issuance in the **Federal Register.** Mail comments to the U.S. Nuclear Regulatory Commission, Uranium Recovery Field Office, P.O. Box 25325, Denver, Colorado 80225. The environmental assessment setting forth the basis for the finding, is available for public inspection and copying at the Commission's Uranium Recovery Field Office located at 730 Simms Street, Suite 100, Golden, Colorado, and at the Commission's Public Document Room at 1717 H Street NW, Washington, DC.

Dated at Denver, Colorado, this 21st day of November 1986.

Gary R. Konwinski,

Project Manager, Licensing Branch 1, Uranium Recovery Field Office, Region IV.

Approved by:

Gary Konwinski,

Acting Chief, Licensing Branch 1, Uranium Recovery Field Office, Region IV.

[FR Doc. 86-26832 Filed 11-26-86; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-528]

Arizona Public Service Co. et al. Palo Verde Nuclear Generating Station, Unit 1; Issuance of Director's Decision

Notice is hereby given that the Director, Office of Nuclear Reactor Regulation, has denied a Petition filed under 10 CFR 2.206 by Myron L. Scott on behalf of the Coalition of Responsible Energy Education regarding the Palo Verde Generating Station (PVNGS), Unit 1. The Petitioner alleged that the integrated leak rate test performed for the containment at PVNGS Unit 1 was deficient in various respects and, therefore, is invalid. Based on these alleged deficiencies, the Petitioner requested relief in the form of service upon the Arizona Public Service Company of an Order to Show Cause why the operating license for PVNGS Unit 1 should not be suspended and the containment ordered immediately retested in accordance with federal regulations.

The Staff has considered the Petitioner's allegations and has determined that they do not provide an adequate basis for the relief requested. The reasons are fully described in a "Director's Decision Under 10 CFR 2.206" (DD-86-18) which is available for public inspection at the Commission's Public Document Room located at 1717 H Street NW., Washington, DC. 20555, and at the Phoenix Public Library, Business, Science and Technology Department, 12 East McDowell Road, Phoenix, Arizona 85004.

A copy of the decision will be filed with the Secretary for the Commission's review in accordance with 10 CFR 2.206(c).

For the Nuclear Regulatory Commission.

Harold R. Denton,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 86-26830 Filed 11-26-86; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Inv. No. 337-TA-231]

Certain Soft Sculpture Dolls, Popularly Known as Cabbage Patch Kids Related Literature and Packaging; Request for Public Comments in Connection with Presidential Review of Exclusion Order Regarding

AGENCY: Office of the United States Trade Representative.

ACTION: Request for public comments on the general exclusion order issued by the U.S. International Trade Commission (Commission) in *Certain Soft Sculpture Dolls, Popularly Known As "Cabbage Patch Kids," Related Literature and Packaging Therefor.*

SUMMARY: On November 19, 1986, the Commission referred to the President for review its determination that there is a violation of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337), in the importation into the United States, and in the sale, of certain soft sculpture dolls because of infringement of registered copyrights, failure to mark the country of origin combined with evidence of consumer confusion and consumer preference for the domestic product. The Commission found that these unfair methods of competition and unfair acts had the effect or tendency to destroy or substantially injure an efficiently and economically operated industry in the United States.

The Commission issued an order directing the U.S. Customs Service to exclude from entry in the United States imports of foreign soft sculpture dolls known as "Cabbage Patch Kids," related birth certificates and adoption papers, and packaging therefor, including but not limited to such models as the 16-inch Cabbage Patch kids; 14-inch Preemies; 16-inch Twins; 16-inch World Travelers; 16-inch Cornsilk Kids; 14-inch Preemie Twins; 16-inch Clowns; 16-inch Astronauts; 16-inch Allstars; and 12-inch Babies, that infringe Original Appalachian Artworks, Inc.'s copyrights, U.S. Copyright Registration Nos. VA-35-804, VA 141-801, TX 1-254-777, TX 1-254-778, and TX 1-261-526, except under license from or with the permission of Original Appalachian Artworks, Inc.

Under Section 337(g), the President, for policy reasons may disapprove the Commission's determination within 60 days following receipt of the determination and record. If disapproved by the President, the determination, and any order issued under its authority, would be without force or effect. The President also may approve the Commission's determination rendering the determination and order final on the date that the Commission receives notice of the approval. If the President takes no action to approve or disapprove the determination and order, they become final automatically following the 60-day review period.

Interested parties may submit comments concerning foreign or domestic policy issues that should be considered by the President in making his decision regarding this investigation. Parties commenting on domestic policy issues should specifically refer to the portion of the Commission's record related to that issue. If the domestic policy issue was not raised before the Commission, parties should provide a rationale for that omission.

Comments may not exceed 15 letter-sized pages, including attachments. Parties must provide twenty copies of the submission to the Secretary, Trade Policy Staff Committee, Room 521, 600 17th Street, NW., Washington, DC 20506. All submissions must be received by

close of business, Thursday, December 4, 1986.

FOR FURTHER INFORMATION CONTACT: Catherine R. Field, Assistant General Counsel, (202) 395-3432.

Donald M. Phillips,

Chairman, Trade Policy Staff Committee.

[FR Doc. 86-26877 Filed 11-26-86; 8:45 am]

BILLING CODE 3190-01-M

PACIFIC NORTHWEST ELECTRIC POWER AND CONSERVATION PLANNING COUNCIL

State Agency Advisory Committee, Regular Meeting Notice

AGENCY: The Pacific Northwest Electric Power and Conservation Planning Council (Northwest Power Planning Council).

ACTION: Notice of meeting.

Status: Open.

SUMMARY: The Northwest Power Planning Council hereby announces a forthcoming meeting of its State Agency Advisory Committee, to be held pursuant to the Federal Advisory Committee Act, 5 U.S.C. Appendix I, 1-4. Activities will include:

- Current MCS revisions.
- Petitions for additional MCS from NRDC/NCAC and CASE.
- Bonneville's WPPSS cost-effectiveness analysis.
- Resolution of 6(c).
- Other issues of interest to the task force.

DATE: Friday, December 12, 1986, 9:00 a.m.-5:00 p.m.

ADDRESS: The meeting will be held at the World Trade Center at Sea-Tax Airport; Mezzanine Level; Room 44A; Highway 99 South; Seattle, WA.

FOR FURTHER INFORMATION CONTACT: Jim Litchfield, (503) 222-5161.

Edward Sheets,

Executive Director.

[FR Doc. 86-26736 Filed 11-26-86; 8:45 am]

BILLING CODE 0000-00-M

POSTAL RATE COMMISSION

[Docket No. A87-5; Order No. 722]

Mary Nichols, Petitioner; Notice and Order Accepting Appeal and Establishing Procedural Schedule

Issued: November 20, 1986.

Before Commissioners: Janet D. Steiger, Chairman; Bonnie Guiton, Vice-Chairman; John W. Crutcher; Henry R. Folsom, Patti Birge Tyson.

Docket Number: A87-5

Name of Affected Post Office: Burkville, Alabama 36725

Name(s) of Petitioner(s): Mary Nichols

Type of Determination: Closing

Date of Filing of Appeal Papers: November 13, 1986

Categories of Issues Apparently Raised:

1. Effect on the community [39 U.S.C. 404(b)(2)(A)].

2. Effect on postal services [39 U.S.C. 404(b)(2)(C)].

Other legal issues may be disclosed by the record when it is filed; or, conversely, the determination made by the Postal Service may be found to dispose of one or more of these issues.

In the interest of expedition, in light of the 120-day decision schedule [39 U.S.C. 404(b)(5)], the Commission reserves the right to request of the Postal Service memoranda of law on any appropriate issue. If requested, such memoranda will be due 20 days from the issuance of the request; a copy shall be served on the Petitioners. In a brief or motion to dismiss or affirm, the Postal Service may incorporate by reference any such memoranda previously filed.

The Commission orders:

(A) The record in this appeal shall be filed on or before November 28, 1986.

(b) The Secretary shall publish this Notice and Order and Procedural Schedule in the **Federal Register.**

By the Commission.

Charles L. Clapp,

Secretary.

Appendix

November 13, 1986—Filing of Petition

November 20, 1986—Notice and Order of Filing of Appeal

December 8, 1986—Last day of filing of petitions to intervene [*see* 39 CFR 3001.111(b)].

December 18, 1986—Petitioner's Participant Statement or Initial Brief [*see* 39 CFR 3001.115(a) and (b)].

January 7, 1987—Postal Service Answering Brief [*see* 39 CFR 3001.115(c)].

January 22, 1987—Petitioner's Reply Brief should petitioner choose to file one [*see* 39 CFR 3001.115(d)].

January 29, 1987—Deadline for motions by any party requesting oral argument. The Commission will schedule oral argument only when it is a necessary addition to the written filings [*see* 39 CFR 3001.116].

March 13, 1987—Expiration of 120-day decisional schedule [*see* 39 U.S.C. 404(b)(5)].

[FR Doc. 86-26724 Filed 11-26-86; 8:45 am]

BILLING CODE 7715-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35-24243]

Filings Under the Public Utility Holding Company Act of 1935 ("Act")

November 20, 1986.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by December 15, 1986, to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the addresses specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Jersey Central Power & Light Company (70-7293)

Jersey Central Power & Light Company ("JCP&L"), Madison Avenue at Punch Bowl Road, Morristown, New Jersey 07960, an electric utility subsidiary of General Public Utilities Corporation, a registered holding company, has filed an application pursuant to sections 9(a) and 10 of the Act.

In order to reduce the unauthorized taking of electric energy from its facilities, commonly known as "theft of service," JCP&L personnel have produced a series of computer programs designed to assist in the administration of the company's efforts to track suspected instances involving theft of service and to identify possible offenders (the "Programs"). The Programs were designed and created by

full-time JCP&L employees as part of their normal duties and were intended for the exclusive use of JCP&L.

Since the development of the Programs, JCP&L has been approached by representatives of various electric and gas utilities requesting that they be permitted to use the Programs. JCP&L proposes to grant these companies a nonexclusive, nontransferable license to use the Programs for a cash consideration to be negotiated with the prospective licensees. Because no agreements to license the Programs have been entered into, JCP&L does not know the amount of the payments it may receive.

Ohio Power Company, et al. 70–7311

Ohio Power Company ("Ohio Power"), an electric utility subsidiary of American Electric Power Company, Inc., a registered holding company, and Ohio Power's coal mining subsidiaries, Southern Ohio Coal Company ("SOCCo") and Windsor Power House Coal Company ("Windsor"), 1 Riverside Plaza, Columbus, Ohio 43215, have filed an application-declaration pursuant to sections 6(a), 7, 9, 10, and 12(b) of the Act and Rule 45 thereunder.

SOCCo and Windsor seek authorization to issue, respectively, from time-to-time through March 31, 1987, up to $135 million and up to $8 million aggregate principal amount of unsecured, fixed-rate notes ("Notes") to banks or other financial institutions. The Notes will mature in not less than two nor more than ten years from the date of issuance and will be issued pursuant to a fixed-rate, term loan agreement. The Notes will be unconditionally guaranteed by Ohio Power and will bear interest to maturity at a rate which would not be greater than 11% per annum. SOCCo and Windsor also seek authorization to issue, respectively, no less than $25 million and no more than $50 million and no less than $2 million and no more than $4 million of new notes ("New Notes") payable to Ohio Power. The sum of the Notes and New Notes will not exceed $160 million for SOCCo and $10 million for Windsor.

Indiana & Michigan Electric Company (70–7313)

Indiana & Michigan Electric Company ("I&ME"), One Summit Square, Fort Wayne, Indiana 46801, a subsidiary of American Electric Power Company, Inc., a registered holding company, has filed a declaration pursuant to sections 6(a) and 7 of the Act and Rule 50 promulgated thereunder.

I&ME proposes to issue and sell, in one or more transactions from time-to-time through December 31, 1987, up to $300 million aggregate principal amount of its (i) First Mortgage Bonds ("Bonds"), in one or more series, each with a maturity of not less than 5 years and not more than 30 years, through a competitive bid basis, unless I&ME later seeks and receives authorizations for an exception from competitive bidding and/or (ii) unsecured notes to mature in not less than 2 years and not more than 10 years pursuant to a proposed term loan agreement and to bear interest at a rate not greater than 12 percent per annum. If I&ME determines to issue the Bonds in more than one series, it may seek to sell one or more series on a competitive basis and one or more series on a negotiated basis.

American Electric Power Company, Inc., et al. (70–7316)

American Electric Power Company, Inc. ("AEP") a registered holding company, and its electric utility subsidiaries, Appalachian Power Company ("Appalachian"), 40 Franklin Road, S.W., Roanoke, Virginia 24011, Columbus and Southern Ohio Electric Company ("Columbus"), 215 North Front Street, Columbus, Ohio 43215, Indiana & Michigan Electric Company ("Indiana"), One Summit Square, P.O. Box 60, Fort Wayne, Indiana 46801, Kentucky Power Company ("Kentucky"), 1701 Central Avenue, Ashland, Kentucky 41101, Kingsport Power Company ("Kingsport"), 40 Franklin Road, S.W., Roanoke, Virginia 24011, Michigan Power Company ("Michigan"), P.O. Box 413, Three Rivers, Michigan 49093, Ohio Power Company ("Ohio"), 301 Cleveland Avenue SW., Canton, Ohio 44701, and Wheeling Electric Company ("Wheeling"), 51 Sixteenth Street, Wheeling, West Virginia 26003, have filed an application-declaration pursuant to sections 6(a), 6(b), 7 and 12(b) of the Act and Rules 45 and 50 thereunder.

During the period from January 1, 1987 through December 31, 1988, Appalachian, Columbus, Indiana and Kentucky propose to issue and sell to banks and dealers in commercial paper short-term notes in aggregate principal amounts not exceeding $125 million, $150 million, $200 million and $75 million, respectively, at any one time outstanding. Kingsport, Michigan and Wheeling propose to issue and sell to banks short-term notes in aggregate principal amounts not exceeding $5 million, $10 million and $5 million, respectively, at any one time outstanding. Appalachian, Columbus, Indiana and Kentucky request that the proposed issuance and sale of commercial paper be excepted from the competitive bidding requirements of Rule 50, pursuant to Rule 50(a)(5).

During the same period, Columbus also proposes to extend an existing credit agreement with Prudential Interfunding Corporation (HCAR No. 23748, June 26, 1986) which provides for short-term borrowings up to an aggregate principal amount of $35 million. Such borrowings will be evidenced by a revolving note maturing no more than 270 days from the date of issuance or renewal and secured by a first security interest in certain coal supplies of Columbus.

AEP requests authorization during the same period to make cash capital contributions from time to time to provide equity capital of up to $25 million for both Indiana and Columbus.

Middle South Utilities, Inc., et al. (70–7317)

Middle South Utilities, Inc. ("Middle South"), a registered holding company, its service company subsidiary, Middle South Services, Inc. ("Services"), both of 225 Baronne Street, New Orleans, Louisiana 70112, Arkansas Power & Light Company ("Arkansas"), First Commercial Building, Little Rock, Arkansas 72201, Louisiana Power & Light Company ("Louisiana"), 142 Delaronde Street, New Orleans, Louisiana 70114, Mississippi Power & Light Company ("Mississippi"), Electric Building, Jackson, Mississippi 39201, and New Orleans Public Service Inc. ("New Orleans"), 317 Baronne Street, New Orleans, Louisiana 70112, each an operating subsidiary of Middle South (collectively, "Operating Companies"), the Operating Companies' fuel-supply subsidiary, System Fuels, Inc. ("SFI"), and Middle South's generating-company subsidiary, System Energy Resources, Inc. ("System Energy"), both of 225 Baronne Street, New Orleans, Louisiana 70112, have filed an application-declaration pursuant to sections 6(a), 7, 9(a), and 10 of the Act and Rule 50(a)(5) thereunder.

By order dated December 30, 1985 (HCAR No. 23967), the applicants-declarants were authorized to participate in a system money pool. It is now proposed that, during the period ending December 31, 1988, such companies continue their participation in the money pool, that the Operating Companies be authorized to issue and sell short-term notes to banks and to commercial paper dealers, and the System Energy be permitted to make short-term borrowings through the pool as well as invest therein. Total outstanding short-term borrowings so proposed to be made by each of the

Operating Companies and System Energy during this period will not exceed 10% of the sum of (a) the total principal amount of all bonds or other securities representing secured indebtedness issued or assumed by an Operating Company or System Energy and then outstanding and (b) the capital and surplus of the Operating Company or System Energy as then stated on its books. Total borrowings through the money pool by Services and SFI will not exceed, at any one time outstanding, amounts equal to the aggregate unused portions of back-up lines of credit then available to these companies. Services and SFI will be permitted to borrow only after the daily needs of the Operating Companies and System Energy have been satisfied. Middle South may lend to the pool but is not authorized to borrow therefrom. All loans will be payable on demand, may be prepaid by any borrowing Participant at any time without premium or penalty, and will bear interest, payable monthly, at a rate of interest, calculated on a daily basis, equal to the daily federal funds effective rate as quoted by the Federal Reserve Bank of New York. Services, as administrator of the money pool, will invest funds remaining in the pool after satisfication of the borrowing needs of the participants and will allocate the earnings among the participants providing the excess funds on a pro rata basis in accordance with their respective interests in the funds.

In the event that, on any given day, the available funds in the money pool are insufficient to satisfy the short-term borrowing requirements of one or more of the Operating Companies, such Operating Companies will effect short-term borrowing through bank loans and/or the sale of commercial paper. The notes proposed to be issued and sold to banks will be payable on demand of the lending bank or not more than one year from the date of issuance and will bear interest at a rate per annum generally no greater than one percent over the prime commercial bank rate. The commercial paper proposed to be issued by the Operating Companies will be in the form of unsecured promissory notes with varying maturities not to exceed 270 days, will not be prepayable, and will be sold directly to a dealer at a discount not in excess of the maximum discount rate per annum prevailing at the date of issuance for commercial paper of comparable quality and maturity. An exception from the competitive bidding requirements of Rule 50 has been requested for the proposed issuance of commercial paper notes.

Middle South Utilities, Inc., (70–7318)

Middle South Utilities, Inc. ("Middle South"), 225 Baronne Street, New Orleans, Louisiana 70112, a registered holding compnay, has filed a declaration pursuant to section 6(a) and 7 of the Act.

Middle South proposes to enter into a revolving credit agreement providing for the issuance by Middle South until December 31, 1989 of up to $60,000,000 at any one time outstanding of its unsecured promissory notes to a group of commercial banks. The Notes issued will bear interest from the date thereof on the unpaid principal amount at a rate per annum equal to one of three rates, as selected by Middle South from time to time.

The Connecticut Light and Power Company (70–7320)

The Connecticut Light and Power Company ("CL&P"), Selden Street, Berlin, Connecticut 06037, a wholly owned subsidiary of Northeast Utilities, a registered holding company, has filed a declaration pursuant to sections 6(a) and 7 of the Act and Rule 50 thereunder.

The proposed transaction relates to the financing of CL&P's portion of the cost of acquiring, constructing and installing certain pollution control facilities and/or sewage or solid waste disposal facilities ("Facilities") at the Seabrook Nuclear Power Station, Unit No. 1 in Seabrook, New Hampshire. CL&P owns 4.05985% of Unit No. 1. The Industrial Development Authority of the State of New Hampshire ("Issuer") intends to issue pollution control revenue bonds ("Bonds) in an aggregate amount not exceeding $25,000,000. The Bonds will be issued an Indenture of Trust between the issuer and a trustee ("Trustee"). The Issuer will lend the proceeds of the Bonds to CL&P pursuant to a loan agreement. CL&P requests that its borrowings under the loan agreement be excepted from the competitive bidding requirements of Rule 50, pursuant to Rule 50(a)(5). CL&P will agree to make payments corresponding to the amounts needed to pay the principal of, premium, if any, and interest on the Bonds as they become due. The obligations of CL&P to repay its loan will be evidenced by a promissory note. The Bonds will be issued with variable interest rates as floating rate demand bonds and will mature in not more than thirty years. At the option of CL&P, the interest rates on the Bonds may be converted to a fixed interest rate. Prior to fixing rates, the Bonds may be tendered for payment by holders. If the Bonds cannot be remarketed, the Trustee may draw upon an irrevocable letter of credit issued by a bank to pay tendering bondholders.

System Fuels, Inc, et al. (70–7321)

System Fuels, Inc. ("SFI"), One Poydras Plaza, 639 Loyola Avenue, New Orleans, Louisiana 70113, a fuel procurement subsidiary of Arkansas Power & Light Company ("AP&L"), First National Building, Little Rock, Arkansas 72203, Louisiana Power & Light Company ("LP&L"), 142 Delaronde Street, New Orleans, Louisiana 70174, Mississippi Power & Light Company ("MP&L"), Electric Building, Jackson, Mississippi 39205, and New Orleans Public Service Inc. ("NOPSI"), 317 Baronne Street, New Orleans, Louisiana 70112 (collectively, "Operating Companies"), each a subsidiary of Middle South Utilities, Inc. ("Middle South"), a registered holding company, and the Operating Companies have filed an application-declaration pursuant to sections 6(a), 7, 9(a), 10, 12(b) and 13(b) of the Act and Rules 45, 90 and 91 thereunder.

By order dated December 30, 1985 (HCAR No. 23968), SFI was authorized to borrow from time to time through December 31, 1986, up to an aggregate principal amount of $56 million from the Operating Companies, pursuant to a loan agreement. It is not proposed to amend the agreement (as amended, "Loan Agreement") to provide for borrowings by SFI for the repayment of loans. Such borrowings will be made from time to time from January 1, 1987 through December 31, 1987, in an aggregate principal amount not exceeding, at any one time outstanding, the sum of $40 million and the amount outstanding under the 1986 agreement (currently estimated to be $11 million), which amount will be converted to loans under the Loan Agreement.

The Operating Companies' commitments under the proposed Loan Agreement are $15,649,000 for AP&L, $22,711,000 for LP&L, $7,650,000 for MP&L and $4,990,000 for NOPSI. The commitment of each company is equal to the same proportion of the total commitments as such company's kilowatt-hour sales for the twelve months ended September 30, 1986, bear to the total kilowatt-hour sales of the Operating Companies for that period.

The applicants-declarants also request authorization for the Operating Companies to assure any party which may contract with SFI in the ordinary course of SFI's fuel supply business that the Operating Companies will, in

accordance with their respective shares of ownership of the common stock of SFI, take such action as may be appropriate from time to time to maintain the sound financial condition of SFI so that it may discharge its contractual obligations. The applicants-declarants further request authorization for personnel employed by the other companies in the Middle South system to perform services for SFI at cost, in circumstances where the employment of such personnel is efficient and economical.

Pennsylvania Electric Company (70-7328)

Pennsylvania Electric Company, ("Penelec"), 1001 Broad Street, Johnstown, Pennsylvania 15907, a subsidiary of General Public Utilities Corporation, a registered holding company has filed an application with the Commission pursuant to sections 6(b), 9(a) and 10 of the Act and Rule 50(a)(5) thereunder.

Penelec proposes to issue an aggregate of up to $41,000,000 principal amount of its first mortgage bonds ("New Bonds") to The Cambria County Industrial Development Authority ("Authority"). The New Bonds will be delivered to the Authority to pay the purchase price of certain pollution control facilities presently being constructed in connection with certain of Penelec's electric generating stations. The interest rate, maturity date, and the redemption, repurchase or repayment provision will correspond to the interest rate, maturity date, and the redemption or prepayment provisions with respect to the pollution control revenue bonds ("Authority Bonds") to be issued by the Authority.

The Authority Bonds will have a term of not less than 10 and not more than 30 years, redeemable at Penelec's direction not earlier than 1991 or later than 1996. The Authority Bonds will initially bear a fixed interest rate for a period of one to seven years, and then are convertible to a capped variable rate for the reminder of the term at the option of the bondholders.

Eastern Edison Company et al. (70-7329)

Eastern Edison Company ("Eastern Edison"), 110 Mulberry Street, Brockton, Massachusetts 02403, Blackstone Valley Electric Company ("Blackstone"), Washington Highway, P.O. Box 1111, Lincoln, Rhode Island 02865 and Montaup Electric Company ("Montaup"), P.O. Box 2333, Boston Massachusetts 02107, (collectively, "Operating Companies"), electric utility subsidiaries of Eastern Utilities Associates, a registered holding company, have filed a declaration pursuant to sections 6(a) and 7 of the Act.

The Operating Companies propose to issue and sell short-term notes to banks from time to time from December 30, 1986 to December 28, 1987 in aggregate principal amounts not exceeding $50 million for Eastern Edison, $40 million for Montaup and $10 million for Blackstone, at any one time outstanding. No such note will mature later than September 30, 1988.

General Public Utilities Corporation (70-7330)

General Public Utilities Corporation ("GPU"), 100 Interpace Parkway, Parsippany, New Jersey 07054, a registered holding company, has filed an application pursuant to sections 9(a) and 10 of the Act.

In order to replace excess liability insurance coverage which expired on July 1, 1986, and to provide continuity of coverage for its system companies and their directors and officers, GPU has entered into a subscription agreement with Exel Limited ("Exel"), a Cayman Islands corporation, subject to Commission approval. GPU proposes to acquire 7,866 shares of common stock of Exel for a purchase price of $150 per share, or an aggregate purchase price of $1,180,000. Exel owns all of the common stock of XL Insurance Company ("XL"), a Barbados insurance company organized to underwrite general libility and directors' and officers' liability insurance coverage. In order to obtain insurance from XL, which will not be a licensed insurer in the United States, a potential policyholder is required to subscribe for shares of common stock of Exel in an amount equal to a percentage of the policyholder's gross first year premium. GPU's liability as a participant would be limited to GPU's capital investment in Exel in the event that XL incurs underwriting losses in excess of accumulated capital and surplus. GPU states that it expects that its proposed ownership interest in Exel will not exceed 1% of the voting stock outstanding at any one time.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Johnathan G. Katz,

Secretary.

[FR Doc. 86-26749 Filed 11-26-86; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-15423; (812-6476)]

Application for Exemption; BT Investment Trust

November 20, 1986.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "1940 Act").

Applicant: BT Investment Trust ("Applicant").

Relevant 1940 Act Sections: Exemption requested under section 6(c) from the provisions of Section 17(f).

Summary of Application: Applicant seeks an order to permit it to maintain excess variation margin with its futures commission merchants ("FCMs") when it engages in futures contracts.

DATES: The application was filed on September 11, 1986, and amended on October 21, 1986.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on December 15, 1986. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicant with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 Fifth Street NW., Washington, DC 20549. Applicant, 60 Broad Street, New York, NY 10004.

FOR FURTHER INFORMATION CONTACT: Victor R. Siclari, Staff Attorney (202) 272-2847 or Brion R. Thompson, Special Counsel (202) 272-3016 (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier (800) 231-3282 (in Maryland (301) 258-4300).

Applicant's Representations

1. Applicant was organized as a business trust under the laws of the Commonwealth of Massachusetts and is registered as an open-end, diversified, management investment company under the 1940 Act.

2. Applicant currently offers shares in three investment portfolios: the Cash Management Fund, the Treasury Money Fund, and the Equity Index Fund (the "Fund"). The Fund seeks to provide investment results that approximate the aggregate price and dividend performance of the securities included in the Standard & Poor's 500 Composite Stock Price Index ("S&P 500 Index") by investing primarily in common stocks included in the S&P 500 Index.

3. Applicant intends to purchase, through the Fund, S&P 500 Index futures contracts as a means of hedging against anticipated adverse price movements of securities. If the Fund anticipates an increase in the market prices of securities which it intends to purchase, it may purchase S&P 500 Index futures contracts when it is not fully invested in securities in order to offset, in part or entirely, increases in the cost of such securities, and convert cash balances into an investment which reflects the S&P 500 Index. The Fund will purchase such futures contracts, provided it creates a segregated account with its Custodian consisting of cash, U.S. Government securities or other appropriate high grade debt obligations in an amount equal to the total market value of any futures contract, less the initial margin for the contract. In order to close long positions in S&P 500 Index futures contracts prior to their settlement date, the Fund will enter into offsetting sales of S&P 500 Index futures contracts. In no event will the Fund purchase or sell such futures contracts for the purposes of speculation. The Fund's investments in securities other than common stocks included in the S&P 500 Index will represent as a group not more than 20 percent of the Fund's net assets and will be in any combination of S&P 500 Index futures contracts and money market instruments. The Fund does not intend to purchase or write options on S&P 500 Index futures contracts.

4. Applicant has filed a Notice of Eligibility on behalf of the Fund claiming exclusion from the definition of the term "commodity pool operator" in accordance with rule 4.5 of the Commodity Futures Trading Commission (the "CFTC"), and has undertaken in the Notice of Eligibility to comply with the rules, requirements and interpretations of the CFTC.

5. Initial margin payments required in connection with Applicant's transactions in S&P 500 Index futures contracts will be made into special segregated accounts with Applicant's Custodian, in the name of the FCM and for the benefit of the Fund ("Account"). A separate Account will be established for each FCM with which Applicant enters into futures transactions, and each such Account will be maintained apart from the general custodial account of Applicant. The amounts held in the Accounts will constitute performance bonds, to be returned to Applicant upon termination of the futures positions, assuming that all of Applicant's contractual obligations have been satisfied. An FCM will have access to such amounts only upon a representation to the Custodian that Applicant is in default on its obligations to the FCM and that all conditions precedent to the FCM's right of access to the Account have been satisfied. Subsequent "variation margin" payments due to an FCM, if any, will be made directly to the FCM by Applicant.

6. Upon entering into an S&P 500 Index futures contract, Applicant must post an "initial margin" deposit, in an amount equal to a certain percentage of the face value of the futures contract, in an Account for the FCM effecting the futures transaction. If on any day the net equity of Applicant's Account for the FCM falls below the required margin, Applicant must make a "variation margin" payment to increase the equity in the Account. Similarly, if Applicant's open futures contract positions with an FCM reflect a net gain on any day, the FCM is obligated to pay Applicant a variation margin in the amount of the excess (unless part of that variation margin is retained by the FCM in order that the Account may continue to meet the minimum margin requirements). Were a variation margin owed to Applicant by an FCM in connection with S&P 500 Index futures contracts held by the FCM rather than by Applicant's Custodian, Applicant might not be in compliance with Section 17(f) of the 1940 Act.

7. While Applicant has a right to demand a variation margin owed to it from an FCM in any amount on any day that there is an excess above the required initial margin, Applicant submits that it would be unnecessarily costly and unduly burdensome for both the Fund and its FCMs if the Fund were required to demand payment of *de minimus* amounts of variation margin. To demand an insubstantial portion of its assets, the Fund would have to incur transaction fees charged by its Custodian and additional operating expenses. Applicant believes that the ability to leave a variation margin with its FCMs in the amounts and on the conditions described below would save the Fund, its shareholders and FCMs the expense of processing payments for small amounts of variation margin without increasing in any meaningful degree any risk to the security of its assets.

8. Applicant will enter into a spearate agreement among itself, its Custodian and each FCM, pursuant to which Applicant's initial margin deposits will be held by the Custodian, subject to disposition by the FCM in accordance with CFTC rules and the rules of the applicable contract market. Each agreement will provide that: (1) The Customdian will take instructions with respect to disposition of assets in that Account only from the FCM; (2) in directing any disposition of assets, the FCM must state that Applicant is in default (if the directed disposition is to the FCM), that all conditions precedent to its right to direct disposition have been satisfied, and that the disposition is for a proper purpose under, and in all other respects complies with, the terms of the agreement; (3) assets of Applicant that would otherwise be held by the FCM will be in the possession of the Custodian until released or sold or otherwise disposed of in accordance with or under the terms of the agreement; (4) those assets will not otherwise be pledged or encumbered by the FCM; (5) when requested by Applicant, the FCM will cause the Custodian to release to Applicant's general custodial account any assets to which Applicant is entitled under the terms of such agreement; and (6) assets in the segregated Account will otherwise be used only to satisfy Applicant's obligations to the FCM under the terms of the agreement.

9. Applicant will promptly cause any amounts no longer required as initial margin to be transferred to its general custodial account and will, prior to engaging in any transactions in future contracts or options thereon, disclose in a prospectus supplement the risk of loss of margin deposits due to the bankruptcy of an FCM, although the foregoing arrangements are designed to reduce that risk.

10. Applicant undertakes with respect to its S&P 500 Index futures contracts that any variation margin payable by an FCM to Applicant will be reflected as net gains, will be immediately shown as increased equity in Applicant's account with the FCM and will be credited immediately to Applicant's net asset value. Conversely, variation margin payments made to an FCM will be reflected as net losses.

11. Applicant further undertakes that it will monitor variation margin each day in order to promptly demand, on a daily basis, payment and transfer of

amounts from an FCM to Applicant's Custodian (for the general or a segregated custodial account maintained for the purpose of holding margin deposits, as appropriate) that are not required to maintain Applicant's S&P 500 Index futures positions ("excess variation margin") whenever and to the extent the excess variation margin owed to Applicant by a given FCM exceeds $50,000 and to the extent necessary to maintain the aggregate amount of excess variation margin held by all of its FCMs at a level which will not exceed ⅛ of one percent of the net assets of the Fund. Applicant anticipates that excess variation margin will be returned to it one business day or less after the levels described above are reached.

12. Initial margin held by Applicant's Custodian and variation margin payments held by Applicant's FCM will continue to be regarded as assets of Applicant, unless and until such amounts are owed to the FCM, and no FCM will be permitted to pledge or encumber amounts held by it or the Custodian for the benefit of Applicant. In the event of the insolvency of an FCM, amounts held by the FCM for the benefit of the Applicant will be subject to federal bankruptcy laws and the bankruptcy regulations of the CFTC, which provide for *pro rata* distribution to customers of the FCM of all customer property.

13. Applicant believes that the order requested is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act in view of the CFTC requirement that initial margin deposits and premiums on commodity futures and related options may not exceed five percent of the fair market value of the Fund's assets, and of the extensive regulations of the CFTC governing segregation and accounting by FCMS.

For the Commission, by the Division of Investment Management, under delegated authority.

Johathan G. Katz,

Secretary.

[FR Doc. 86-26750 Filed 11-26-86; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

[Docket 44485]

Baltimore-London Service Case; Prehearing Conference

Notice is hereby given that a prehearing conference in the above-entitled matter is assigned to be held on December 8, 1986, at 10:00 a.m. (local time), in Room 5332, Nassif Building, 400 7th Street SW., Washington, DC, before Administrative Law Judge Ronnie A. Yoder.

Dated: November 20, 1986.

Ronnie A. Yoder,

Administrative Law Judge.

[FR Doc. 86-26759 Filed 11-26-86; 8:45 am]

BILLING CODE 4910-62-M

Coast Guard

[CGD 86-065]

Rules of the Road Advisory Council; Membership Applications

AGENCY: Coast Guard, DOT.

ACTION: Request for Applications.

SUMMARY: The U.S. Coast Guard is seeking applications for appointment to membership on the Rules of the Road Advisory Council. This Council was established under the Inland Navigational Rules Act of 1980 (33 U.S.C. 2073) to advise, consult with, and make recommendations to the Secretary of Transportation on matters relating to the Inland Navigation Rules and the International Regulations for Preventing Collisions at Sea (72 COLREGS).

DATE: Requests for applications should be received by the Coast Guard no later than January 15, 1987. Applications must be completed and returned to the Coast Guard no later than February 15, 1987.

ADDRESS: Persons interested in applying should write to Commandant (G-NSS-2), U.S. Coast Guard Headquarters, Washington, DC 20593-0001.

FOR FURTHER INFORMATION CONTACT: Commander Charles K. Bell, Executive Director, Rules of the Road Advisory Council (G-NSS-2), Room 1606, U.S. Coast Guard Headquarters, 2100 Second St. SW., Washington, DC 20593-0001, (202) 267-0366.

SUPPLEMENTARY INFORMATION: In June 1987, there will be seven vacancies on the 21-member Council. The seven appointments will be made by the Secretary of Transportation. The Coast Guard will accept applications received after the publication of this notice and before February 15, 1987 and thereafter make recommendations to the Secretary. Under the Inland Navigational Rules Act and ". . . to assure balanced representation, members shall be chosen, insofar as practical, from the following groups: (1) Recognized experts and leaders in organizations having an active interest in the Rules of the Road and vessel and port safety, (2) representatives of owners and operators of vessels, professional mariners, recreational boaters, and the recreational boating indusry, (3) individuals with an interest in maritime law, and (4) Federal and state officials with responsibility for vessel and port safety."

Since its establishment, the Council has met at least yearly at various sites in the continental United States. Members are entitled to receive per diem in lieu of subsistance, as well as to be reimbursed for travel expenses, in accordance with current regulations. The Authorization for the Council was extended to September 30, 1990. The seven new appointments will expire three years from June 1987.

Dated: November 21, 1986.

A.B. Smith,

Captain, U.S. Coast Guard, Chief, Office of Navigation (Acting).

[FR Doc. 86-26766 Filed 11-26-86; 8:45 am]

BILLING CODE 4910-14-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) 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 7313, 1201 Constitution Avenue NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545-0074
Form Number: IRS Form 1040
Type of Review: Revision
Title: Unisex Annuity Tables

OMB Number: 1545-0718
Form Number: IRS Form 941-M
Type of Review: Extension
Title: Employer's Monthly Federal Tax Return

Clearance Officer: Carrick Shear, (202) 566-6150, Room 5571, 1111 Constitution Avenue NW., Washington, DC 20224

OMB Reviewer: Milo Sunderhauf, (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Dated: November 21, 1986.

Douglas J. Colley,

Departmental Reports Management Office.

[FR Doc. 86-26740 Filed 11-26-86; 8:45 am]

BILLING CODE 4810-25-M

Public Information Collection Requirements Submitted to OMB for Review

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) 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 7313, 1201 Constitution Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545-0002
Form Number: IRS Form CT-2
Type of Review: Extension
Title: Employee Representative's Quarterly Railroad Tax Return

OMB Number: 1545-0245
Form Number: IRS Form 6627
Type of Review: Reinstatement
Title: Environmental Taxes

Clearance Officer: Garrick Shear, (202) 566-6150, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224

OMB Reviewer: Milo Sunderhauf, (202), 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503

Dated: November 21, 1986.

Douglas J. Colley,

Departmental Reports Management Office.

[FR Doc. 86-26824 Filed 11-26-86; 8:45 am]

BILLING CODE 4810-25-M

Sunshine Act Meetings

Federal Register
Vol. 51, No. 229
Friday, November 28, 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).

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 am., December 5, 1986.

PLACE: 2033 K Street, NW., Washington, DC., 8th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Market Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 245–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 86–26867 Filed 11–25–86; 11:07 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 am., December 12, 1986.

PLACE: 2033 K Street, NW., Washington, DC., 8th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Market Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 86–26868 Filed 11–25–86; 11:08 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 am., December 19, 1986.

PLACE: 2033 K Street, NW., Washington, DC., 8th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Market Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 86–26869 Filed 11–25–86; 11:09 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., December 26, 1986.

PLACE: 2033 K Street NW., Washington, DC., 8th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Market Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 86–26870 Filed 11–25–86; 11:10 am]

BILLING CODE 6351–01–M

FARM CREDIT ADMINISTRATION

Farm Credit Administration Board; Regular Meeting

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the forthcoming regular meeting of the Farm Credit Administration Board (Board).

DATE AND TIME: The meeting is scheduled to be held at the offices of the Farm Credit Administration in McLean, Virginia, on December 2, 1986, from 10:00 a.m. until such time as the Board may conclude its business.

FOR FURTHER INFORMATION CONTACT: Kenneth J. Auberger, Secretary to the Farm Credit Administration Board, 1501 Farm Credit Drive, McLean, Virginia 22102–5090 (703–883–4010).

ADDRESS: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

SUPPLEMENTARY INFORMATION: No portion of the meeting will be closed to the public (limited space available). The matters to be considered at the meeting are:

1. Approval of Minutes of November Meeting.
2. Regulations:
   Proposed: Sections 611.1020–611.1031—Director Compensation
3. Consideration of Guidelines for Regulatory Accounting Practices/Requirements

Dated: November 24, 1986.

Kenneth J. Auberger,

Secretary, Farm Credit Administration Board.

[FR Doc. 86–26884 Filed 11–25–86; 12:06 pm]

BILLING CODE 6705–01–M

FEDERAL COMMUNICATIONS COMMISSION

November 24, 1986.

The Federal Communications Commission previously announced on November 18, 1986, its intention to hold an Open Meeting, November 25, 1986, on the subject listed below. This item has been rescheduled to be held in a Closed Meeting following the Regular Open Meeting which will commence at 9:30 a.m., at 1919 M Street NW., Washington, DC.

Agenda, Item No., and Subject

Private Radio—1—Title: Preparation for an International Telecommunication Union World Administrative Radio Conference for the Mobile Services. Summary: The Commission will consider whether to adopt a Report and Order which presents recommendations to the Department of State for U.S. proposals to be put forth at the Mobile WARC.

This item is closed to the public because it concerns Executive Order and Premature Disclosure matters (See 47 CFR 0.603 (a) and (i).

The prompt and orderly conduct of Commission business requires this change and no earlier announcement of the change was possible.

The following persons are expected to attend this meeting:

Commissioners and their Assistants
Managing Director and members of his staff
Acting Chief, Private Radio Bureau
Chief, Common Carrier Bureau
Chief, Field Operations Bureau
Chief, Mass Media Bureau
Chief, Engineer and members of his staff
Chief, Office of Congressional and Public Affairs

Action by the Commission November 21, 1986. Commissioners Fowler Chairman; Quello, Dawson, Patrick and Dennis voting to consider this item in Closed Session with less than 7-days notice to the public.

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 Maureen Peratino, FCC Office of Congressional and Public Affairs, telephone number (202) 632–5050.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 86–26906 Filed 11–25–86; 3:11 pm]

BILLING CODE 6712–01–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that

at 10:15 a.m. on Friday, November 21, 1986, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session, by telephone conference call, to consider the following matters:

(A) Application of The Steel City National Bank of Chicago, Chicago, Illinois, for consent to purchase certain assets of and assume the liability to pay deposits made in the branch located at 9117 South Commercial Avenue, Chicago, Illinois, of United Savings of America, Streamwood, Illinois, a non-FDIC-insured institution.

(B) Application of Grenada Bank, Grenada, Mississippi, an insured State nonmember bank, for consent to merge, under its charter and title, with The Bank of Leland, Leland, Mississippi, and for consent to establish the two offices of The Bank of Leland as branches of the resultant bank.

(C) Application of Southern Bank and Trust Company, Mount Olive, North Carolina, an insured State nonmember bank, for consent to merge, under its charter and title, with Tarheel Bank & Trust Co., Gatesville, North Carolina, and for consent to establish the six offices of Tarheel Bank & Trust Co., as branches of the resultant bank.

(D) Application of The Greater New York Savings Bank, New York City (Brooklyn), New York, an insured savings bank, for consent to transfer certain assets to Ensign Bank, FSB, Hialeah, Florida, a non-FDIC-insured institution, in consideration of the assumption of the liability to pay deposits made in the Lexington Avenue and Port Chester Branches of The Greater New York Savings Bank.

At that same meeting, the Board also considered a request for financial assistance pursuant to section 13(c) of the Federal Deposit Insurance Act.

In calling the meeting, the Board determined, on motion of Chairman L. William Seidman, seconded by Director Robert L. Clarke (Comptroller of the Currency), that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting pursuant to subsections (c)(4), (c)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(4), (c)(6), (c)(8), and (c)(9)(A)(ii)).

Dated: November 24, 1986.

Federal Deposit Insurance Corporation.

Margaret M. Olsen,

Deputy Executive Secretary.

[FR Doc. 86-26871 Filed 11-25-86; 11:11 am]

BILLING CODE 6714-01-M

FEDERAL ELECTION COMMISSION

DATE AND TIME: Tuesday, December 2, 1986, 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. 437g
Audits conducted pursuant to 2 U.S.C. 437g, 438(b), and Title 26, U.S.C.
Matters concerning participation in civil actions or proceedings or arbitration
Internal personnel rules and procedures or matters affecting a particular employee

* * * * *

DATE AND TIME: Thursday, December 4, 1986, 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC (Ninth Floor).

STATUS: This meeting will be open to the public.

MATTERS TO BE CONSIDERED:

Setting of dates of future meetings
Correction and approval of minutes
Proposed FEC *Guideline for Presentation in Good Order* for the 1988 Presidential primary election
Draft Advisory Opinion 1986-39—Timothy P. Dillon on behalf of Vincent Carrafiella
Draft Advisory Opinion 1986-40—John R. Raese on behalf of West Virginia Republican Party
Draft Advisory Opinion 1986-41—Mary E. Downs on behalf of the Air Transport Association of America
Proposed revisions of Title 26 regulations
Routine administrative matters

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Information Officer, 202-376-3155.

Marjorie W. Emmons,

Secretary of the Commission.

[FR Doc. 86-26900 Filed 11-25-86; 2:55 pm]

BILLING CODE 6715-01-M

UNITED STATES INSTITUTE OF PEACE

TIMES AND DATES:

9:00 a.m.-5:00 p.m., Thursday, December 4, 1986
9:30 a.m.-5:00 p.m., Friday, December 5, 1986

PLACES:

Thursday, December 4, 1986. Tayloe House, National Courts Building, 717 Madison Place, NW., Washington, DC 20005
Friday, December 5, 1986. United States Senate, Russell Senate Office Building, Room 385, Washington, DC 20510

STATUS: Open (portions may be closed pursuant to subsection (c) of section 552(b) of title 5, United States Code, as provided in subsection 1706(h)(3) of the United States Institute of Peace Act, Pub. L. 98-525).

AGENDA (TENTATIVE):

Thursday: Meeting of Board of Directors convened. Consideration of business, including minutes of seventh meeting, committee reports, grants program update, program discussion, and closing meeting in order to consider, in committee and plenary session, (a) specific grant applications and (b) personnel matters regarding the Jennings Randolph Program for International Peace.

Friday: Morning: Information Services Committee convened to discuss the intellectual map of the peace field with Prof. Inis Claude (Univ. of Virginia), Dr. Edward Luttwak (CSIS, Georgetonw Univ.), Prof. Gene Sharp (Univ. of Massachusetts and Harvard Univ.), and Prof. Louis Sohn (Univ. of Georgia). Afternoon: Committee meeting may continue. Committee may adjourn and Board may reconvene in executive session to conclude discussions on grant applications and personnel matters commenced on Thursday.

CONTACT: Mrs. Olympia Diniak. Telephone: (202) 789-5700.

Dated: November 24, 1986.

Robert F. Turner,

President, United States Institute of Peace.

[FR Doc. 86-26894 Filed 11-25-86; 2:11 pm]

BILLING CODE 3155-01-M

Corrections

Federal Register
Vol. 51, No. 229
Friday, November 28, 1986

This section of the FEDERAL REGISTER contains editorial corrections of previously published Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency-prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA Action 2066; A-7-FRL-3069-2]

Approval and Promulgation of State Implementation Plans; Missouri

Correction

In rule document 86-18985 beginning on page 30063 in the issue of Friday, August 22, 1986, make the following correction:

§ 52.1320 [Corrected]

In § 52.1320 (c)(59)(i)(A), on page 30064, in the first column, in the last line, "1986" should read "1985".

BILLING CODE 1505-01-D

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 62

[A-1-FRL-3107-7]

Approval and Promulgation of Implementation Plans; Massachusetts; Correction Notice; Approval and Promulgation of State Plans for Designated Facilities and Pollutants; Certification of No Designated Facilities

Correction

In rule document 86-25343 beginning on page 40799 in the issue of Monday, November 10, 1986, make the following corrections:

1. On page 40800, in the third column, immediately following the last paragraph, the table which appears on page 40801 should appear here also.

2. On page 40801, in the first column, in the third paragraph, in the fifth line, "December 10, 1986" should read "January 9, 1987".

BILLING CODE 1505-01-D

ENVIRONMENTAL PROTECTION AGENCY

[OPP-66129A; FRL-3108-7]

Carbon Tetrachloride; Intent to Cancel Registrations of Pesticide Products Containing Carbon Tetrachloride

Correction

In notice document 86-25503 beginning on page 41004 in the issue of Wednesday, November 12, 1986, make the following corrections:

1. On page 41006, in the first column, in the fourth complete paragraph, in the seventh line, "b2" should read "bw".

2. On the same page, in the second column, in the sixth line from the top, "95" should read "94".

3. On the same page, in the same column, in the first complete paragraph, in lines 23 and 25, "has" should read "had".

4. On the same page, in the third column, the heading after the first complete paragraph should read "D. Exposure".

5. On page 41007, in the first column, in the first complete paragraph, in the seventh line, insert "and" before "5".

6. On the same page, in the second column, in the 7th, 8th, 14th and 25th lines, "$<$" should read "$\leqslant$".

7. On the same page, in the same column, in the last paragraph, in the eighth line, "anc" should read "and".

BILLING CODE 1505-01-D

ENVIRONMENTAL PROTECTION AGENCY

[OPP-66132; FRL-3094-7]

Dinoseb; Intent to Cancel and Deny All Registrations for Pesticide Products Containing Dinoseb

Correction

In notice document 86-23100 beginning on page 36650 in the issue of Tuesday, October 14, 1986, on page 36653, second column, in Table 1 make the following corrections:

1. Under the entry for **Soybeans**, fifth line, in column two, the "Daily exposure" for "Late post" should read "1.4 (1.1-8.9)".

2. Under the entry for **Grapes**, insert ")" after "sprayer" in column one.

3. In "footnote 1", second line, the first word should read "boom".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 175

[Docket No. 85F-0036]

Indirect Food Additives; Adhesives and Components of Coatings

Correction

In rule document 86-21562 beginning on page 33887 in the issue of Wednesday, September 24, 1986, make the following correction:

On page 33888, in the third column, in the first complete paragraph, in the ninth line, "in" should read "is".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 83F-0156]

21 CFR Part 178

Indirect Food Additives; Adjuvants, Production Aids, and Sanitizers

Correction

In rule document 86-21563 beginning on page 33892 in the issue of Wednesday, September 24, 1986, make the following correction:

On page 33895, in the first column, the last line of the authority should read "CFR 5.10, 5.61.".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 558

New Animal Drugs for Use In Animal Feeds; Pyrantel Tartrate

Correction

In rule document 86–21560 beginning on page 33897 in the issue of Wednesday, September 24, 1986, make the following corrections:

1. On page 33898, in the first column, in the first line, "NASA" should read "NADA"; and

2. On the same page, in the same column, in the ninth line, "or" should read "of".

BILLING CODE 1505-01-D

Federal Register

Friday
November 28, 1986

Part II

Department of Energy

Western Area Power Administration

10 CFR Part 904

General Regulations for the Charges for the Sale of Power From the Boulder Canyon Project; Final Rule

DEPARTMENT OF ENERGY

Western Area Power Administration

10 CFR Part 904

General Regulations for the Charges for the Sale of Power From the Boulder Canyon Project

AGENCY: Western Area Power Administration, Department of Energy.

ACTION: Final rule.

SUMMARY: The Western Area Power Administration (Western) is announcing the adoption of General Regulations for the Charges for the Sale of Power From the Boulder Canyon Project (General Regulations). These General Regulations define the methodology to be used in the computation of the charges for the sale of power from the Boulder Canyon Project (Project) on and after June 1, 1987. These General Regulations shall supersede the "General Regulations for Lease of Power" dated April 25, 1930 (1930 General Regulations), and the "General Regulations for Generation and Sale of Power in Accordance with the Boulder Canyon Project Adjustment Act" approved and promulgated on May 20, 1941 (1941 General Regulations), both of which shall terminate on May 31, 1987.

EFFECTIVE DATE: June 1, 1987. The General Regulations are promulgated on November 28, 1986.

ADDRESSES: For further information concerning these General Regulations, contact:

Mr. Tom Carter, Assistant Area Manager for Power Marketing, Boulder City Area Office, Western Area Power Administration, P.O. Box 200, Boulder City, NV 89005, (702) 477–3255

Mr. Gary D. Miller, Attorney, Office of the General Counsel, Western Area Power Administration, P.O. Box 3402, Golden, CO 80401, (303) 231–1531

SUPPLEMENTARY INFORMATION:

Introduction

Hoover Dam[1] (originally known as Boulder Dam) was authorized by Congress in 1928. When it was constructed, it represented a major achievement in the history of American public works because of its massive size—over 600 feet—and because of the enormous amounts of power that it could generate and the water that could be stored in its reservoir. Today, more than 50 years later, Hoover remains an important national resource. The benefits of its powerplant and its reservoir are distributed to millions of people in the States of Arizona, California, and Nevada.

In September 1929, the Secretary of the Interior issued an invitation for applications for the purchase of power from the Project. In response to the 27 applications, the Secretary announced a tentative allocation of power on October 21, and a hearing was held on November 12–13 with regard to the protests to the proposed allocation. In February 1930, the Department of the Interior (Interior) initiated negotiations with the applicants. By late April 1930, general regulations had been issued and two contracts satisfying the repayment requirements of the Boulder Canyon Project Act had been executed. The first contract with the United States for a lease of power privileges was executed by the City of Los Angeles acting through its Department of Water and Power (LADWP) and the Southern California Edison Company (SCE), while the second contract with the United States for the purchase of energy was executed by the Metropolitan Water District of Southern California (MWD). Thereafter, additional contracts for the purchase of energy were executed by the cities of Pasadena, Burbank, and Glendale, the State of Nevada, and the State of Arizona.

Construction of the Dam started in 1930. The first unit of the powerplant was placed in service on June 1, 1937, and the 50-year period of the energy contracts began to run on that date. On May 20, 1941, Interior adopted the 1941 General Regulations which, among other things, established the basis for the energy rates for the period June 1, 1937, through May 31, 1987.

The existing power contracts expire on May 31, 1987. In 1979, Western began the process of determining how power would be allocated after that expiration date. In the course of that process, controversy erupted over the extent to which the existing contractors would be entitled to renew their contracts. The dispute was heightened by the filing of a lawsuit by Nevada in 1981.

In order to settle this controversy and ensure the orderly marketing of power to customers in all three states, Congress passed the Hoover Power Plant Act of 1984, (98 Stat. 1333, 43 U.S.C. 618, 619 *et seq.*) (Hoover Power Plant Act), which provides very specific guidelines for the marketing and allocation of power from the Project for the 30-year period from June 1, 1987, to May 30, 2017. To a very large extent, Congress has made the major decisions concerning the Project; namely, who is to be offered the power from the Project and in what amounts. Congress, in effect, decided to continue largely intact the existing pattern of allocating power from Hoover Dam. Representative Udall described this legislative settlement as "an equitable allocation of the Hoover resources among customers in the three states [which] permits the Department of Energy to go forward with the [marketing of power] smoothly and without controversy" (May 3, 1984; H3308).

Under the Hoover Power Plant Act, Western is responsible for ensuring that those decisions are implemented. This rulemaking was instituted pursuant to that responsibility. The Hoover Power Plant Act does not provide specific guidelines on the precise form of the charges for power from the Project. However, Western's responsibility under the statutory framework for Hoover Dam is quite clear concerning the charges. Western must establish charges which result in the collection of revenues sufficient to cover the costs and obligations identified in the relevant statutes. In carrying out this mandate, Western has considerable discretion to construct a rate design for the charges for power from the Project.

The Government itself has no particular economic interest in the intricacies of the rate design, since whatever rate design is adopted must yield the same overall amount of revenue. In developing a fair and equitable rate design, however, Western has sought the active participation of those entities whose business and economic interests will be directly affected by Western's decision concerning rate design. In one sense, the interests of these entities are necessarily in competition since there is a fixed amount of revenue which must be collected. Simply stated, any decrease in the charges to one entity must be offset on a dollar-for-dollar basis by an increase in the aggregate charges to other entities. However, all these entities share a common interest in the orderly marketing of power from Hoover Dam. Orderly marketing requires the adoption of a rate design which takes into account the positions of all the entities and attempts to treat everyone equitably. Such a rate design will permit Western to go forward with the marketing of power from the Project consistent with the settlement embodied in the Hoover Power Plant Act. This is the very reason the Act was enacted.

Background

The Reclamation Act of 1902 (43 U.S.C. 391 *et seq.*), the Boulder Canyon Project Act of 1928 (43 U.S.C. 617 *et seq.*)

[1] Hoover Dam is, in this document, referred to as Hoover, Hoover Dam, and the Project.

(Project Act), the Boulder Canyon Project Adjustment Act of 1940 (43 U.S.C. 618 *et seq.*) (Adjustment Act), the Department of Energy Organization Act (42 U.S.C. 7101 *et seq.*), the Colorado River Storage Project Act (43 U.S.C. 620 *et seq.*), the Colorado River Basin Project Act (43 U.S.C. 1501 *et seq.*), and the Hoover Power Plant Act provide the statutory framework within which Western markets power from the Project. The Project Act provides for the construction of works for the protection and development of the Colorado River Basin and for other purposes. Section 617d of the Project Act addresses the Secretary of the Interior's authority, under such regulations as he may prescribe, to contract for the generation and delivery of electrical energy. The charge for electric service from the Project shall be established to provide sufficient revenue to recover all expenses of operation and maintenance, and repayment, with interest, of all amounts advanced from the United States Treasury for the Project.

The Adjustment Act further defines the Secretary of the Interior's authority to promulgate the charges, or the basis of computation thereof, for electrical energy generated at Hoover Dam. In accordance with this authority, the Secretary of the Interior approved and promulgated the 1941 General Regulations. The 1941 General Regulations provide the basis for computation of the charges for electrical energy generated at Hoover Dam through May 31, 1987.

The Department of Energy Organization Act transferred the responsibility for the power marketing and transmission functions of the Project to Western from the Bureau of Reclamation (Reclamation). The construction, power generation, operation, maintenance, and replacement responsibilities of the Project powerplant and appurtenant works remained with Reclamation. "General Regulations for Power Generation, Operation, Maintenance, and Replacement at the Boulder Canyon Project, Arizona/Nevada" are the subject of a separate rulemaking by the Department of the Interior under 43 CFR Part 431. A final rule in that rulemaking was published in the **Federal Register** (51 FR 23960) on July 1, 1986.

The power marketing function of Western includes the responsibility for promulgating charges for the sale of power. The marketing of power from the Project is the administrative responsibility of Western's Boulder City Area Office. The marketing of power from the Project beginning June 1, 1987, shall be in accordance with the "Conformed General Consolidated Power Marketing Criteria or Regulations for Boulder City Area Projects," published in the **Federal Register** (49 FR 50582) on December 28, 1984. That document conforms the Boulder City Area Office marketing criteria to the Hoover Power Plant Act.

The Hoover Power Plant Act amends and is supplemental to the Project Act, the Adjustment Act, and the Colorado River Basin Project Act of 1968. The Hoover Power Plant Act also sets forth requirements and guidelines for the marketing and allocation of power from the Project for the period beginning June 1, 1987.

In effect, the Hoover Power Plant Act provides each original contractor with the opportunity for renewal of its allocation. Additionally, the Act authorizes the renovation of the existing generators at Hoover through an uprating program. The uprating will provide approximately 500 MW of additional capacity. This additional capacity and specified amounts of associated firm energy have been statutorily allocated among the three States. The statute specifies that the Nevada allocation is to be offered to the Colorado River Commission of Nevada (CRC) and that the Arizona allocation is to be offered to the Arizona Power Authority (APA). The statute does not specify any particular entity in California to be offered the California allocation from the uprating program.

However, in order to spread the benefits of Hoover power to more customers, the Act provides that California's share of the uprating capacity (127 MW) and associated firm energy may not be sold to any customer that now receives 20 MW or more of Hoover Power. Consequently, LADWP, MWD, and SCE are ineligible to receive an allocation of uprating power. Instead, Western will market it to preference entities in California, whose identities and allocations were determined in a separate rulemaking.

As to the specific allocations, section 105(a)(1)(A) of the Hoover Power Plant Act states that the Secretary of Energy shall offer "to each contractor for power generated at Hoover Dam a renewal contract for delivery commencing June 1, 1987, of the amount of capacity and firm energy specified for that contractor" in the following schedule:

SCHEDULE A.—LONG TERM CONTINGENT CAPACITY AND ASSOCIATED FIRM ENERGY RESERVED FOR RENEWAL CONTRACT OFFERS TO CURRENT BOULDER CANYON PROJECT CONTRACTORS

Contractor	Contingent capacity (kW)	Firm energy (thousands of kWh)		Total
		Summer	Winter	
Metropolitan Water District of Southern California	247,500	904,382	387,592	1,291,974
City of Los Angeles	490,875	488,535	209,658	698,193
Southern California Edison Co	277,500	175,486	75,208	250,694
City of Glendale	18,000	47,398	20,313	67,711
City of Pasadena	11,000	40,655	17,424	58,079
City of Burbank	5,125	14,811	6,347	21,158
Arizona Power Authority	189,000	452,192	193,797	645,989
Colorado River Commission of Nevada	189,000	452,192	193,797	645,989
U.S., for Boulder City	20,000	56,000	24,000	80,000
Totals	1,448,000	2,631,651	1,128,136	3,759,787

Section 105(a)(1)(B) states that the Secretary of Energy shall offer to purchasers in the States of Arizona, California, and Nevada "contracts for delivery commencing June 1, 1987, or as it thereafter becomes available, of capacity resulting from the uprating program and for delivery commencing June 1, 1987, of associated firm energy as specified" in the following schedule:

SCHEDULE B.—CONTINGENT CAPACITY RESULTING FROM THE UPRATING PROGRAM AND ASSOCIATED FIRM ENERGY

Contractor	Contingent capacity (kW)	Firm energy (thousands of kWh)		Total
		Summer	Winter	
Arizona	188,000	148,000	64,000	212,000
California	127,000	99,850	43,634	143,214
Nevada	188,000	288,000	124,000	412,000
Totals	503,000	535,850	231,364	767,214

Section 105(a)(1)(B) provides that contracts for this power from the uprating program be offered to the APA and the CRC. By **Federal Register** notice of November 20, 1985 (50 FR 47837), Western allocated contingent capacity and associated firm energy to be made available through the uprating program to purchasers in California as specified in the following schedule:

ALLOCATION SCHEDULE

State	Contingent capacity (kW)	Firm energy (thousands of kWh)		Total
		Summer	Winter	
Arizona: Arizona Power Authority	188,000	148,000	64,000	212,000

ALLOCATION SCHEDULE—Continued

State	Contingent capacity (kW)	Firm energy (thousands of kWh)		Total
		Summer	Winter	
Nevada: Colorado River Commission	188,000	288,000	124,000	412,000
California:				
City of Anaheim	40,000	36,255	15,745	52,000
City of Azusa	4,000	3,486	1,514	5,000
City of Banning	2,000	1,394	606	2,000
City of Burbank	15,000	3,794	1,648	5,442
City of Colton	3,000	2,789	1,211	4,000
City of Glendale	2,000	2,894	1,257	4,151
City of Pasadena	9,000	2,525	1,096	3,621
City of Riverside	30,000	27,191	11,809	39,000
City of Vernon	22,000	19,522	8,478	28,000
Total California	127,000	99,850	43,364	143,214
Total	503,000	535,850	231,364	767,214

The financing of the uprating program will be accomplished with funds advanced by the customers. The power purchasers agreed to this financing arrangement, are capable of raising the monies, and will enter into contracts with the United States to advance funds. The contracts will provide for the repayment of the advanced funds, plus interest, from revenues produced by operation of the Project.

Proposed General Regulations were first published in the **Federal Register** (50 FR 20732) on May 17, 1985. The **Federal Register** notice provided that comments on the proposed General Regulations would be accepted by Western on or before July 15, 1985. A public information forum on the proposed General Regulations was held on June 4, 1985, and a public comment forum was held on July 1, 1985. At the public comment forum, Western announced a 90-day delay in the public process on the proposed General Regulations. The 90-day delay was in response to a request made by the CRC on behalf of the Boulder Canyon Project renewal contractors and proposed Uprating Program contractors.[2] The 90-day delay was granted by Western to allow those involved to resolve their differences regarding Project matters. Subsequently, on July 26, 1985, Western published in the **Federal Register** (50 FR 30447) a "Notice of a Delay in the Comment Period on the Proposed General Regulations for Charges for the Sale of Power From the Boulder Canyon Project." The notice provided that the comment period would be extended until October 1, 1985.

Upon review of the initial comments received, Western determined that it would be in the best interest of all concerned to publish the revised proposed General Regulations and allow for additional comments. The revised proposed General Regulations and the request for comments were published in the **Federal Register** (50 FR 49050) on November 29, 1985. A public comment forum was held in Las Vegas, Nevada, on December 19, 1985, to receive oral comments. The period for written comments closed on January 6, 1986. Western received written and oral comments on the proposed General Regulations principally from three entities, the LADWP, the city of Vernon, and CRC. CRC submitted comments on behalf of CRC; APA; MWD; and the cities of Burbank, Glendale, Pasadena, Anaheim, Azusa, Banning, Colton, and Riverside.[3] Additional separate comments generally supporting the Joint Allottees' position were made by representatives of APA; MWD; the Central Arizona Water Conservation District; the Irrigation and Electrical Districts Association of Arizona; and the cities of Anaheim, Azusa, Banning, Colton, Glendale, Pasadena, and Riverside. LADWP's comments were supported by SCE. Written comments were also received from the National Wildlife Federation.

Upon a request for more information on the proposed General Regulations, Western published a notice in the **Federal Register** (51 FR 3471) on January 28, 1986, announcing an additional public comment forum to be held in Las Vegas, Nevada, on February 12, 1986. In a February 4, 1986, **Federal Register** Notice (51 FR 4376), Western invited all interested parties to indicate to Western, either during the public comment forum or by written request to be received by February 17, 1986, any additional information required on the revised proposed General Regulations. Responses to the oral and written requests for more information were provided in a **Federal Register** Notice (51 FR 12333) on April 10, 1986. That notice also provided that interested parties could submit further written comments on the revised proposed General Regulations within 30 days of publication of the notice and request another public comment forum within 5 days of the date of the notice. Western did not receive requests for an additional comment forum.

In a further effort to be responsive to the concerns expressed by the allottees regarding major outstanding issues in the General Regulations, Department of Energy (DOE) officials met in Washington, D.C., on July 10, 1986, with representatives of the allottees. The Under Secretary of the Department of Energy encouraged the allottees to develop a consensus proposal which would resolve the major outstanding issues in a manner which would be mutually satisfactory to all. It was announced at the meeting that the comment period on the General Regulations would be reopened in order to receive any additional comments from any interested party. The notice of the reopening of the comment period until August 7, 1986, appeared in the July 24, 1986, **Federal Register** (51 FR 26555). This notice also announced the availability of a summary of the July 10 meeting. Western's responses to all significant oral and written comments received by Western during the public process on the proposed General Regulations are set forth in the Analysis and Decision section of this notice.

Analysis and Decision

Western's decisions concerning the substance of the General Regulations, as well as supporting analyses and discussion of the comments, are organized by section and title as they appear in the final General Regulations. In particular, this section addresses changes that were made to the revised proposed General Regulations and incorporated into the final General Regulations.

Section 904.1 Purpose and Section 904.2 Scope

The discussions of these sections incorporate comments received on the Authorities, Purpose, and Scope sections of the revised proposed General Regulations. The first discussion is on the 904.1 Authorities section of the revised proposed General Regulations, which has been incorporated into the 904.1 Purpose section in these General Regulations.

Few comments were received concerning the Authorities section. One set of comments suggested adding the phrase "to the extent that Congress has made these applicable to the Boulder Canyon Project" to the list of cited authorities. These comments also suggested citing section 7 of the Colorado River Storage Project Act and the Colorado River Basin Project Act of 1968 as authorities. The remaining comments on this section stated that the power marketing authorities of Reclamation law, other than those contained in the Project Act, the Adjustment Act, and the Hoover Power Plant Act, do not apply to the marketing of Hoover power.

[2] In this notice, those entities which were allocated power from Hoover Dam are identified generically as "contractors" or "allottees."

[3] This group called themselves the Joint Allottees and will hereafter be identified by that name.

After review and consideration, Western has decided to cite the Colorado River Storage Project Act of 1956 and the Colorado River Basin Project Act of 1968 in the revised proposed General Regulations. Western has concluded that adding the phrase "to the extent that Congress has made these applicable to the Boulder Canyon Project" and the inclusion of a specific citation to section 7 of the Colorado River Storage Project Act are unnecessary. Western does not have the authority to apply provisions of any law to the Project which Congress has not made applicable thereto. The citation of Reclamation law in this section includes section 7 of the Colorado River Storage Project Act, therefore, specific citation of section 7 is not necessary.

A commentor cited section 18 of the Reclamation Project Act of 1939 as authority for the claim that Reclamation law, except for the provisions of the Project Act, the Adjustment Act, and the Hoover Power Plant Act, does not apply to the marketing of Hoover power. This particular section of the law merely states: "Nothing in this Act shall be construed to amend the Boulder Canyon Project Act (45 Stat. 1057), as amended." To state that nothing in the Reclamation Project Act of 1939 shall be deemed to have amended or changed the Project Act is not the same thing as saying that the provisions of the 1939 Act shall not apply to the marketing of Hoover power. In fact, section 617m of the Project Act states that the Project Act is supplemental to Reclamation law. Specifically, this section states that:

> This subchapter shall be deemed a supplement to the reclamation law, which said reclamation law shall govern the construction, operation, and management of the works herein authorized, except as otherwise herein provided (43 U.S.C. 617m).

The Hoover Power Plant Act, an act which the commentor concedes applies to the marketing of Hoover power, by its own terms, makes the Colorado River Basin Project Act of 1968 applicable to the marketing of Hoover power. Section 102 of the Hoover Power Plant Act sets forth the valuation and commencement date for the Project contribution to the Lower Colorado River Basin Development Fund, as an amendment to, and to be inserted into, the Colorado River Basin Project Act of 1968. Section 7 of the Colorado River Storage Project Act and section 8 of the Boulder City Act of 1958, Pub. L. No. 85–900 (72 Stat. 1726), also bear upon the marketing of Hoover power and thus further refute the commentor's claim regarding the limited applicability of general Reclamation law.

It is further noted that all of the original contracts for electrical energy from the Project state as an authority the phrase: ". . . pursuant to the Act of Congress approved June 17, 1902 (32 Stat. 388), and acts amendatory thereof or supplementary thereto, all of which acts are commonly known and referred to as the Reclamation law. . . ." This indicates that Western and its predecessor have consistently, for many years, interpreted Reclamation law to be applicable to the marketing of power from the Project.

After analysis and consideration, Western has concluded that, except for the additional citations described above, only the title of this section requires a change. This section will otherwise remain as published on November 29, 1985.

Two entities submitted comments regarding the Purpose and Scope sections of the proposed General Regulations. One commentor agreed with Western's proposal to revoke, by these General Regulations, the 1941 General Regulations and the 1930 General Regulations. The other commentor took exception to the termination of the 1941 General Regulations as proposed by Western.

The commentor's primary basis for the exception to the termination of the 1941 General Regulations focuses on the scope and breadth of coverage of the 1941 General Regulations as compared to the scope and breadth of coverage of these General Regulations. These General Regulations have a narrower scope and breadth of coverage than the 1941 General Regulations. The reason for this difference was noted by the commentor. In 1941, the Secretary of the Interior had sole Federal responsibility for all facets of the Project. The responsibility changed in 1977 when the Congress enacted the Department of Energy Organization Act. This act divided the Federal responsibility for power between the Secretary of the Interior and the Secretary of Energy. The result of this division of Federal responsibility is that any regulations proposed by either department will have a narrower scope and breadth of coverage than did the 1941 General Regulations.

The commentor further suggested that the 1941 General Regulations should not be revoked until Reclamation's regulations are ready for simultaneous promulgation with Western's proposed General Regulations. Western exercises no control over the timing of, or the promulgation of, regulations by Reclamation. Western and Reclamation have separate and distinct statutory obligations. In fact, however, Reclamation has already published a final rule entitled "General Regulations for Power Generation, Operation, Maintenance, and Replacement at the Boulder Canyon Project, Arizona/Nevada," in the **Federal Register** (51 FR 23960) on July 1, 1986.

One commentor remarked that Western's proposed General Regulations were "superseding and repealing in their entirety (without hearing) the 1941 Regulations." The claim of a lack of hearing is without substance. Public comment forums for the proposed General Regulations were held on December 19, 1985 (50 FR 49050, November 29, 1985), and February 12, 1986 (51 FR 3471, January 28, 1986). In addition, all interested parties have had the opportunity to submit detailed written comments on the provisions of the proposed General Regulations. Western believes that full and ample opportunity for hearing has been extended to all interested parties on all aspects of these General Regulations.

Another commentor submitted that if the 1941 General Regulations are to be terminated, a number of provisions contained in the 1941 General Regulations should be carried forward into the new proposed General Regulations. The suggested provisions were a "most favored nation" clause, a provision whereby a default by one contractor would not affect the rights of others, a provision for a hearing on any proposed amendment to regulations hereafter promulgated, and some assurance that any such amendments would not impair then existing rights or enlarge obligations of the contractors. It is Western's belief that, except for the "most favored nation" clause and the matter of impact of future amendments on existing rights of contractors, the suggested provisions are not necessary for inclusion in these General Regulations. The "most favored nation" and future amendments impact limitation language has been added to these General Regulations. The inclusion of any of the other suggested provisions would add nothing of substance to the rights of the contractors. Those other suggested additions are addressed by applicable law, and thus their inclusion in these General Regulations would be an unnecessary restatement of law.

Western has concluded that, except for the two changes above and except for other minor revisions (including reference to the general regulations of the Department of the Interior), these sections do not require changes to their

provisions as published on November 29, 1985.

Section 904.3 Definitions

A few minor comments were received on this section. All recommended changes were considered, but Western determined that some recommended changes would not add to the clarity of the definitions. Word changes were recommended, and most of these recommendations were accepted by Western.

Early in the comment period, it was recommended that additional definitions be added. New definitions have been added, where necessary, to clarify additions made to the General Regulations. In addition, some definitions have been added, deleted, or modified to conform with the definitions in related Western and Reclamation documents.

Section 904.4 Marketing Responsibilities

In the comments submitted regarding the section entitled "Power Generation and Marketing Responsibilities" in the revised proposed General Regulations, commentors have expressed concern about coordination efforts between Reclamation and Western and how this coordination may or may not impact the contractors. One commentor suggested that the Secretary of the Interior is a necessary party to the contracts between Western and the allottees. Western, with the agreement of Reclamation, has determined that Reclamation will concur only in the specific provisions of the contract that relate to Reclamation's responsibilities.

Another commentor suggested the creation of an operating committee which would include Reclamation, Western, and the Hoover contractors. This committee would enable the parties to coordinate their mutual efforts regarding the Project. Western believes that the formal creation of such a committee would be an inefficient use of time and effort in this case. Coordination already has taken place, and the two Federal entities will continue to coordinate their endeavors. The contractors will continue to have ready access to Western. Interior's general regulations indicate that this is also the case with Reclamation and the contractors. Interior's general regulations and Western's electric service contracts will provide specific means of coordination to the contractors (see for example, Interior Regulations, 43 CFR Part 431, 431.4(d)).

Western has concluded that since Interior has published general regulations providing for Reclamation's responsibilities for the Project, Western's General Regulations do not need to be specific in that area; therefore, this section has been modified to exclude the specific responsibilities of Reclamation.

Section 904.5 Revenue Requirements

The Revenue Requirements section of these General Regulations has been rewritten, but no major changes have been made to the contents of the revenue requirements specified in the revised proposed General Regulations. Two sections, 904.14 and 904.15, of the revised proposed General Regulations have been deleted and the contents partially incorporated into this section. Western determined that much of 904.14, Payments to States and Transfers From the Colorado River Dam Fund, was appropriately covered in Interior's general regulations; therefore, this section was removed from these final General Regulations. Appropriate reference concerning transfers to the Colorado River Dam Fund is now included in the Revenue Requirements section. Section 904.15, Repayment Periods, has been transferred, in total, to the Revenue Requirements section. Western believes that the subject of repayment periods should be included in this section relating to the revenues. One modification made to the repayment provisions is the inclusion of the words "or June 1, 1987, whichever is later" in subsection (c)(1). The discussion of the comments given below will cover all major comments received on the three sections of the revised proposed General Regulations that are now incorporated into this one section of the General Regulations.

The major comments relating to the revenue requirements focused on the repayment of the advances deemed by statute to be allocated to flood control. The spectrum of the various comments on this section was diverse and all encompassing. One commentor disputed Western's authority to require flood control repayment and to include interest on the flood control allocation. Another commentor stated that the repayment period proposed by Western is too long and that the interest rate on the flood control amounts is too low. Another commentor expressed agreement with Western's proposal for repayment of the flood control allocation.

The matter of flood control and its repayment for the Project was initially addressed in the Project Act. The Project Act originally provided that:

> The Secretary of the Treasury is authorized to advance to the fund, from time to time and within the appropriations therefor, such amounts as the Secretary of the Interior deems necessary for carrying out the provisions of this subchapter, except that the aggregate amount of such advances shall not exceed the sum of $165,000,000. Of this amount the sum of $25,000,000 shall be allocated to flood control and shall be repaid to the United States. . . . If said sum of $25,000,000 is not repaid in full during the period of amortization, then 62½ percentum of all net revenues shall be applied to payment of the remainder. Interest at the rate of 4 percentum per annum accruing during the year upon the amounts so advanced and remaining unpaid shall be paid annually out of the fund, except as herein otherwise provided (43 U.S.C. 617, 617a(b)).

This section was amended by the Hoover Power Plant Act. This amendment deleted the phrase "except that the aggregate amount of such advances shall not exceed the sum of $165,000,000." Thus, Congress expressly readdressed this provision of the Project Act when it adopted the recent Hoover Power Plant Act, and chose to leave undisturbed the Project Act's requirement that the unamortized flood control allocation be repaid with interest to the United States.

The Adjustment Act, enacted on July 19, 1940, also addressed the matter of the flood control allocation and its repayment to the United States. This act provided a period of deferment for repayment of the flood control allocation as follows:

> The first $25,000,000 of advances made to the Colorado River Dam Fund for the project shall be deemed to be the sum allocated to flood control by section 617a(b) of this title and repayment thereof shall be deferred without interest until June 1, 1987, after which time such advances so allocated to flood control shall be repayable to the Treasury as the Congress shall determine (43 U.S.C. 618, 618f).

This section of the Adjustment Act was not altered or amended by the Hoover Power Plant Act. Deferring a cost is not the equivalent of debt forgiveness, as one commentor seems to suggest. The congressional intent that the flood control allocation be repaid is clear. The same conclusion was arrived at not only in a legal opinion by Western dated June 3, 1985, but also in a legal opinion dated April 5, 1985 by Interior's Office of the Solicitor (copies of which have been provided to all interested parties, see 51 FR 12333). The Comptroller General also found that repayment of the flood control allocation commencing in 1987, following a deferment during which interest would not accrue, was provided for by the Adjustment Act (see unpublished decision of the Comptroller

General of the United States, B–12615, dated October 29, 1940).

One commentor has taken a position disputing repayment commencing in 1987. In taking this position, the commentor has focused on the last phrase of section 618f of the Adjustment Act which states that "such advances so allocated to flood control shall be repayable to the Treasury as the Congress shall determine." The commentor does concede that ". . . arguably, under the Adjustment Act, no further congressional action is necessary before the $25,000,000 flood control allocation can be charged to the Hoover rate after 1987 . . ." (letter dated June 5, 1985, incorporated by reference in the January 6, 1986, comments of CRC). Nonetheless, the commentor concludes that since Congress has not made a subsequent specific determination detailing how repayment is to be handled, the period of deferment should be extended indefinitely until Congress takes specific action.

This position is urged despite the Adjustment Act's specification, rather than implication, that the period of deferment ends June 1, 1987. Adopting a construction of section 618f of the Adjustment Act that would infer an indefinite deferment of repayment from that section's last phrase would seem to read out of the same section the explicit June 1, 1987, terminal date for the deferment that the Congress specifically provided. Examination of section 618f itself does not suggest convincingly that, in alluding to the possibility of new legislation, Congress intended the explicit terminal date provided in that section to be contingent on passage of new legislation. Reading section 618f above, it is more reasonable to conclude that Congress intended that new legislation might be adopted in the future that would specify in greater detail the terms of repayment after the statutory deferral period had run.

The commentor further suggests that sections 618 and 618a of the Adjustment Act support the position for no repayment and no interest on the flood control allocation. The pertinent provisions of these two sections are as follows:

> The Secretary of the Interior is hereby authorized and directed to, and he shall, promulgate charges, or the basis of computation thereof, for electrical energy generated at Hoover Dam, computed to be sufficient, together with other net revenues from the project, to accomplish the following purposes:
>
> (a) . . .
>
> (b) To repay to the Treasury, with interest, the advances to the Colorado River Dam Fund for the project made prior to June 1, 1937, within 50 years from that date (excluding advances allocated to flood control by section 617a(b) of this title, which shall be repayable as provided in section 618f of this title), . . . (43 U.S.C. 618).

and:

> All receipts from the project shall be paid into the Colorado River Dam Fund and shall be available, without further appropriation, for:
>
> (a) . . .
>
> (b) Repayment to the Treasury, with interest (after making provision for the payments and transfers provided in subsections (c) and (d) of the section), of advances to the Colorado River Dam Fund for the construction of the project (excluding the amount allocated to flood control by section 617a(b) of this title), . . . (43 U.S.C. 618a).

Read in complete isolation, the text of the latter provision, section 618a(b), briefly describes only an exclusion of flood control funds from the permitted disposition of receipts for repayment to the Treasury. Read more closely, however, the funds are identified specifically as those allocated to flood control "by section 617a(b),". Section 618f of the Adjustment Act, which, as was described above, contains the terminal date of the repayment deferral for the flood control allocation, explicitly is directed to "the sum allocated to flood control by section 617a(b)," of the Project Act. Thus, section 618a(b) merely points back, albeit indirectly, to section 618f. Similarly does the other cited provision, section 618(b), specify directly that the flood control allocation is to be repayable "as provided in section 618f . . ." Thus, neither provision, by its own text, can be read in isolation, and the text of each leads back to section 618f of the Adjustment Act, which contains the explicit terminal date for repayment deferral that was analyzed above.

Given this, the meaning of section 618(b) of the Adjustment Act is readily discernible. The rate for electrical energy generated at Hoover Dam, together with other net revenues,[4] shall be sufficient to repay to the Treasury, with interest, the advances to the Colorado River Dam Fund for the Project made prior to June 1, 1937, within 50 years of that date. This rate, commencing June 1, 1937, and continuing through May 31, 1987, cannot include a component for the recovery of the flood control allocation, since this component has been deferred, including interest thereon, until June 1, 1987, by section 618f of the Adjustment Act. However, commencing June 1, 1987, the rate shall include a component for the recovery of the flood control allocation, with interest, unless Congress shall direct otherwise. This is a reasonable meaning which effectuates the express intent of Congress in enacting this legislation. Moreover, section 618(b) states that the flood control allocation is "repayable as provided in section 618f" rather than repayable "without interest." It is Western's opinion that if Congress had intended that the flood control allocation was repayable without interest, it could, and would, have so stated.

Section 618a(b) specifies that all receipts of the Project shall be paid into the Colorado River Dam Fund and shall be available for repayment to the Treasury, with interest, of advances to the said fund for construction of the Project, excluding the amount allocated for flood control pursuant to section 617a(b) of the Project Act. As was described above, however, section 618f by its own terms is directed to the allocation for flood control under section 617a(b) of the Project Act. Thus, the exclusion contained in section 618a(b) must be read in conjunction with the provisions of sections 618(b) and 618f. So read, the reasonable meaning of this exclusion is that receipts in the fund cannot be used to repay the flood control allocation until June 1, 1987, the date set by Congress for commencing such repayment in section 618f, unless Congress directs otherwise. Pursuant to the provisions of section 618, the rate charged for electrical energy generated at Hoover Dam, which provides receipts for payment into the fund, cannot include any component for repayment of the funds advanced and allocated to flood control until after June 1, 1987. This is a reasonable interpretation of section 618a(b) which harmonizes all the relevant provisions of the Project and Adjustment Acts and which gives effect to all the text of each provision.

The comments also discussed the question of interest on the flood control allocation. One commentor submitted that no interest is applicable to this sum, while another commentor submitted that the proposed interest rate of 3 percentum per annum is too low. The following discussion will first address the issue of whether or not interest is applicable to the repayment of the flood control allocation.

The comments disputing the applicability of interest to the repayment of the flood control allocation rely heavily upon portions of the legislative history leading up to the enactment of the Adjustment Act in 1940. The legislative process leading up

[4] The "other net revenues" have a negligible effect on the rate design.

to the Adjustment Act was long and convoluted. Several draft proposals were offered but were not enacted. The Adjustment Act currently addresses flood control repayment as follows:

> The first $25,000,000 of advances made to the Colorado River Dam Fund for the project shall be deemed to be the sum allocated to flood control by section 617a(b) of this title and repayment thereof shall be deferred without interest until June 1, 1987, after which time such advances so allocated to flood control shall be repayable to the Treasury as the Congress shall determine (43 U.S.C. 618f).

The commentor included in its comments what it referred to as the "long form" of section 7(d) of S. 4039, a companion bill to H.R. 9877, as follows:

> The said $25,000,000 allocated to flood control shall be deemed to have been the first advances made for construction purposes, and shall be repaid *without interest* after full repayment of the net advances in such manner as Congress may hereafter require (Letter dated May 30, 1985, incorporated by the CRC in comments dated January 6, 1986). (Emphasis added.)

As the commentor noted, this "long form" language is what prior unsuccessful legislative attempts (H.R. 6629 and H.R. 6666) contained, regarding changes to the then existing requirement for repayment of the flood control allocation in the Project Act. An important element is the prior unsuccessful attempts at legislative change. Had the language of H.R. 6629 and 6666 or the "long form" of S. 4039 been enacted, the commentor's position might have more substance. In this instance, the differences in language do not support the commentor's position regarding interest being applied to the flood control repayment. It is difficult to argue that "shall be deferred without interest until June 1, 1987," is the same as "shall be repaid without interest after full repayment of the net advances." All the cited legislative history does not overcome this plain difference in wording and meaning.

Examination of the existing statutory language reinforces Western's interpretation. The key operative phrase in the existing law concerning the application of interest to flood control repayment is "shall be deferred without interest until June 1, 1987." To fully comprehend the meaning of this phrase, one must keep in mind the existing provisions of the Project Act that were being impacted by the phrase. The Project Act mandated that advances for the Project included the sum of $25,000,000 for flood control, that the flood control sum was to be repaid to the Treasury along with all other advances, and that all advances would bear interest at the rate of 4 percentum per annum (43 U.S.C. 617a(b)). The interest rate was changed from 4 to 3 percentum per annum by the Adjustment Act. The existing applicable law at the time the Adjustment Act was being considered and debated required repayment of flood control, with interest. Had Congress opted only for language that repayment of the flood control allocation was to be deferred until June 1, 1987, then the flood control allocation would have clearly accrued interest during the period of deferment. Had Congress opted for language that the flood control allocation was to be repaid without interest, after full repayment of the net advances, then interest would not have accrued or been payable at all. Congress did consider, but did not adopt, this very language. Since Congress chose language that only deferred repayment without interest until June 1, 1987, the logical interpretation of the language is that interest was to be deferred along with repayment only until the stated date. Interest would not accrue during the period of deferment. However, interest is due and payable on the sums advanced for flood control starting June 1, 1987.

Another commentor disputing Western's proposed treatment of the flood control allocation repayment took a position totally different from the position discussed above. This commentor felt the flood control allocation was due in total on June 1, 1987. Obviously, this balloon payment concept renders moot the question of interest rate and amortization period for repayment of the flood control allocation. The commentor did indicate that if Western felt the single payment balloon option was too burdensome for the contractors, a short period of amortization might be appropriate; this short period being one "ratemaking" cycle of 5 years. This commentor took exception to Western's proposed 50-year amortization period and application of the 3 percent interest rate set forth in the Adjustment Act.

The suggestion that the flood control allocation becomes due in total as a single balloon payment on June 1, 1987, the date the congressional deferment ends, is contrary to applicable law. First, section 617a(b) of the Project Act clearly established that the flood control allocation was not required to be repaid to the Treasury within the first 50-year "period of amortization." Section 617a(b) specifically provided that if the flood control allocation was not repaid within the initial amortization period, then a stated portion of the net revenues from the Project, after this initial repayment period, was to be applied to the unpaid balance of the flood control allocation. The key here is that Congress clearly contemplated, and accepted, the fact that the flood control allocation would not necessarily be repaid within the initial 50-year amortization period.

Congress revisited the issue of repayment of the flood control allocation in 1940. In the Adjustment Act, Congress specifically directed that the flood control allocation would not be repaid within the initial 50-year period of amortization by deferring such repayment, along with the interest thereon, until June 1, 1987 (43 U.S.C. 618f). The Adjustment Act unequivocally directed that the repayment of the flood control allocation, with interest, was deferred until a date certain. Congress did not state that the repayment was being converted from an extended period of amortization to a single balloon payment scheme with the final payment due on a date certain.

Had Congress intended such a result, it is reasonable to assume it would have so stated in clear, concise terms. Without such a definitive statement of intent, one can only look at the existing law for implementation of flood control repayment.

The Adjustment Act, in section 618 (including recent amendments made by the Hoover Power Plant Act), expresses a clear intent for 50-year periods of amortization for advances to the Colorado River Dam Fund. Given the directives of the applicable law regarding repayment of the flood control allocation, Western declines to adopt the concept of a balloon payment due June 1, 1987.

This commentor also took exception to Western's proposal to apply 3 percent interest to the flood control allocation commencing June 1, 1987, and to amortize the repayment over a 50-year period. The commentor states that such a result is contrary to the provisions of DOE Order RA 6120.2, dated September 20, 1979, as amended (RA 6120.2). The answer to these two exceptions is that RA 6120.2 is not the appropriate, controlling authority to determine the interest rate to be charged or the amortization period for the repayment for the Project. The appropriate authority, in this case, is the Adjustment Act. The existing law specifies both the interest rate and the period of amortization. By its own terms, RA 6120.2 allows deviations from its provisions when authorized by statute. Moreover, a Federal agency does not have the authority to overrule a specific congressional mandate by administrative fiat. Given the mandate

of sections 618 and 618e, Western has no choice concerning the appropriate rate of interest to be applied and the period of amortization for repayment of the flood control allocation.

A commentor took exception to Western's use of the word "within" instead of "over" for investment cost recovery periods. As was previously noted (see 51 FR 12333, dated April 10, 1986), applicable statutory provisions use both "within" and "over" in addressing repayment of investment costs. Congress would have eliminated this dual usage of terms in its amending provisions of the Hoover Power Plant Act had it deemed such dual usage a problem. The April 10, 1986, Federal Register Notice also pointed out that use of "within" was the result of comments submitted following the original publication of the proposed General Regulations in May 1985. Given this new concern, Western changed the reference from "within" to "over," as the comment suggests, in the revisions made to the repayment provision of this section.

Another commentor submitted comments concerning allowable interest costs for reimbursement to the non-Federal entities advancing funds for the uprating program. The commentor proposed imposing a ceiling on allowable interest costs. The ceiling proposed was the "Federal rate of interest applicable at the time of each advance." The relevant portion of the Hoover Power Plant Act states:

> Those amounts advanced by non-Federal purchasers shall be financially integrated as capital costs with other project costs for rate-setting purposes, and shall be returned to those purchasers advancing funds throughout the contract period through credits which include interest costs incurred by such purchasers for funds contributed to the Secretary of the Interior for the uprating program (Section 619a(f)).

The Hoover Power Plant Act makes no provisions for placing a ceiling derived from the cost of money to the Federal government on the amount of interest costs that may be reimbursed through credits. Instead, the statute describes the credits purchasers are entitled to receive as including the "interest costs *incurred by such purchasers*" (emphasis supplied). While prudent action should be expected by all parties to complete the requisite financing arrangements, Western believes it would be contrary to the statute to limit the amount of interest costs allowable to some composite Federal interest rate in effect at the time various advances are made. Western believes, however, that it is important to scrutinize interest costs to ensure the interest costs are prudent and in keeping with normal business practice.

The relevancy of the Boulder City Act of 1958 to §§ 904.6(c)(5) and 904.15(a) of the revised proposed General Regulations was questioned by one commentor. Western included this reference in the General Regulations because Boulder City was originally a Federal camp and part of the Project. The Boulder City Act of 1958 authorized the transfer of the Federal property to the municipality of Boulder City upon incorporation. This same act transferred the Federal Government's rights to power for Boulder City from the Project and gave the municipality the same rights to deferred payments as the other Boulder Canyon Project contractors.

Comments on the repayment periods, incorporated into this section, were minimal. One commentor requested a separate provision for the repayment period on replacements. The Revenue Requirements section of the General Regulations has been modified to specify "Capital costs of investments and replacements." Western believes that this modification addresses the commentor's concerns that replacements be treated as a capital cost, rather than an annual cost.

In addition to the comments addressed above, several word changes were recommended by the commentors. Most of these changes have been incorporated into the final version of this section. This section has been rewritten to match more closely Interior's general regulations and to define more clearly the revenue requirements to be used in development of the charges for electric service. The Repayment Period section of the revised proposed General Regulations has been incorporated into this section.

Section 904.6 Charge for Capacity and Firm Energy, Section 904.7 Base Charge, and Section 904.8 Lower Basin Development Fund Contribution Charge

Western is combining the discussion of these sections concerning the Base Charge and Lower Basin Development Fund Contribution Charge (Contribution Charge). While the Base Charge and the Contribution Charge do not raise entirely the same issues, Western believes its overall decision on charges should consider the combined effect of the Base Charge and the Contribution Charge on the contractors. Accordingly, Western has considered specific issues relating to the Base Charge or the Contribution Charge separately, but has evaluated the fairness and equity of various rate designs on the basis of the combined effect of the Base Charge and the Contribution Charge. The discussion on charges is divided as follows:

1. Responsibility to Set Rates
2. Overview of Western's Efforts to Resolve the Issues
3. Contribution Charge
4. Base Charge
5. Description of Rate Design Proposals
6. Analysis of Rate Design Proposals
7. Adopted Rate Design
8. Other Comments

1. Responsibility to Set Rates

By law, Western is charged with the responsibility to establish rates for electrical energy generated at the Project. The Project Act provides that such rates be set "with a view to meeting the revenue requirements herein provided for. . . ." (43 U.S.C. 617d(c)). The Adjustment Act provides that:

> The Secretary . . . is hereby authorized and directed to, and he shall, promulgate charges, or the basis of computation thereof, for electrical energy generated at Hoover Dam, computed to be sufficient, together with other net revenues from the project, to accomplish the following purposes: . . . (43 U.S.C. 618).

Further:

> The Secretary is hereby authorized from time to time to promulgate such regulations and enter into such contracts as he may find necessary or appropriate for carrying out the purposes of this subchapter and the Project Act, . . . as modified hereby. . . . (43 U.S.C. 618g).

Included in this authority is the administrative discretion necessary to carry out the statutory directives regarding rates and regulations concerning electrical energy generated at Hoover Dam. The applicable law does not mandate that any particular rate design be used. The law does require that the rate design used must produce sufficient revenues to meet the statutory obligations of the Project. The Boulder Canyon Project Act, the Boulder Canyon Project Adjustment Act, and the Hoover Power Plant Act require Western to exercise this administrative discretion and determine a rate design for the Project for the period beginning June 1, 1987. Additionally, the Hoover Power Plant Act amended the Colorado Basin Project Act of 1968 so as to require the rate design to recover specified amounts, generally referred to as the "Contribution Charge."

2. Overview of Western's Efforts to Resolve the Issues

As discussed previously, Western believes the rulemaking process should give great weight to the views of those persons directly affected by these

regulations. This is especially appropriate with respect to the rate design for the Base Charge and the Contribution Charge. Earlier statutes relating to Hoover and the Hoover Power Plant Act mandate the level of revenues to be collected by the charges, certain entities which must be offered contracts, and the amount of contingent capacity and associated firm energy allocated to each such entity. Thus, the remaining significant issue is developing a rate design to apportion the revenue requirements among the contractors. In this situation, each contractor possesses the most thorough understanding of the issue as it relates to that contractor's own circumstances. In the aggregate, the contractors will be the entities directly affected by the decision on rate design. Accordingly, throughout this rulemaking proceeding, Western has encouraged the contractors to discuss the issues among themselves and attempt to develop a common position on rate design.

At the June 4, 1985, public information forum on the proposed General Regulations, Western indicated that rate design would be discussed during a separate public process. Interested parties in attendance at the forum indicated that the rate design should be determined in the General Regulations in order to assure certainty and to permit the financing of Reclamation's Hoover uprating program to proceed as scheduled. Western indicated that it was not opposed to the inclusion of the rate design in the General Regulations. Western also indicated that it would seriously consider any rate design which all of the allottees could agree upon and which assured collection of adequate revenues, and did not violate the law. Western went on to introduce three possible approaches for the rate design of the Base Charge and the Contribution Charge, along with the clearly stated proviso that these three approaches were not the only possible methods Western would consider. Interested parties were requested to submit any rate design they felt appropriate.

In July 1985, Western granted a 90-day extension of the comment period (50 FR 30447, July 26, 1985) to enable the allottees to seek agreement among themselves on recommendations for a rate design. During this period, Western met upon request with various allottees to supply additional information and to help resolve differences on these matters. When, late in the 90-day extension period, the allottees indicated that they were unable to agree among themselves and requested assistance from Western, Western's Boulder City Area Manager met with, and attempted to mediate among, the allottees. This effort was unsuccessful. Western then issued its revised proposed General Regulations, subsequently provided additional information on the revised proposal, and held several public comment forums. The allottees were still unable to reach accord on rate design.

In a further attempt to help the allottees resolve their differences on the rate design, the Under Secretary of the Department of Energy and other officials of DOE and Western met with representatives of the allottees and requested that they try to develop a proposal on the rate design that would be acceptable to all parties. The comment period on the revised proposed General Regulations was reopened for 2 weeks to allow the allottees time to discuss their concerns and submit additional comments. Notwithstanding these efforts, the allottees have not submitted a common position on rate design. Rather, the allottees have continued throughout the process to be divided into two groups.

One group is comprised of CRC; APA; MWD; and the California cities of Glendale, Pasadena, Burbank, Banning, Azusa, Anaheim, Colton, and Riverside (identified as the Joint Allottees). The other group includes LADWP and SCE (hereinafter called the LADWP–SCE Group [5]).

Although these two groups did not agree upon a common position, their positions did evolve during the course of this rulemaking. In the earlier stages of the proceeding, each group presented at least one rate design which distinctly favored the major renewal entities contained in that group when compared to the current allocation of economic burdens among the allottees. The final positions of both groups, however, would result in all the allottees' being treated more nearly the same as under the existing system. Thus, while consensus was not achieved, Western believes the efforts to achieve a common position were constructive. This process, along with its analysis of the various proposals submitted, has helped Western to identify a range of reasonableness within which the effects of the rate design for the period beginning June 1, 1987, will treat all the contractors in an evenhanded manner consistent with the Hoover Power Plant Act.

[5] The city of Vernon submitted separate comments of its own. However, those comments generally supported and agreed with the positions taken in the LADWP–SCE Group's comments on these sections.

3. Contribution Charge

The Contribution Charge is a statutorily mandated amount which is to be included in the rates charged to the Hoover allottees. The statute provides that rates charged to purchasers in Arizona are to include the "equivalent of" 4½ mills per kilowatthour (kWh), whereas the rates charged to purchasers in California and Nevada are to include the "equivalent" (of) 2½ mills per kWh. The revenues to be produced by the Contribution Charge are required to be used for certain statutorily specified purposes.

The issue regarding the Contribution Charge is over how the revenues to be raised by it are to be apportioned and collected. More specifically, the issue involves whether the revenues required to be raised by means of the Contribution Charge are to be collected based upon energy sales alone, or alternatively, partly upon energy sales and partly upon capacity sales.

It must be explained at the outset that the controversy over the Contribution Charge has a financial impact only upon the purchasers in California. Since there is effectively only one purchaser in Nevada (CRC) [6] and only one purchaser in Arizona (APA), how the Contribution Charge revenue requirement for each of those states is apportioned and collected as between energy and capacity makes no difference. That is to say, regardless of whether the Contribution Charge for each of those two States is collected 100 percent from energy sales, or 100 percent from capacity sales, or partly from energy sales and partly from capacity sales, the CRC and the APA will pay virtually the same total dollar amount. As will be seen, the foregoing is not true in California where there are multiple purchasers.

An illustration will help to point up the differences in approach of the two groups with regard to how the Contribution Charge should be collected. Assume for the purposes of illustration that the energy made available to California purchasers in a year is 2,531,023,000 kWh. Based upon that assumption the amount of revenue which the Hoover Power Plant Act indicates should be raised through the Contribution Charge in that year in California is $6,327,558 (2,531,023,000 kWh × the equivalent of 2½ mills per kWh = $6,327,558). The question then becomes how the $6,327,558 is to be apportioned and collected.

[6] The impact of Boulder City is negligible.

The LADWP–SCE group contended that it should be apportioned and collected based solely upon the energy available to each purchaser. That approach amounts to, and results in, each California purchaser being charged 2½ mills per kWh of energy purchased. Under this approach, the capacity allocations of each purchaser are simply not a factor which is considered. This approach is financially advantageous to California contractors such as LADWP and SCE which have small energy allocations relative to their capacity allocations. That is true, of course, because they, having relatively little energy compared to capacity, will pay a smaller portion of the total revenues to be raised in California through the Contribution Charge when those are apportioned and collected based solely on energy than would be true if those revenues were apportioned and collected partly on capacity allocations.

The Joint Allottees, on the other hand, contended that the revenues to be raised through the Contribution Charge should be apportioned and collected based upon capacity and energy. As previously noted, this approach does not financially impact purchasers in Nevada and Arizona, but does financially impact purchasers in California. The 50–50 proposal of the Joint Allottees, as applied to California, illustrates the differences in impact. Under that proposal, 50 percent of the revenues required to be raised through the Contribution Charge would be apportioned and collected based upon the energy available to the California purchasers, while 50 percent would be apportioned and collected based upon the contingent capacity available to the California purchasers. In the illustration, the revenues to be raised in a year through the Contribution Charge for California as a whole, as noted, would be the equivalent of 2½ mills times the total assumed California energy purchases of 2,531,023,000 kWh, or $6,327,558. If one half of that total amount is apportioned to, and collected from, energy sales, that will result in a charge of $.00125 per kWh ($6,327,558 divided by 2 = $3,163,779 divided by 2,531,023,000 kWh = .00125). The other one half would be apportioned on, and collected based upon, capacity sales. That would result in a charge per kilowatt (kW) of $2.69 for the year ($3,163,779 divided by 1,177,000 kW allocated to California under the Hoover Power Plant Act of 1984 = $2.69 per kW). The difference in the impact of these two approaches is illustrated by looking at two California purchasers at the extremes. MWD has a large energy allocation relative to its capacity allocation, while the reverse is true of SCE. The following table illustrates in this example the financial impact on each under the two approaches.

	100 percent on energy	50 percent energy—50 percent capacity
MWD:		
1,191,974,000 kWh	$3,229,935	$1,614,967
247,500 kW		665,775
Total paid	3,229,935	2,280,742
SCE:		
250,694,000 kWh	626,735	313,367
277,500 kW		746,475
Total paid	626,735	1,059,842

Thus, just as was the case with the 100 percent on energy approach favoring certain parties, it can be seen that it is financially advantageous to parties such as MWD, with a large energy allocation relative to its capacity allocation, to have part of the revenues required to be collected through the Contribution Charge apportioned to and collected based upon capacity, rather than solely upon energy.

The comments and arguments of the parties with respect to this issue focused primarily upon the proper statutory construction of the language imposing the Contribution Charge. These matters are discussed hereinafter.

The Contribution Charge is a recent statutory requirement for inclusion in the rates charged to purchasers of power from the Project. The Hoover Power Plant Act amended paragraph (2) of section 403(c) of the Colorado River Basin Project Act of 1968 (43 U.S.C. 1543) by adding the following:

Provided however, that for the Boulder Canyon project commencing June 1, 1987, and for the Parker-Davis project commencing June 1, 2005, and until the end of the repayment period for the Central Arizona project described in section 301(a) of this Act, the Secretary of Energy shall provide for surplus revenues by including the equivalent of 4½ mills per kilowatthour in the rates charged to purchasers in Arizona for application to the purposes specified in subsection (f) of this section and by including the equivalent 2½ mills per kilowatthour in the rates charged to purchasers in California and Nevada for application to the purposes of subsection (g) of this section as amended and supplemented: *Provided further*, that after the repayment period for said Central Arizona project, the equivalent of 2½ mills per kilowatthour shall be included by the Secretary of Energy in the rates charged to purchasers in Arizona, California, and Nevada to provide revenues for application to the purposes of said subsection (g) of this section (98 Stat. 1333, section 102(c)).

Controversy regarding the proper rate design to be used in apportioning and collecting the Contribution Charge centered around the correct statutory construction of the foregoing language. The LADWP–SCE Group construed the statute to mandate that 100 percent of the Contribution Charge must be applied to the energy sales of the Project, to the exclusion of capacity sales. The Joint Allottees construed the statute as evidencing an intention that the Contribution Charge be split between both capacity and energy sales from the Project. The positions of the two groups were based, in large part, on their differing legal interpretations of the words "equivalent" (of), "rates," and "purchasers."

The Joint Allottees' construction of the language may be summarized as follows:

(a) The word "equivalent" does not mean "the same as" but rather "of equal force or value." The use of the phrase "equivalent" (of) indicates that Congress was not simply mandating a charge of 2½ mills per kWh. If that had been what Congress intended, the words "equivalent" (of) would have been omitted from section 102(c) so as to simply require "including 2½ mills per kWh in the energy rate charged to purchasers in California . . ." Moreover, those words cannot properly be ignored. The Joint Allottees relied upon the rule of statutory construction to the effect that every word of a statute must be given meaning if possible.

(b) The use of the plural form of "rates" is a reference to the energy rate and capacity rate, thus indicating that the Contribution Charge was to be recouped through each.

(c) The word "purchasers" should be construed to refer to purchasers in the general or collective sense and to thus mean all of the purchasers in each state as a group. By construing the word "purchasers" as referring not to individual purchasers—but rather to the purchasers in a given state as a group—the statute would not require each individual purchaser in the state to pay exactly 2½ mills per kWh for energy purchased.

The upshot of the Joint Allottees' statutory construction was their conclusion that the provision indicated an intention that the total annual Contribution Charge revenue requirement for each of the three states was intended to be recouped partly based upon energy sales and partly based upon capacity sales. In particular, the Joint Allottees argued that the reference to "purchasers" in the Hoover Power Plant Act refers to the purchasers in each state as a group in the collective sense and that the statute is fully complied with as long as all the purchasers in any one state are collectively paying the amount which is the equivalent of 2½ mills per kWh for the total kWh delivered to all of the purchasers in that state.

The statutory construction of the LADWP–SCE Group may be summarized as follows:

(a) The word "equivalent" means "equal to."

(b) The word "rates" refers to either rates in general or to energy rates. (The construction of this word does not appear to be an essential element of construction by this Group.)

(c) The word "purchasers" refers to the individual purchasers in each state. They assert that "purchasers" is used three times in section 102(c), which establishes the charge, twice in section 205(a)(1)(B) and once in section 105(a)(1)(C).

The LADWP–SCE Group contended the statutory language mandated that the Contribution Charge be recouped entirely based on energy sales. The construction of the word "purchasers" to refer to each individual purchaser in a given state is a crucial premise in the overall result contended for by the LADWP–SCE Group. That is true because such construction, in turn, affects how the word "equivalent" should be properly interpreted. Specifically, if the word "purchasers" refers, for example, to each individual purchaser in California and the statutory mandate is to include the equivalent of 2½ mills per kWh received by each individual purchaser in the rates of each such individual purchaser, that precludes apportioning and charging part of the Contribution Charge on the basis of capacity as advocated by the Joint Allottees. For, if that were done, the Contribution Charge to each individual purchaser will not be equal to or equivalent of 2½ mills per kWh for each kWh purchased by each individual purchaser.

The point that each individual allottee would not pay the equivalent of 2½ mills per kWh if the Contribution Charge were apportioned partly on the basis of capacity was made by the LADWP–SCE Group in analyzing the effects of the Joint Allottees' proposal to apportion and charge the Contribution Charge in California 50 percent on energy and 50 percent on capacity. The LADWP–SCE Group presented an example illustrating that the 50–50 assessment method would require LADWP to pay in effect 3.14 mills instead of 2.5 mills per kWh, resulting in an increased annual cost of $446,722, or $13.4 million over the 30-year contract period. SCE would pay in effect 4.23 mills instead of 2.5 mills per kWh, resulting in an increased annual cost of $432,576, or $12.97 million over the 30-year contract period. MWD, however, would pay in effect 1.76 mills instead of 2.5 mills per kWh, resulting in a decreased annual cost of $949,666, or about $28.5 million less over the 30-year contract period.

Both the Joint Allottees and the LADWP–SCE Group presented lengthy comments and analyses of the background and legislative history of the Contribution Charge, citing various facets of that material as being supportive of their respective positions. In that regard, the LADWP–SCE Group attempted to marshal support for the position that the Contribution Charge was intended to be a continuation of what it contended was the past practice of collecting similar types of "surplus revenues" from the dam and appurtenances charges (i.e., charges which are comparable to an energy charge). The Joint Allottees, among other things, emphasized the use of the word "power" in various statements made by various Government officials and members of Congress in the development of the Hoover Power Plant Act and in what it contended was the evolution of the "equivalent of" language through various drafts. Additionally, the Joint Allottees contended, largely in rebuttal to the position argued by the LADWP–SCE Group, that Congress was primarily concerned with ensuring that the Contribution Charge would result in producing the anticipated surplus revenues to be used for the statutorily specified purposes—not with mandating a given rate design as would be the case under the LADWP–SCE Group's construction.

Western has carefully reviewed the background and legislative history material presented by both sides. Western has concluded that this material is simply not persuasive in support of the construction contended for by either side. In short, the legislative history does not clearly indicate an intention regarding how the Contribution Charge was to be collected as between energy and capacity.

Western is similarly unpersuaded that the relevant statutory language mandates that the Contribution Charge be placed upon both energy and capacity sales. In that regard, the plain meaning of "equivalent of" would at most appear to permit rather than to mandate application of the Contribution Charge to both capacity and energy components. Moreover, since no particular rate design or split is set out in the pertinent language of the statute it would seem obvious that Congress necessarily intended that Western use its discretion in the rate design used to collect the Contribution Charge.

The Joint Allottees, in their comments on this topic, recognized the discretionary aspects of the relevant language. Thus, they observed in their comments of October 23, 1985, as follows:

"By use of the word "equivalent," Congress plainly left to Western's discretion the allocation of those dollars in the design of rates for the Boulder Canyon Project. That discretion—to allocate the Contribution Charge between the rate components for capacity and energy—was intended. It is the logical consequence of quantification of the 1968 requirement for "surplus."

Equally unpersuasive as the contention that the "equivalent" language compels allocation to capacity and energy is the Joint Allottees argument concerning the significance of the congressional use of the plural form of "rate" in section 102(c). Given that Congress did not clearly establish any particular rate design for the Project for the period beginning June 1, 1987, the argument, without more, that congressional use of the word "rates" in section 102(c) was a deliberate collective reference to capacity and energy rates is unpersuasive. Rather, Western concludes that the use of the word "rates," if anything, suggests a congressional intent to permit Western the flexibility to adopt a rate design with one or more rates which would produce the Contribution Charge revenues required.

On the other hand, the LADWP–SCE Group argued that Western was required by the Hoover Power Plant Act to assess 100 percent of the Contribution Charge to the energy rate, and since Western was proposing such an assessment, the Group was in agreement with Western. Although Western has decided to continue the approach reflected in its revised proposed regulations and to assess 100 percent of the Contribution Charge to the energy component, it has not based that decision on the statutory construction or legal theory advocated by the LADWP–SCE Group. Western believes that the use of "equivalent" (of) recognizes the fact that the Hoover Power Plant Act does not mandate a particular rate design and thus is intended to give Western the flexibility to include the specified Contribution Charges in whatever rate design Western adopts. In the context of a Base Charge rate design such as the one Western has adopted, which has both an energy and capacity component, Western believes the best way to achieve the statutory goals of assessing a Contribution Charge equivalent of the required 2½ or 4½ mills per kWh is to assess 100 percent of the charge to the energy component. The practical considerations which Western identified in its April 10, 1986, Federal

Register notice for doing this remain valid. By any mathematical standard and under any definition, charging 2½ mills per kWh is the "equivalent of" a Contribution Charge of 2½ mills per kWh.

Moreover, requiring each purchaser in a State to pay the Contribution Charge on the basis of the energy it actually receives will result in both each *individual* purchaser in California paying the equivalent of 2½ mills per kWh received by that purchaser and the purchasers in California *as a group* paying the total dollar amount of Contribution Charge revenues for that State which results from the multiplication of 2½ mills per kWh times the kWh available to California purchasers.

After detailed analysis and consideration, Western has concluded that the section does not require any changes to its provisions as published on November 29, 1985. By placing the charge entirely on energy, Western has clearly met the intent of Congress that the revenues to be raised through the Contribution Charge will be collected and, also, has avoided charging some individual contractors in California more or less than 2½ mills per kWh.

4. Base Charge

The Base Charge is composed of a capacity component and an energy component. The Base Charge is designed and intended to produce revenues which will recoup all of the costs and statutorily imposed financial obligations of the Project with the exception of the revenues which the Hoover Power Plant Act (by amending the Colorado River Basin Project Act) specifies are to be recovered through the Contribution Charge. The specific types of costs and statutorily imposed financial obligations of the Project which the Base Charge is intended to recoup are those which are identified in § 904.5(b) of the General Regulations.

From the outset of this rulemaking, Western has proposed that there would be two components of the Base Charge. One component would be an "energy component" consisting of a charge of a specified mills per kWh amount for each kWh of energy sold from the Project. The other component would be a "capacity component" consisting of a specified dollar amount per kW of capacity to which each allottee is entitled during a specified time period. The energy charge and the capacity charge would be uniform with respect to all sales of energy and capacity from the Project (i.e., would not vary with the identity of the purchaser). This dual component rate design approach is a standard method of charging for electric power.

Western also proposed that the total revenue requirement amount which was to be recouped through the Base Charge would be divided between the energy component and the capacity component by applying an appropriate percentage split to the total Base Charge revenue requirement amount. Applying that percentage split to the total Base Charge revenue requirement amount would thus result in the dollar amount to be recouped through the energy component and the dollar amount to be recouped through the capacity component. The total dollar amount to be recouped from energy over the remaining years in the repayment period is then divided by the number of years remaining in the repayment period in order to calculate the estimated average annual revenue from the energy component which is required to be recouped each year. That amount of estimated average annual revenue to be recouped through the energy component is then divided by the estimated average annual energy estimated to be available in order thereby to derive an actual mills per kWh energy charge. The average annual energy estimated to be available is derived by taking the total energy expected during the remainder of the repayment period and dividing that number by the number of years remaining in the repayment period.

The total dollar amount to be recouped from capacity over the remaining years in the repayment period is divided by the number of years remaining in the repayment period in order to calculate the estimated average annual revenue required to be recouped from capacity. That average annual revenue amount is then divided by the estimated average annual capacity rating of the Project in order thereby to derive the actual dollar per kW capacity charge. The estimated average annual capacity rating of the Project is derived by taking the total capacity rating of the Project expected during the remainder of the repayment period and dividing that number by the number of years remaining in the repayment period. The capacity rating of the Project will be based on the estimated powerplant output capability with all units in service at 498 feet of net effective head or 1,951,000 kW, whichever is less.

Oversimplifying somewhat and merely by way of illustration, if the estimated average annual Base Charge revenue requirement for a year was determined to be $100 million and the appropriate percentage split were determined to be 50 percent from capacity and 50 percent from energy, then the capacity charge would be designed to recoup a total of $50,000,000 over the year and the energy charge would be designed to recover $50,000,000 over the year. Carrying the illustration further, assuming the average annual kWh available are 4,527,001,000, then the energy charge would be set at the $0.01104/kWh level needed to produce the $50,000,000 of energy charge revenue requirements ($50,000,000 ÷ 4,527,001,000 kWh = $0.01104/kWh). Similarly, assuming the average annual capacity rating is 1,951,000 kW, the capacity charge would be set at the $25.63/kW level needed to produce the $50 million of capacity charge revenue requirements ($50,000,000 ÷ 1,951,000 kW = $25.63/kW). (For the sake of simplicity, the illustration assumes an annual $/kW charge rather than a monthly $/kW charge.)

It is the determination of what is the appropriate capacity/energy percentage split (i.e., comparable to the 50–50 split in the foregoing example) to be applied to the total Base Charge revenue requirement amount which has prompted widely divergent views and prolonged controversy. That controversy arises out of the differing economic impacts which various percentage splits have upon various allottees.

Simply put, the varying economic impact arises out of the fact that the allottees have been allotted different amounts of capacity in proportion to energy under the terms of the Hoover Power Plant Act of 1984. Some allottees have been allotted large amounts of capacity relative to the amount of energy which they have been allotted. LADWP and SCE fall in this category. For those allottees it is financially advantageous to have the capacity charge as low as possible and the energy charge as high as possible. Consequently, it is advantageous to those allottees to have a relatively low percentage of total revenue requirements recouped through the capacity component and a relatively high percentage of those revenue requirements recouped through the energy component. On the other hand, some allottees have been allotted a large amount of energy relative to the amount of capacity allotted them. MWD falls in this category. For them it is financially advantageous to have the energy charge as low as possible and the capacity charge as high as possible. Consequently, it would be advantageous to them to have a high percentage of total costs allocated to capacity and a low percentage allocated to energy.

5. Description of Rate Design Proposals

In view of the prolonged nature of this rulemaking and the multiplicity of rate design proposals which were suggested, it will be helpful to briefly review the chronology of those proposals.

Western published its initial proposed General Regulations on May 17, 1985 (50 FR 20732). Those proposed regulations, while indicating that the Base Charge would contain both a capacity component and an energy component, did not specify how costs would be recovered as between the two components. Rather, those proposed regulations indicated that the manner of such division would be determined in a future public process. Similarly, no rate design for the Contribution Charge was specified or proposed in those regulations.

On June 4, 1985, Western held a public information forum with regard to the May 17th proposed General Regulations. In the course of that forum, Western mentioned three possible Base Charge rate design approaches. Those possible approaches were described as being a traditional method, where the capacity component included the fixed costs of a project and the energy component included the annualized costs; the historical (Hoover) method, where the capacity component included all of the costs associated with generating machinery and associated equipment, and the energy component included all of the costs associated with the dam and appurtenant works; and an equitable split method, where all costs would be equitably split between an energy component and a capacity component based upon a percentage split rather than attempting to put costs into various categories and formulas. Western stressed that by presenting these alternatives it did not intend to imply that they were the only alternatives it would consider or that the same method would be used for the Base Charge and the Contribution Charge.

On September 24, 1985, the Joint Allottees proposed that the Base Charge be divided 50 percent to capacity and 50 percent to energy (hereinafter "50–50 split"). The Joint Allottees cited the rate design for the Colorado River Storage Project as precedent for a 50–50 split.[7] Additionally, equitable considerations were urged in its support. Thus, the comments noted:

[7] The rate design for the Colorado River Storage Project provides for a 50–50 split but contains no contribution charge. While Western might properly take note of this rate design, it is not dispositive since it involves an unrelated project and was adopted pursuant to a different statute.

> The division of costs as between the capacity and energy components *should not favor one customer over another as will happen if a "35–65," "65–35," or more unequal, split in favor of capacity or energy is adopted.* (Emphasis added)

These comments also urged that the Contribution Charge be apportioned on a 50–50 basis. The Joint Allottees reiterated their September 24th "draft" comments with respect to the Base Charge in comments filed October 1, 1985.

On September 30, 1985, LADWP and SCE submitted comments. Essentially those comments urged that the Base Charge should be determined by using a traditional cost allocation methodology. A cost allocation study was presented which showed that the appropriate cost allocation split was 35 percent to capacity and 65 percent to energy (hereinafter "35–65 split").

On October 23, 1985, the Joint Allottees submitted supplemental comments which analyzed the elements of the Base Charge revenue requirements using traditional cost allocation principles. That analysis indicated that 70 percent of costs should be recouped from capacity charges and 30 percent from energy charges (hereinafter "70–30 split").

On November 29, 1985, Western, having reviewed all of those proposals and the comments regarding them, published its revised proposed General Regulations (50 FR 49050). Those revised regulations provided that the Base Charge revenue requirement would be collected 45 percent from the capacity charge and 55 percent from the energy charge (hereinafter "45–55 split"). As shown in Western's April 10, 1986, **Federal Register** Notice, this rate design was based upon an "equitable split" type of approach. In these same revised proposed regulations the Contribution Charge was shown as being placed 100 percent on energy.

On December 19, 1985, Western held a public comment forum with respect to its revised proposed General Regulations. The Joint Allottees presented further explanation and comment in support of the 70–30 split based upon their traditional cost allocation study. Part of this commentary related to a refinement whereby common costs which were not directly assignable to capacity or energy would be allocated in some other manner. These refinements did not materially change the 70–30 result. Spokesmen for the Joint Allottees stressed their view that Hoover was primarily a peaking, or capacity-related, facility and that, consequently, a majority of the costs associated with it should properly be recovered through capacity charges. For the stated purpose of achieving a compromise, the Joint Allottees indicated a willingness to agree to a 50–50 split on both the Base Charge and the Contribution Charge. These positions were essentially reiterated at the public comment forum of February 12, 1986, and incorporated in all subsequent Joint Allottee comments.

The LADWP–SCE position at the December 19th forum was an offer to agree to accept Western's proposed 45–55 split on the Base Charge if all other allottees would similarly agree. Further explanation of the traditional cost allocation study results in support of the 35–65 split was also presented. This group's willingness to accept Western's proposal as a compromise was expressed again at the February 12, 1986, public comment forum and in all subsequent comments.

The comments of the city of Vernon supported a 10 percent to capacity and 90 percent to energy split as reasonable in light of the value of the resource being based upon the amount of time the resource is available for use by each contractor. The more energy a contractor has to use with its capacity, the longer the resource is available. Concomitantly, so reasons the city of Vernon, the longer the resource is available for use, the more valuable it is, and since the amount of energy controls the length of availability for use, the energy component of the Base Charge should carry the largest percentage of the cost. The city did indicate that it could support the 35–65 split for the Base Charge.

Subsequent to the February public comment forum there was no significant change in the positions of the two groups with respect to the Base Charge rate design issue. The Joint Allottees did, however, in written comments received August 7, 1986, submit a proposal to continue with the 1941 General Regulations' methodology.

6. Analysis of Rate Design Proposals

As previously noted, both the Joint Allottees and the LADWP–SCE Group advocated a Base Charge rate design derived by the use of a traditional utility ratemaking cost allocation methodology. That methodology consisted of a cost classification scheme whereby each of the elements of cost set forth in Section 904.5 of these General Regulations is identified as being, in whole or in part, either capacity-related or energy-related. Under this methodology, generally fixed costs are classified as capacity costs while generally variable

costs are classified as energy costs. Capacity-related costs are accumulated as are energy-related costs. The relationship of the accumulated costs in each category as compared to the total results in the percentage "split" between capacity costs and energy costs.

The cost allocation study presented by the Joint Allottees allocated 70 percent of costs to capacity and 30 percent to energy. The LADWP–SCE Group presented a cost allocation study which allocated 35 percent of costs to capacity and 65 percent to energy. Each group offered up extensive criticism of asserted defects and shortcomings in the cost allocation study of the other group. In addition, the city of Vernon, through its expert, criticized the study of the Joint Allottees. The city of Vernon analysis distinguished the Hoover situation from that of a typical utility with multiple generating resources. According to this analysis, Hoover is an energy-constrained system. Vernon contended that because the usefulness of the capacity allotted to most allottees is limited by the amount of energy available, most Hoover costs are properly allocated to the energy component.

The cost allocation studies of the various groups put side by side point up the high degree of uncertainty involved in an attempt to apply traditional utility ratemaking principles to this Project. In fact, each of the parties which advocated the use of the traditional utility ratemaking costs allocation methodology recognized that it is necessarily reliant on judgment to some degree. The comments of the LADWP–SCE Group of January 4, 1986 (pp. 9–15), and the discussion attached to the comments of the city of Vernon of January 6, 1986 (pp. 7–18) recognize that "proper" classification of particular costs is susceptible to different interpretations and can lead to very different results. The uncertainty of the "traditional" method was aptly summarized as follows:

> The literature also observes that costs can be classified in accordance with the function to be served by the expenditure but realistically accepts the fact that costs cannot always be easily identified and quantified and, even more frequently, costs cannot easily be classified (i.e., pigeonholed into one classification or another) (Comments of Joint Allottees dated January 6, 1986, page 19).

Several considerations lead to the conclusion that the traditional cost allocation approach to the rate design of the Base Charge is not appropriate for the use in this proceeding. As previously noted, the Joint Allottees and the LADWP–SCE Group, both purporting to use the same methodology, derived widely differing results. That wide divergence in results is particularly interesting when a comparison of the respective cost allocation studies reveals that there was significant disagreement only with respect to three of the elements of cost: Payments to the states; replacements; and annual operation and maintenance (O&M) expense. It is primarily the differing treatment of the last item, annual O&M, which causes the great difference in result. That item of expense comprises approximately 60 percent of each group's projected 30-year contract period revenue requirement. The LADWP–SCE Group allocated 100 percent of this item to energy, thus failing to recognize any fixed O&M. That approach is contrary to the great weight of authority. On the other hand, the Joint Allottees arbitrarily allocated O&M expense 50 percent to capacity and 50 percent to energy. No persuasive reason for the 50–50 allocation of O&M was advanced.

In addition, as the city of Vernon and other parties recognized, the Hoover Project is not strictly comparable to the typical regulated utility operation with respect to which the traditional cost allocation principles were designed. Those differences make the application of such principles to Hoover controversial and difficult at best. For these reasons, Western has determined not to utilize the traditional cost allocation methodologies urged on it in this rulemaking.

Moreover, comparative analyses of all the suggested methods show that application of the proposed traditional rate design methods does not produce the highest level of fairness and equity among all of the allottees. The rate designs produced by those methods would benefit a select few at the expense of others. As one group observed early in these proceedings:

> The division of costs, as between the capacity and energy components, should not favor one contractor over another as will happen if a "35–65," "65–35," or more unequal, split in favor of capacity or energy is adopted (Comments of Joint Allottees dated October 1, 1985, page 5).

The Joint Allottees asserted in their May comments (page 5) that there are no disruptive consequences in abandoning the historic patterns and adopting their proposed 70–30 split. As discussed in more detail in the following section, Western's analysis does not support this view. During the next 30 years, the estimated cost of an average kWh from the Hoover Powerplant will increase by 123 percent. Neither the 70–30 split nor the 35–65 split will spread this increase in cost equitably among the allottees. For example, the 70–30 split proposal would increase the MWD rate by 69 percent, while the SCE rate would increase by 166 percent. Similarly the 35–65 split proposal would produce an increase of 127 percent for MWD, while producing only a 98 percent increase for LADWP. Western finds that magnitude of the disparity in the increases which would result from these two "extreme" proposals would be disruptive to the relative economic positions of the allottees.

The 50–50 split was proposed by the Joint Allottees as a compromise. This method fits within the "equitable split" approach of the Base Charge as originally presented by Western. This method makes no effort to classify and allocate specific items of cost to capacity or energy. The Joint Allottees' proposal is an equitable split approach where all revenue required to be collected through the Base Charge and the Contribution Charge would be charged 50 percent to sales of capacity and 50 percent to sales of energy. As such, it does not involve the classification of the costs or elements of the cost of service which resulted in the 70–30 split and 35–65 splits under the "traditional" cost allocation ratemaking approach discussed above. Rather it focuses on the results of the rate design and the extent to which those results treat each allottee fairly and equitably. Western agrees with the view that the results of a rate design are the proper focus for evaluating its merits. With respect to this particular proposal, however, Western believes that charging equal shares of the total cost to the capacity and energy components of the Base Charge and the Contribution Charge does not produce the most fair and equitable result with respect to the affected entities in this case, particularly when historical practice is introduced into the analytical process. The comparison of all suggested methods which follows will demonstrate that the interests of fairness and equity are not best served by this method nor by the traditional method proposals resulting in the 70–30 and 35–65 splits.

In their comments of August 7, 1986, the Joint Allottees proposed that the historical method (established in the 1941 General Regulations) of charging GM&E costs to capacity and D&A costs to energy could continue unchanged or could serve as a basis for charging costs to capacity and energy.[8] The suggestion

[8] In their comments of August 7, 1986, the Joint Allottees correctly pointed out that on page 12335 of

Continued

that the historical method continue unchanged fails to take into account the differences in the mode of operation under the 1941 General Regulations and under the Hoover Power Plant Act. Under the 1941 General Regulations, section 18 sets forth the application of GM&E charges. The relevant portion provides:

(b)(1) a direct charge to cover the entire cost of amortization, together with a proper share of the amortization costs of common facilities as provided in (a)(I) above, shall be paid by an allottee for the machinery and equipment installed for the sole use of such allottee;

(2) the amortization charges, including a proper share of amortization cost of common facilities as provided in (a)(I) above, for a section or sections of machinery and equipment used jointly *will be apportioned on the basis of energy taken*, both firm and secondary, within the minimum annual obligation of each allottee as the minimum considered; . . . . (Emphasis added.)

These rules were designed for the Hoover Powerplant as it was operated for the first 50 years under contracts which gave individual allottees entitlements from specific units. Of the 17 main generating units at Hoover, 11 were installed for the sole use of individual allottees, and 6 were shared units. For the 11 units which are for the sole use of individual allottees, the GM&E charge is the equivalent of a capacity charge. For the six shared units, the GM&E charge is based upon energy taken and thus appears to be an energy charge. However, because of the fact that one party, LADWP, is entitled to over 84 percent of the capacity of these shared units, the GM&E charge for the entire Hoover Powerplant is roughly equivalent to a capacity charge. That is to say, if the parties sharing the six units were to be charged on the basis of capacity entitlement rather than energy usage, the shift of costs would be less than 10 percent of the total costs of GM&E. Thus, when speaking of the original contracts, Western has treated GM&E as comparable to a capacity charge.

Under the Hoover Power Plant Act, however, no entity is entitled to the sole use of a specific unit. All allottees will have a right to capacity from the entire Hoover Powerplant, and thus, they each share all of the units. Thus, if the 1941 General Regulations governing application of GM&E were literally followed, the entire burden of GM&E costs would be based upon energy taken. Thus, all GM&E charges and all D&A charges would be allocated based upon energy. Rather than resulting in a 60 percent to capacity and 40 percent to energy split, as suggested by the Joint Allottees, the application of the historic method would result in a charge of 0 (zero) percent to capacity and 100 percent to energy. Western found this result to be inequitable and it obviously is not what the Joint Allottees had in mind. Rather, it is reasonably apparent that what the Joint Allottees had in mind was a rate design which would reflect a continuation of the capacity versus energy cost classification aspects of the 1941 Regulations. Thus capacity costs would be those types of costs which had been, or which would have been, GM&E costs under the 1941 Regulations. Energy costs would be those types of costs which had been, or which would have been, D&A costs under the 1941 Regulations.

In the analysis which follows, Western has determined that rate designs which provide for either a 70–30 split or a 50–50 split of the Base Charge and a 50–50 split of the Contribution Charge do not produce as equitable results as the rate design ultimately adopted. Since a 60–40 split of the Base Charge and a 50–50 split of the Contribution Charge falls between these two rate designs, Western concluded the 60–40 split would not be the most equitable rate design. However, although Western has determined that continued application of the existing rate design would not be appropriate, Western does believe that a fair and equitable rate should preserve in general the relative economic relationships between capacity and energy charges of the historic method. As has been stated in the Joint Allottees' comments, the historical rate design was the result of a compromise leading to the 1941 General Regulations. Western finds that this approach has operated successfully since its implementation in 1941. Western believes that a fair and equitable rate design should reasonably reflect the historic capacity/energy split and take into account the historic and prospective relative economic positions of the allottees.

In support of its view, Western notes that neither the Hoover Power Plant Act nor its legislative history contemplates a dramatic change in the positions of the allottees. While the Hoover Power Plant Act does not specify a particular rate design, the legislative history does indicate that Congress expressly considered this subject. During the House debate, Representative Boxer offered an amendment which would have required power from the Project to be sold at market rates. The amendment was rejected. The floor debates that preceded rejection of the Boxer Amendment indicate that the House consciously chose not to change the status quo. Such an intent is completely consistent with the genesis of the Hoover Power Plant Act as a settlement of the controversy surrounding allocation of power from the Project. To a large extent, the equitable nature of that settlement would be undermined by a significant change in the allocation of economic burdens among the allottees.

The Joint Allottees have also argued that since the major additional cost at the Hoover Powerplant is for the uprating program, which creates new capacity, the capacity charge should pay the additional costs, because the historic pattern will be altered (comments attached as Appendix A to CRC's May 12, 1986, comments, page 4). Western finds this argument unpersuasive. The renewal allottees agreed to blend the additional costs caused by the uprating program so that all allottees would pay for those improvements. That arrangement was reflected in the Hoover Power Plant Act. Consequently, it would depart from what the parties agreed to and from what Congress directed to argue that the renewal contractors should not share in these costs. Taking the analysis further, each of the renewal allottees will receive an amount of capacity and energy which it agreed represented a renewal of its rights under the original contract. None of the three largest California allottees is receiving a direct benefit from the uprating program. Since they are each receiving relatively the same amount of capacity and energy which they each received under the original contracts, and since the rates of each are being affected in relatively the same manner, the costs of the uprating program will be shared, as they should be, on a relatively equal basis.

7. Adopted Rate Design

During the course of the proceeding, Western reached several conclusions about what would constitute an equitable rate design for power from Hoover Dam. First, because the Hoover Power Plant Act specifically allocates very different relative amounts of energy and capacity to certain contractors, no rate design could yield

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the **Federal Register** Notice of April 10, 1986, Western inadvertently reversed the future generating machinery and equipment (GM&E) charge with the dam and appurtenant works (D&A) charge. Their statement that the GM&E charge should be 60 percent and the D&A charge should be 40 percent is correct. We conclude that this was harmless error in the text of the notice, since Western utilized the correct figures in its study which was supplied to all the contractors in the supplemental materials accompanying the April 10, 1986, **Federal Register** Notice.

the same results for all contractors in the sense of imposing precisely the same composite charge (that is, the total energy and capacity charges divided by either energy or capacity). Thus, the equitable nature of a rate design cannot be measured simply by looking for uniformity in charges, but rather must be evaluated in light of its relative effects on each contractor. Second, because the rate design must collect a statutorily specified level of revenue, there exists, in effect, a "zero-sum game" situation in which no contractor can improve its benefits except at the expense of one or more other contractors. Thus, an equitable rate design should seek to minimize the degree to which individual contractors benefit at the expense of others. Finally, the Hoover Power Plant Act represented, to a large degree, a negotiated settlement among the existing contractors over the future allocation of power from Hoover Dam. There is no indication that either Congress or the existing contractors contemplated that this settlement would give rise to any radical change in the rate treatment of the existing contractors. Thus, an equitable rate design should seek to maintain, to the extent practicable, the relative positions of the contractors which have resulted under the existing system.

Western has chosen a rate design on the basis of these conclusions. Initially, it analyzed the various rate designs to see which one would approximate most closely the historic split of costs between capacity and energy. Then, Western evaluated the degree of neutrality which each rate design displayed towards the contractors. That is, which rate design most minimized more favorable treatment for one contractor at the expense of other contractors. Finally, Western evaluated the extent to which the various rate designs maintained the existing relative positions of the contractors.

In order to approximate the rate treatment under the existing system, Western analyzed the historic split between energy and capacity costs. Historically, the Hoover rates consisted of a GM&E charge, which is comparable to a charge for capacity, and a D&A charge, which is comparable to a charge for energy. During the first 48 years of the original Hoover contracts, the application of the GM&E charge resulted in total revenues of $207,315,384 and the application of the D&A charge resulted in total revenues of $327,051,085. Thus, it can be said that capacity has historically paid 38.796 percent of the total costs, and energy has historically paid 61.204 percent of the total costs.

As noted previously, Western proposed the 45–55 split. Western proposed this rate design in part because analyses indicated the overall effect [9] of this design would approximate closely the historic split between capacity and energy. The Joint Allottees pointed out, however, that this design would result in an overall allocation of 35 percent to capacity, and 65 percent to energy, which differed from the historic cost split.

Western has decided to adopt an overall rate design which provides for a 50–50 split between capacity and energy for the Base Charge and 100 percent of the Contribution Charge on energy (Adopted Rate Design). The Adopted Rate Design results in capacity paying 38.394 percent and energy paying 61.606 percent of the Project costs over the 30-year contract period. This comes closer to the historic average capacity/energy cost split than any of the proposals, as shown by the following:

OVERALL RATE DESIGN

Base charge Contribution charge	Historical	50–50 0–100	45–55 0–100	50–50 50–50	70–30 50–50	35–65 0–100	60–40 50–50
Capacity (percent)	38.796	38.394	34.6	50	65.4	26.9	57.7
Energy (percent)	61.204	61.606	65.4	50	34.6	73.1	42.3

In evaluating the equitable nature of the Adopted Rate Design, Western has considered factors other than how closely a rate design approximates the historic split between capacity and energy costs. In particular, Western has analyzed the effects on individual contractors and especially the manner in which a rate design treats the contractors relative to one another.

Western evaluated the future economic impact on each contractor of the Adopted Rate Design and the various proposals. In order to compare their effects, Western developed an Average Annual Composite Contractor's Cost (AACCC) for each rate design. The AACCC is computed by taking the total annual estimated cost of the contractor's allocated energy and capacity and dividing by the number of kWh or kW allocated that contractor by the Hoover Power Plant Act.[10] Table A sets forth the AACCC's per kWh for each contractor under each rate design. This AACCC is a dollar per kWh amount which represents the contractor's average cost per unit of allocated energy. As such, it provides a suitable measure of cost for comparison with similarly computed amounts for other allottees.

[9] Western has evaluated the rate designs by looking at the overall effect of the Base Charge and the Contribution Charge. Isolating segments of the rate design for analytical discussion without ever viewing the whole rate design can result in an inability to assess the overall fairness and equity of the entire rate design.

[10] The AACCC's are based on the Hoover Power Plant Act allocations of capacity and firm energy and the most recently available estimated future costs. The cost data was provided by Reclamation and has been made available to each of the allottees. Although the cost numbers used are the best available, they do not necessarily reflect the actual and estimated costs which will be used to calculate the charges after June 1, 1987.

TABLE A.—SUMMARY COMPARISON OF ECONOMIC IMPACT ANALYSIS, BOULDER CANYON PROJECT, PROPOSED CONTRACTOR'S ESTIMATED AVERAGE ANNUAL COMPOSITE CONTRACTOR'S COST (AACCC PER KWH) [1] on the Basis of Allocated Firm Energy for Future 30-YEAR CONTRACT PERIOD

Proposed contractor	AACCC under 35-65 split [2]	AACCC under 70-30 split [3]	AACCC under 50-50 split [4]	AACCC under 45-55 split [5]	AACCC under adopted rate design [6]
Banning	$0.01643	$0.02226	$0.01975	$0.01768	$0.01831
Colton	0.01449	0.01773	0.01632	0.01520	0.01555
Azusa	0.01488	0.01863	0.01700	0.01569	0.01610
Burbank	0.01454	0.01784	0.01641	0.01526	0.01562
Vernon	0.01477	0.01837	0.01681	0.01555	0.01594
Riverside	0.01464	0.01807	0.01658	0.01539	0.01576
Anaheim	0.01464	0.01807	0.01658	0.01539	0.01576
Pasadena	0.01120	0.00999	0.01047	0.01096	0.01084
Glendale	0.01084	0.00916	0.00984	0.01051	0.01032
Boulder City	0.01062	0.00887	0.00967	0.01022	0.01002
SCE	0.01725	0.02421	0.02122	0.01875	0.01949
LADWP	0.01413	0.01687	0.01567	0.01473	0.01503
CRC	0.01145	0.01090	0.01123	0.01128	0.01120
APA	0.01409	0.01415	0.01412	0.01411	0.01412
MWD	0.01017	0.00759	0.00864	0.00964	0.00938

[1] AACCC per kWh is equal to the contractor's total estimated cost which is the resultant of the following formula: [the contractor's allocated capacity (kW)] multiplied by [the capacity charge (cost per kW)]; plus, [the contractor's allocated firm energy (kWh)] multiplied by [the energy charge (cost per kWh)]; plus, [the contractor's estimated total Contribution Charge]; and that sum divided by [the contractor's allocated firm energy (kWh)].

[2] 35-65 split=Base Charge of 35 percent on Capacity and 65 percent on Energy, with 100 percent of Contribution Charge on Energy.

[3] 70-30 split=Base Charge of 70 percent on Capacity and 30 percent on Energy, with 50 percent of Contribution Charge on Energy and 50 percent on Capacity.

[4] 50-50 split=Base Charge of 50 percent on Capacity and 50 percent on Energy, with 50 percent of Contribution Charge on Energy and 50 percent on Capacity.

[5] 45-55 split=Base Charge of 45 percent on Capacity and 55 percent on Energy, with 100 percent of Contribution Charge on Energy.

[6] Adopted Rate Design=Base Charge of 50 percent on Capacity and 50 percent on Energy, with 100 percent of Contribution Charge on Energy.

Table A sets forth composite annual costs to each contractor (for economic comparison) which are based on allocated energy (that is, total cost per allocated kWh). Some parties suggested that the comparison of the economic impacts among the allottees should instead be based on capacity (that is, total cost per kW). Western recognizes that Hoover Dam is a very versatile resource that can serve as a peaking facility for some customers and a base-load facility for other customers. Indeed, during the negotiations which led to the settlement embodied in the Hoover Power Plant Act, the allottees sought and agreed to different relative amounts of energy and capacity largely on the basis of whether they wanted power from Hoover Dam for peaking functions or for base-load functions. Those allottees which wanted to use their Hoover allocation for peaking functions generally sought a relatively large allocation of capacity compared to their allocation of energy. That combination allows an allottee to use its relatively large amount of capacity for all or part of the relatively short duration of one or more peaks. Those allottees which wanted to use their Hoover allocation for functions more in the nature of base-load operations sought amounts of capacity and energy which would complement each other and allow an allottee to use its capacity allocation over a relatively large percentage of the time. As a consequence of the different ways in which allottees view and utilize power from Hoover Dam, a comprehensive view of its value can be obtained by looking at the total costs to individual allottees both in terms of allocated energy and in terms of allocated capacity. For purposes of further comparison, Table B sets forth composite annual costs to each contractor which are based on capacity. The numbers in Table B were derived in the same way as the numbers in Table A except that a contractor's total costs were divided by the number of kW rather than divided by the number of kWh allocated.

TABLE B.—SUMMARY COMPARISON OF ECONOMIC IMPACT ANALYSIS, BOULDER CANYON PROJECT, PROPOSED CONTRACTOR'S ESTIMATED AVERAGE ANNUAL COMPOSITE CONTRACTOR'S COST (AACCC kW)[1] ON THE BASIS OF ALLOCATED CAPACITY FOR FUTURE 30-YEAR CONTRACT PERIOD

Proposed contractor	AACCC under—				
	35-65 split[2]	70-30 split[2]	50-50 split[2]	45-55 split[2]	Adopted rate design[2]
Banning	16.42	22.26	19.75	17.68	18.31
Colton	19.32	23.63	21.75	20.26	20.73
Azusa	18.60	23.29	21.25	19.62	20.13
Burbank	19.22	23.59	21.68	20.17	20.65
Vernon	18.80	23.38	21.39	19.79	20.29
Riverside	19.03	23.50	21.55	20.00	20.49

TABLE B.—SUMMARY COMPARISON OF ECONOMIC IMPACT ANALYSIS, BOULDER CANYON PROJECT, PROPOSED CONTRACTOR'S ESTIMATED AVERAGE ANNUAL COMPOSITE CONTRACTOR'S COST (AACCC kW)[1] ON THE BASIS OF ALLOCATED CAPACITY FOR FUTURE 30-YEAR CONTRACT PERIOD—Continued

Proposed contractor	AACCC under—				
	35-65 split[2]	70-30 split[2]	50-50 split[2]	45-55 split[2]	Adopted rate design[2]
Anaheim	19.03	23.50	21.55	20.00	20.49
Pasadena	34.55	30.83	32.28	33.82	33.45
Glendale	38.96	32.91	35.34	37.75	37.14
Boulder City	42.50	35.48	38.68	40.90	40.10
SCE	15.59	21.87	19.17	16.94	17.61
LADWP	20.10	24.00	22.29	20.95	21.38
CRC	32.12	30.58	31.50	31.66	31.43
APA	32.06	32.21	32.13	32.11	32.13
MWD	53.10	39.60	45.12	50.34	48.96

[1] AACCC per kW is equal to the contractor's total estimated cost which is the resultant of the following formula: [the contractor's allocated capacity (kW)] multiplied by [the capacity charge (cost per kWh)]; plus, [the contractor's allocated energy (kWh)] multiplied by [the energy charge (cost per kW)]; plus, [the contractor's estimated total Contribution Charge]; and that sum divided by [the contractor's allocated capacity (kW)].

[2] See footnotes 2-6 of Table A for descriptions of the Rate Designs.

In order to evaluate more thoroughly and clearly the information in Tables A and B, Graphs A and B were prepared which depict the data in Tables A and B, respectively. The vertical axis of each graph indicates the AACCC, while the numbered points on the horizontal axis represent the 15 individual contractors. The effects of each of the various rate designs were graphed by connecting the points which represent the AACCC's of each of the 15 contractors under each particular rate design. Chart A sets forth the identities of the contractors shown by number on the horizontal axis of Graphs A and B, as well as the amounts of energy (kWh) and capacity (kW) allocated to each contractor.

Graphs A and B show that no rate design results in all, or even most, contractors paying approximately the same AACCC on either an energy or a capacity basis. Rather, each rate design results in widely varying AACCC's. The graphs also show that, in most cases, the contractors generally maintain their relative positions vis-a-vis one another, regardless of which rate design is used. Moreover, the tables show that those contractors which have relatively high AACCC's on an energy basis have relatively low AACCC's on a capacity basis and vice versa. These results are a direct consequence of the Hoover Power Plant Act's allocating very different amounts of capacity relative to energy to certain contractors. Given those statutory allocations, no rate design could treat all contractors exactly the same (that is, yield the same AACCC).

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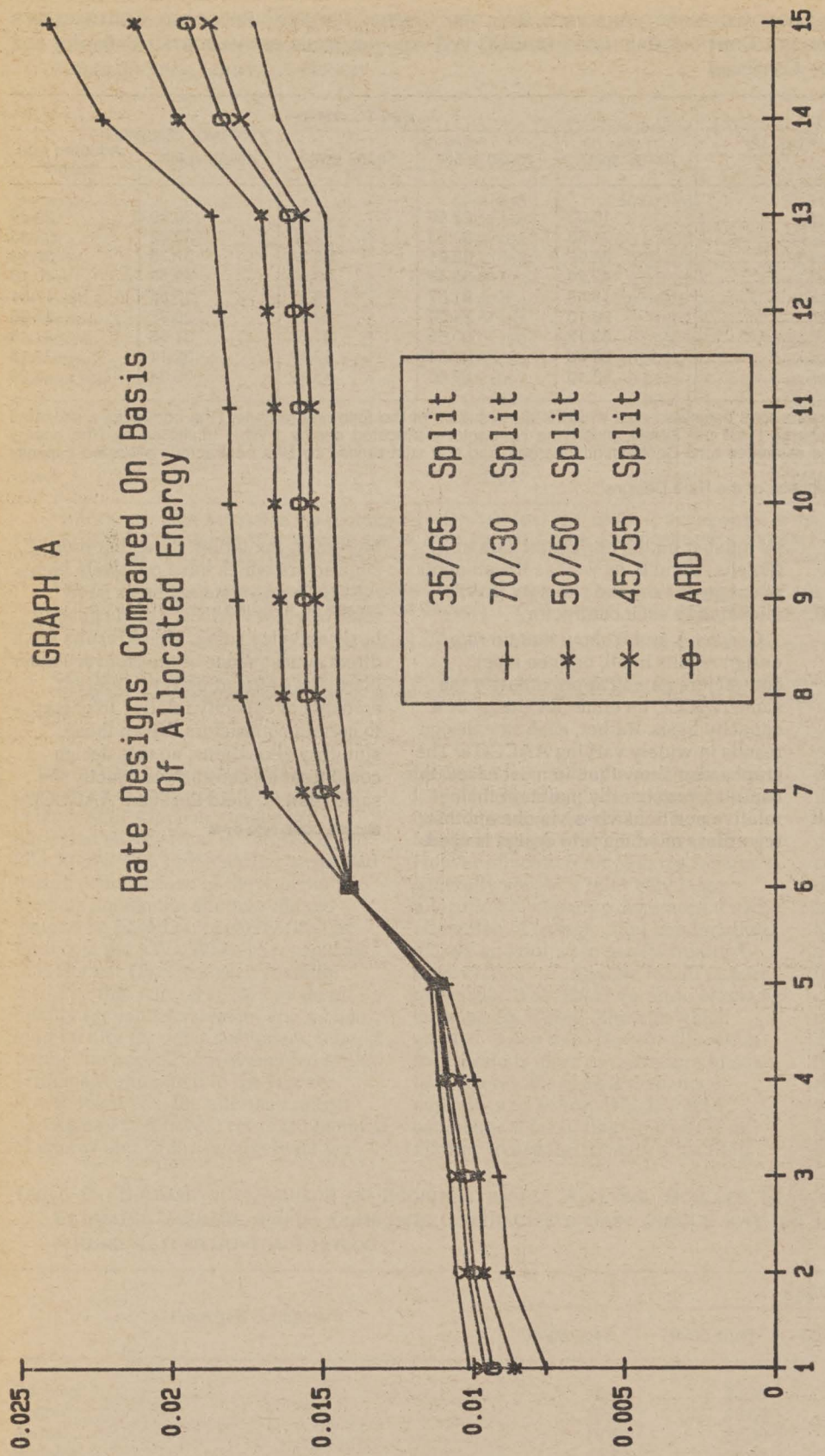
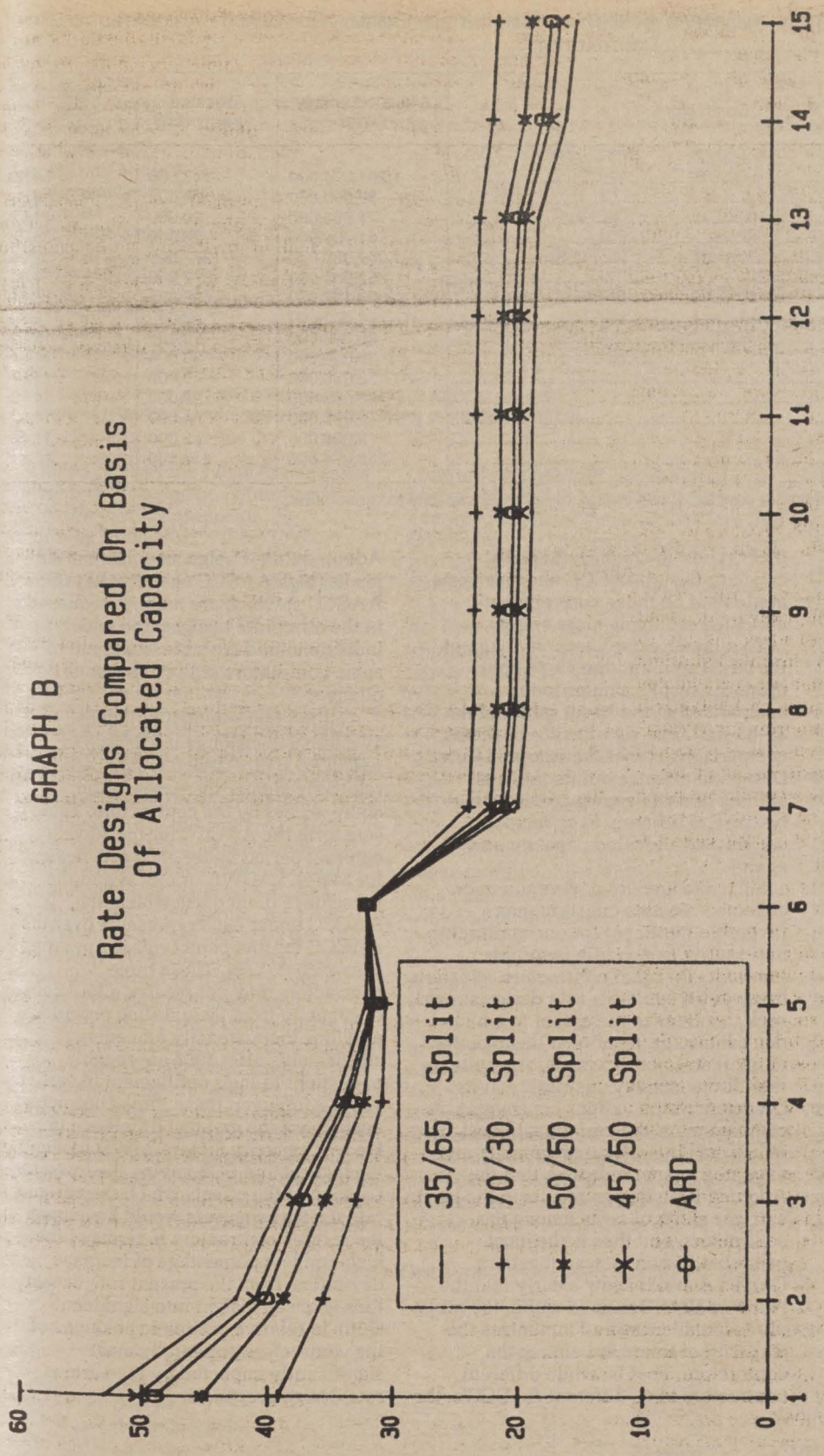

GRAPH A
Rate Designs Compared On Basis
Of Allocated Energy
35/65 Split
70/30 Split
50/50 Split
45/55 Split
ARD
0.025
0.02
0.015
0.01
0.005
0
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15



BILLING CODE 6450-01-C

CHART A.—IDENTIFICATION OF CONTRACTORS ON GRAPHS A AND B; AND AMOUNTS OF ENERGY AND CAPACITY ALLOCATED TO EACH CONTRACTOR

Designation on graphs	Contractor	Allocated energy (kWh)	Allocated capacity (kW)	Capacity factor [1] (percent)
1	MWD	1,291,974,000	247,500	59.59
2	Boulder City	80,000,000	20,000	45.66
3	Glendale	71,862,000	20,000	41.02
4	Pasadena	61,700,000	20,000	35.22
5	CRC	1,057,989,000	377,000	32.04
6	APA	857,989,000	377,000	29.68
7	LADWP	698,193,000	490,875	16.24
8	Colton	4,000,000	3,000	15.22
9	Burbank	26,600,000	20,125	15.09
10	Riverside	39,000,000	30,000	14.84
11	Anaheim	52,000,000	40,000	14.84
12	Vernon	28,000,000	22,000	14.53
13	Azusa	5,000,000	4,000	14.27
14	Banning	2,000,000	2,000	11.42
15	SCE	250,694,000	277,500	10.31

[1] The Capacity factor is the percentage of time a contractor has energy to utilize its capacity for generation.

Graphs A and B, however, do show that the rate designs vary in the level of equity and fairness they achieve. Specifically, the more favorably a rate design treats some contractors (that is, lower AACCC's), the less favorably it treats the other contractors (that is, higher AACCC's). An examination of how various rate designs affect MWD and SCE illustrates this point.[11]

Compared to the other rate designs, the 70–30 split results in the lowest energy- or capacity-based AACCC for MWD and the highest energy-or capacity-based AACCC for SCE, while the 35–65 split results in the highest energy- or capacity-based AACCC for MWD and the lowest energy-or capacity-based AACCC for SCE. The reason for these results is clear. The 70–30 split loads costs on capacity and thus favors those contractors which are allocated relatively more energy than capacity, such as MWD. On the other hand, the 35–65 split loads costs on energy and thus favors those contractors which are allocated relatively more capacity than energy, such as SCE.

When the AACCC's of MWD and SCE are compared, the tilting effects of the 70–30 split and the 35–65 split become evident. The 70–30 split produces the greatest divergence between the lowest (MWD's) and the highest (SCE's) energy-based AACCC's because costs are loaded on those contractors allocated relatively more capacity. Likewise, the 35–65 split produces the greatest divergence between the lowest (SCE's) and the highest (MWD's) capacity-based AACCC because costs are loaded on those contractors allocated relatively more energy.

To a lesser extent, a comparison of the 50–50 split and the 45–55 split produces results similar to the comparison of the 70–30 split and the 35–65 split. The significance of these comparisons is that the Adopted Rate Design, in effect, exhibits the least shifting of costs among contractors because of differences in relative amounts of allocated capacity and energy.

Since the amount of revenue to be collected remains constant, more favorable treatment for one contractor necessarily means less favorable treatment for other contractors. Western believes an equitable rate design should seek to minimize the extent to which one contractor benefits at the expense of another. In other words, an equitable rate design displays neutrality in its treatment of the various contractors. A comparison of the various rate designs in light of both allocated capacity and allocated energy indicates that the Adopted Rate Design results in the least extreme shifts of costs among the contractors, and thus is the most equitable. When viewed together, Graphs A and B show clearly that the Adopted Rate Design is within the range of reasonableness and minimizes the disparity of treatment among the contractors. That is, while different contractors have different AACCC's, the Adopted Rate Design smooths out the peaks (high AACCC's) and valleys (low AACCC's) which are more pronounced in the other rate designs and which indicate more favorable treatment of some contractors at the expense of others.

Another factor which influenced Western's decision is the degree to which each rate design would result in relatively similar increases in the charges paid by the contractors. Table C sets forth the AACCC for the 30-year contract period under each rate design for MWD, LADWP, and SCE and the percentage of increase which the AACCC under each represents over the AACCC for that contractor in operating year 1986 (OY86). These three contractors may not receive allocations of capacity from the uprating program, and thus their capacity and energy entitlements after 1987 are roughly equivalent to their entitlement in earlier years. Moreover, these three contractors encompass the greatest difference in Hoover capacity factors, MWD having the highest and SCE having the lowest. Looking at the effects which the various rate design proposals would have upon these three contractors in terms of the high and low percentage of increase deviations from the present rate design thus gives an insight into significant shifts in relative economic positions of the contractors potentially most significantly impacted by the various rate design proposals.

[11] Western chose MWD and SCE for this illustration because they are renewal contractors, they do not receive any of the uprating program capacity, and because they represent the greatest difference in the capacity factors.

TABLE C.—OPERATING YEAR 1986 (OY86) VS. POST 1987-AACCC PER KWH [1]

	Plant average	MWD	LADWP	SCE	High-low factor deviation
Actual OY86 rate	$0.00555	$0.00439	$0.00744	$0.00869	
Adopted rate design [2]	$0.01240	$0.00938	$0.01503	$0.01949	
Increase factor (percent)	123	114	102	124	22
45-55 split [2]	$0.01240	$0.00964	$0.01473	$0.01875	
Increase factor (percent)	123	120	98	116	22
50-50 split [2]	$0.01240	$0.00864	$0.01567	$0.02122	
Increase factor (percent)	123	97	111	144	47
35-65 split [2]	$0.01240	$0.01017	$0.01413	$0.01725	
Increase factor (percent)	123	132	90	99	33
70-30 split [2]	$0.01240	$0.00759	$0.01687	$0.02421	
Increase factor (percent)	123	73	127	179	106

[1] See footnote 1 of Table A for the definition of AACCC per kWh.
[2] See footnotes 2-6 of Table A for descriptions of the rate designs.

Table C shows the range of increases for each of the selected contractors under the various proposals, as compared to the AACCC for OY86, which is the most current reflection of the relative economic positions of these contractors. Table C shows that Western's Adopted Rate Design and the 45-55 split produce the least deviation. The Adopted Rate Design thus maintains the current relative economic relationships of these contractors as well as the 45-55 split and better than the other three rate proposals. However, the results shown in Table C are not completely accurate. For one thing, there are differences in the amount of firm energy which each contractor received in OY86 and the amount of allocated firm energy which each will receive during the post-1987 period. In OY86 LADWP received 645,362,474 kWh of firm energy, whereas in the post-1987 period its allotted firm energy will be 698,193,000 kWh. In OY86 MWD received 1,378,172,262 kWh, while in the post-1987 period its allotted firm energy will be 1,291,974,000 kWh. And in OY86 SCE received 269,118,088 kWh, whereas in the post-1987 period its allotted firm energy will be 250,694,000 kWh. Table C does not make any adjustments to account for these differences. Because of these differences, each contractor has a different AACCC than it would if it had received its post-1987 allocation of energy. Moreover, a review of firm energy receipts by these contractors in OY86 and previous years does not show a constant relationship between the receipts of these contractors from one year to the next. For example, in OY86 the firm energy receipts of SCE were approximately 19% of the firm energy receipts of MWD and the firm energy receipts of LADWP were approximately 47% of those of MWD. In OY83, however, the firm energy receipts of SCE were approximately 39% of those of MWD and the firm energy receipts of LADWP were approximately 71% of those of MWD. Due to the fluctuating relationship in the energy receipts (and consequently in their firm energy costs) on a year-to-year basis of the contractors, the results of the comparisons presented in Table C are skewed to reflect the particular relationship in firm energy receipts which happened to exist in OY86. Table D adjusts the AACCC of each contractor in order to eliminate variations in energy receipts (and consequently costs) and thus to permit a meaningful comparison of the change in the relative economic positions of these contractors.

Therefore, the actual OY86 AACCC of each of these contractors was adjusted in order to reflect the cost of the amount of firm energy which each will receive in the post-1987 period. Specifically, the actual OY86 AACCC of each was recomputed assuming that each had had firm kWh receipts in OY86 in the amount of the post-1987 firm kWh allotted to it. The actual OY86 total firm energy cost of each was adjusted to reflect the cost derived by multiplying the adjusted kWh receipts of each by its actual OY86 average firm energy rate. The adjusted firm energy cost for each contractor was then added to that contractor's actual OY86 capacity costs (generating charges) and the total was then divided by that contractor's post-1987 firm kWh allotment. Western believes that the comparison shown in Table D of that adjusted OY86 AACCC for each of these three contractors with the AACCC of each under the various proposed rate designs is a more meaningful comparison than that presented in Table C since the results are not skewed to reflect random variations in the amounts of energy actually received in OY86. Of course, the AACCC's for the proposed rate designs are computed in part on the post-1987 energy allocations. The use of adjusted OY86 AACCC's permits a better comparison since each contractor is treated as receiving the same amount of energy in OY86 as it is allocated in the post-1987 period.

TABLE D.—ADJUSTED OPERATING YEAR 1986 (OY86) VS. POST 1987-AACCC PER KWH [1]

	MWD	LADWP	SCE	High-low factor deviation
OY86 rates (adjusted)	$0.00448	$0.00712	$0.00910	
Adopted rate design [2]	$0.00938	$0.01503	$0.01949	
Increase factor (percent)	109	111	114	5
45-55 split [2]	$0.00964	$0.01473	$0.01875	
Increase factor (percent)	115	107	106	9
50-50 split [2]	$0.00864	$0.01567	$0.02122	
Increase factor (percent)	93	120	133	40

TABLE D.—ADJUSTED OPERATING YEAR 1986 (OY86) VS. POST 1987-AACCC PER KWH[1]—Continued

	MWD	LADWP	SCE	High-low factor deviation
35-65 split[2]	$0.01017	$0.01413	$0.01725	
Increase factor (percent)	127	98	90	37
70-30 split[2]	$0.00759	$0.01687	$0.02421	
Increase factor (percent)	69	137	166	97

[1] See footnote 1 of Table A for the definition of AACCC per kWh.
[2] See footnotes 2-6 of Table A for descriptions of the rate designs.

Table D shows that Western's Adopted Rate Design results in the lowest amount of deviation from the adjusted OY86 rates. It thus shows that the Adopted Rate Design results in more closely maintaining those contractors in the same relative current economic positions than do the other proposals.

Similarly, Table E shows that the Adopted Rate Design results in the lowest amount of deviation from adjusted OY86 rates when the comparison is made on a dollar per kilowatt basis, rather than on a dollar per kilowatthour basis. The adjusted OY86 dollar per kilowatt rates shown in Table E for each contractor were derived from the same OY86 adjusted composite cost of power (i.e., energy and capacity) for each which was used in deriving the adjusted rates shown in Table D. Thus, the actual OY86 firm energy costs of each contractor were adjusted in the very same manner which was explained in the discussion of Table D and with the same resultant adjusted cost of firm energy. The adjusted firm energy cost of the contractor was then added to the actual OY86 capacity charges of the contractor and the sum divided by the kilowatts of capacity of the contractor (i.e., the same number of contingent capacity kilowatts as are allocated to each pursuant to the Hoover Power Plant Act) in order to derive a dollar per kilowatt composite cost of power.

TABLE E.—ADJUSTED OPERATING YEAR 1986 VS. POST 1987-AACCC PER KW[1]

	MWD	LADWP	SCE	High-low factor deviation
OY86 rates (adjusted)	$23.36	$10.12	$8.22	
Adopted rate design[2]	$48.95	$21.38	$17.61	
Increase factor (percent)	110	111	114	4
45-55 split[2]	$50.34	$20.95	$16.94	
Increase factor (percent)	115	107	106	9
50-50 split[2]	$45.12	$22.29	$19.17	
Increase factor (percent)	93	120	133	40
35-65 split[2]	$53.10	$20.10	$15.59	
Increase factor (percent)	127	99	90	37
70-30 split[2]	$39.60	$24.00	$21.87	
Increase factor (percent)	70	137	166	96

[1] See footnote 1 of Table B for the definition of AACCC per kW.
[2] See footnotes 2-6 of Table A for descriptions of the rate designs.

As previously noted the basis for comparison in Tables C, D, and E is OY86 rates (Table C) or adjusted OY86 rates (Tables D and E). Western recognizes, however, the difficulty in choosing a particular year for which AACCCs could be developed and used as an historical basis for comparison with the AACCCs developed in Table A with respect to the 30-year future contract period. For example, if OY84 rates were used as a basis for comparison in Table C, the Adopted Rate Design would produce the lowest percentage deviation, while if OY85 rates were used, that would not be the case. The inconsistency in results arises primarily from two factors. The major factor is that the firm energy allocations of the contractors under the present arrangements are a percentage of a mathematically defined number of kWh which are reduced by a constant amount of kWh from year to year. Therefore, the variations in the quantity of firm energy receipts are such that there is not a constant relationship among the quantities of firm energy received by the three allottees from one year to the next due to the reducing percentage of defined firm energy declared to be available in concert with the annual change in the cost per firm kWh. The absence of such a constant relationship necessitates the adjustments to firm energy quantities and costs, which adjustments have been described in the discussion of Table D. Also, because some contractors are entitled to particular generating sections and due to the way GM&E charges are computed, extraordinary O&M expense in a given year on a particular generating section can directly and significantly affect the AACCC of such contractor.

The adjustments to the OY86 firm energy costs, which adjustments are reflected in the Adjusted Rates shown in Tables D and E, eliminate the variations in composite cost which are attributable to variation in firm energy cost due to the variation in relative firm energy receipts, but do not eliminate variations in relative costs which might be attributable to extraordinary O&M expense on generating sections. Therefore, a decision was made to make comparisons based on adjusted average composite rates of the three contractors where such average composite rates were for a ten year period. A comparison based upon adjusted 10-year average composite rates should

tend to mitigate any difference in results which would be attributable to extraordinary O&M expense on a particular generating section in a particular year or years, by making the effects of such less pronounced and by a balancing out process. Moreover, when Congress and the allottees contemplated the settlement embodied in the Hoover Power Plant Act, their frame of reference was rate treatment generally during recent years. Thus, a comparison based upon the previous decade would reflect generally the assumptions which underlie the adoption of the Hoover Power Plant Act.

The amount of deviation among the three contractors under the various proposed rate designs was examined when composite rates resulting under those rate designs were compared with a 10-year average adjusted composite rate for each contactor for the most recent ten years 1977–1986. This comparison was made on both an energy (composite cost per kWh) and a capacity (composite cost per kW) basis. In both cases, as is shown in Tables F and G, the Adopted Rate Design resulted in the lowest percentage amount of deviation.

Table F shows the comparison on an energy, or composite cost per kWh basis. The actual firm energy cost of each contractor was adjusted for each year in the ten year period, in the same manner as has been described in the discussion of Table D. The adjusted energy cost for the year was then added to the actual capacity charges for that year to produce an adjusted composite cost of power for that year. That adjusted composite cost of power was then divided by the kilowatthours of firm energy allotted to the contractor by the Hoover Power Plant Act. The resulting ten annual adjusted composite cost per kWh amounts for the contractor were then totalled and divided by ten to produce the 10-year average adjusted composite cost rate for that contractor which is shown in Table F.

TABLE F.—ADJUSTED 10-YEAR AVERAGE AACCC (1986–1977) [1] VS. POST 1987-AACCC ON A DOLLAR/KWH BASIS

	MWD	LADWP	SCE	High-low factor deviation
10-year average rates (adjusted) (OY86–OY77)	$0.00382	$0.00570	$0.00805	
Adopted rate design [2]	$0.00938	$0.01503	$0.01949	
Increase factor (percent)	146	164	142	22
45–55 split [2]	$0.00964	$0.01473	$0.01875	
Increase factor (percent)	152	159	133	25
50–50 split [2]	$0.00864	$0.01567	$0.02122	
Increase factor (percent)	126	175	164	49
35–65 split [2]	$0.01017	$0.01413	$0.01725	
Increase factor (percent)	166	148	114	52
70–30 split [2]	$0.00759	$0.01687	$0.02421	
Increase factor (percent)	99	196	201	102

[1] See footnote 1 of Table A for the definition of AACCC per kWh.
[2] See footnotes 2–6 of Table A for descriptions of the rate designs.

Table G shows the same type of 10-year average comparison shown in Table F except on a capacity, or per kW basis. The same adjusted composite cost of power which was developed for each contractor for each of the 10 years for use in Table F was used in developing the adjusted ten year average composite rates in Table G. Each annual adjusted composite cost of power (i.e., adjusted cost of firm energy plus actual capacity charges) was divided by the number of kilowatts of contingent capacity allotted to the contractor in question by the Hoover Power Plant Act. The resulting ten adjusted composite cost per kilowatt amounts for each contractor were then totalled and divided by 10 in order to derive the ten year average adjusted composite dollar per kW rate shown for that contractor on Table G.

TABLE G.—ADJUSTED 10-YEAR AVERAGE AACCC (1986–1977) [1] VS. POST 1987-AACCC ON A DOLLAR/KW BASIS

	MWD	LADWP	SCE	High-low factor deviation
10-year average rates (adjusted)	$19.93	$8.10	$7.27	
Adopted rate design [2]	$48.96	$21.38	$17.61	
Increase factor (percent)	146	164	142	22
45–55 split [2]	$50.34	$20.95	$16.94	
Increase factor (percent)	153	159	133	26
50–50 split [2]	$45.21	$22.29	$19.17	
Increase factor (percent)	126	175	164	49
35–65 split [2]	$53.10	$20.10	$15.59	
Increase factor (percent)	166	148	114	52
70–30 split [2]	$39.60	$24.00	$21.87	
Increase factor (percent)	99	196	201	102

[1] See footnote 1 of Table B for the definition of AACCC per kW.
[2] See footnotes 2–6 of Table A for descriptions of the rate designs.

Given the Project's historical cost pattern, the historic relative economic relationships of the allottees, and the prospective allocation of costs, Western has concluded, after careful consideration, that the Adopted Rate

Design is the most fair and equitable of all the proposals and is a proper exercise of Western's administrative discretion. Accordingly, Western is changing the percentage split of the Base Charge in section 904.7 of the General Regulations, as published on November 29, 1985, to reflect the Adopted Rate Design.

8. Other Comments

Additional changes have been made to the development of the capacity and energy components of the Base Charge. Paragraph (b) has been modified to indicate that the capacity component will be a dollar-per-kilowattmonth amount applied to each contractor's capacity amount. The dollar-per-kilowattmonth will be based on the estimated revenue requirements of the capacity component, divided by the total estimated capacity rating of the Hoover Powerplant, divided by 12. The kW rating will be based on the powerplant output capability with all units in service at 498 feet of net effective head or 1,951,000 kW, whichever is less. The development of the energy component has also been modified. The determination for the charge per kWh has been changed from a charge being based on "total Firm Energy" to "total kilowatthour."

Western, in accordance with RA 6120.2, will prepare an annual repayment study to determine the adequacy of the then-effective rates to ensure recovery of all financial obligations over the remaining years of the Project repayment period. Whenever the repayment study shows that the repayment requirements are not being met, action will be taken to prepare and recommend a plan to be implemented at the next practicable time to satisfy the repayment requirements. If it is determined that a rate adjustment is required, Western will initiate a formal rate adjustment proceeding.

In developing the charge per unit, Western will utilize the criteria specified in RA 6120.2. Specifically, in determining the cost per kWh, Western will utilize energy quantities determined by reservoir operation studies based on historical stream flow studies prepared by Reclamation. The estimated energy quantities for the remaining repayment period will be used in estimating future revenues for the Project. In the absence of power quantity projections available from hydrology studies, Western will utilize the allocation of energy specified in the Hoover Power Plant Act.

In its August 7, 1986, comments, the Joint Allottees suggested that in the event of deficiencies or excesses in revenues assignable in any one year to either the capacity or energy cost component, these deficiencies or excesses must be charged or credited to the same component in future years. Section 904.7 has been modified to provide that the only time there can be a deficiency in capacity revenue is during the uprating period or in a situation where the output of the plant is significantly reduced. The determination of the level of such "significant reduction" is left to the electric service contract negotiation. Western believes that properly setting the level at which capacity revenues are reduced will make the occurrence of such reductions extremely rare. It should be noted that because there will not be a charge for excess capacity, there cannot be any significant excess of revenues collected by the capacity charge. Energy projections are based on average hydrologic forecasts for the repayment period, and the energy rates are calculated accordingly. Thus, the rate is based on a forecast of average energy to be produced over the repayment period. Since these energy forecasts are based upon long-term averages, deficiencies and excesses should occur in equal amounts. These deficiencies and excesses should offset each other over the Project repayment period. In the early years of the contract there will be an overcollection on the energy component because of the excess energy that will be generated due to the high levels of the reservoirs on the Colorado River. This overcollection on the energy component will be shared equally by capacity and energy components in future years and will result in a reduction in the amounts required of both components in later years. While this occurrence will be to the advantage of those contractors with large amounts of capacity relative to energy, there are offsetting factors. The benefits of integrating the operation of the Boulder Canyon Project with other Federal Projects, which is referred to in section 904.5(g) of these regulations, will be produced from use of capacity for shaping, firming, and supplying spinning reserves. These activities will involve use of capacity but, because all of the energy from the Project is allocated, will not use energy from the Project. These benefits, although produced exclusively from capacity, will be credited in the same manner as the overcollection for energy and thus will benefit both capacity and energy components equally. Based upon the foregoing, Western has concluded that it is neither necessary nor desirable to adopt the Joint Allottees' proposal.

Another change made to this section 904.7 concerns the application of the energy component. During contract negotiations, the allottees requested that lay off of energy provisions be included in the contract (see discussion of section 904.11, Lay Off of Energy). The language proposed by an allottee provides that each contractor will continue to be obligated to pay for energy available to that contractor. The application of the energy component of the Base Charge was modified to reflect this obligation.

Section 904.8 has been modified to clarify that the Contribution Charge will not be applied to energy purchased at the contractor's request. This clarification was added because one commentor pointed out that the revised proposed General Regulations did not specifically address firming energy. The commentor further stated the Contribution Charge requirement did not apply to firming energy. Western has been convinced by the commentor's arguments and has added the above-noted provision to the General Regulations. In addition, discussions in the contract negotiations have indicated that it may be necessary to purchase energy from other resources in order to provide a non-Federal funding contractor with the credits to which it is entitled. Such purchases, if necessary, also would not be subject to the Contribution Charge.

Section 904.9 Excess Capacity

The comments submitted concerning excess capacity at the Project were made by the two major commenting groups, the Joint Allottees and the LADWP-SCE Group. The Joint Allottees contended that any excess capacity generated at the Project during the 30 year contract period rightfully belonged to the contractors and that Western was not authorized by law to use any such excess capacity to integrate the Hoover Project with other Federal projects on the Colorado River. This group did, however, indicate a willingness to negotiate with Western to allow some portion of any excess capacity to be retained by Western for Project integration purposes. In support of their position regarding Western's lack of legal authority to determine that available excess capacity should be used for integration purposes, the Joint Allottees offered an analysis and construction of various provisions of the Boulder Canyon Project Act of 1928, the Boulder Canyon Adjustment Act, the Reclamation Project Act of 1939, the Act of May 28, 1954 (68 Stat. 143), the Colorado River Basin Project Act, the Colorado River Storage Project Act, and the Hoover Power Plant Act.

In contrast, the LADWP–SCE Group concluded that disposition of any capacity in excess of 1,951,000 kW, the amount statutorily allocated by the Hoover Power Plant Act, is properly a matter of Western's administrative discretion. Further, they conclude that the contractors have no statutory right to any capacity in excess of 1,951,000 kW.

Logically, an important foundational point for this issue is the ownership of the Project. Congress addressed this point in clear, concise terms in the Project Act, which states:

> The title to said dam, reservoir, plant, and incidental works shall forever remain in the United States, and the United States shall, until otherwise provided by Congress, control, manage, and operate the same . . . (43 U.S.C. 617e).

There is no dispute over who owns, controls, manages, and operates this Project. Congress has not deemed it necessary to change the above mandate for the Federal role in this Project. The contractors are contractors of the Project, paying for, and receiving capacity and energy from this Project (a status not uncommon to the utility industry as a whole). Some commentors seem to believe that because the contractors have purchased output of the Project in the past, and the money they paid was used to repay the Federal investment, this gave them the equivalent of an equity position in the Project. The above citation demonstrates that this is not the intent of Congress.

Western's position is that the contractors' rights to power from the Project are established by the Hoover Power Plant Act which makes specific allocations in the schedules set forth in section 619a. The allocations contained in Schedules A and B are expressed specifically in kW for capacity and kWh for energy. The allocations of Schedule A provide each of the nine renewal allottees a specified number of kW of capacity and, by season, a specified amount of kWh of energy. No mention is made in Schedule A of any excess Project capacity. It is significant that the allocations are made in terms of specific amounts of capacity and energy, rather than in terms of percentages of Project output.

The allocations contained in Schedule B are stated in specific amounts of kW of capacity and kWh of energy for the States of Arizona, California, and Nevada. Schedule B also makes no mention of any excess capacity of the Project. Again it is significant that the allocations of uprating program capacity are made in terms of specific amounts of capacity, rather than in terms of percentages of the resulting increased capacity. If Congress had intended to direct every kW of capacity resulting from the uprating program exclusively to the three states specified, Congress would have made allocations in terms of percentages of resulting uprating program capacity or would have included a clear affirmative indication that any excess capacity was to go to the allottees. Congress did neither. The Joint Allottees emphasize that Congress provided that any funds advanced for the uprating program by the non-Federal entities, plus interest thereon, were to be returned to those entities during the contract period through credits. That feature of the statute does not demonstrate that the contractors were to become owners of equity interests in any excess capacity that might exist in this Federal resource. In fact, Congress chose to use a specific-amount allocation method, even though it knew well by what it provided in section 619 that the uprating program would be financed in large part by funds advanced by non-Federal entities.

Since Congress did not specifically allocate all of the capacity that might result from the uprating program, the question arises regarding what disposition Congress did intend for any resulting capacity in excess of the 1,951,000 kW of capacity specifically allocated in the 1984 Act. Western believes that section 619 of the Hoover Power Plant Act, in addition to making the allocations, provides the answer. Sections 619a(a) (3) and (4) provide:

> (3) Subdivision E of the "General Consolidated Power Marketing Criteria or Regulations for Boulder City Area Projects" published in the **Federal Register** May 9, 1983 (48 FR commencing at 20881), hereinafter referred to as the "Criteria" or as the "Regulations" shall be deemed to have been modified to conform to this section.

and, each contract shall:

> (4)(C) conform to the applicable provisions of subdivision E of the Criteria, commencing at 48 FR 20881, modified as provided in this section. To the extent that said provisions of the Criteria, as so modified, are applicable to contracts entered into under this section, those provisions are hereby ratified.

Section E of the General Consolidated Power Marketing Criteria or Regulations for Boulder City Area Projects (48 FR 20881) (Criteria) specifically made the following point regarding all of the projects of the Boulder City Area Office:

> The Projects will be operationally integrated to improve the efficiency of the Federal system in accordance with: the operational constraints of the Colorado River, hydro-project powerplants, and Navajo Generating Station, as may be imposed by the Secretary of the Interior or authorized representatives; applicable laws; the general items, conditions, and principles contained in these Criteria; and the General Power Contract Provisions in effect which are applicable to a particular Project (48 FR 20882, May 9, 1983).

The Joint Allottees contended that the above quoted provision of the Criteria did not conform to, and was inconsistent with, the Hoover Power Plant Act. In that regard they point to the provision of section 105(g) of that Act which provides that section 105 (which sets forth the allocations of capacity to the allottees specified in Schedules A and B) ". . . constitutes the exclusive method for disposing of capacity and energy from Hoover Dam for the period beginning June 1, 1987, and ending September 30, 2017". Additionally, the Joint Allottees stress that the Act does not specifically allocate any capacity to Western.

Western does not agree with the Joint Allottees. "Disposing" of capacity and energy is not the same as "use" of such capacity that was not disposed of pursuant to the Act. Thus, Western believes this portion of section E of the Criteria was not changed by the Hoover Power Plant Act, that no changes to it were necessary to conform it to that Act, and that, consequently, it was effectively ratified by the Act. The General Regulations provide that if the uprating program results in excess capacity as defined in those Regulations, Western is entitled to such excess capacity to integrate the operation of the Boulder City Area projects and other Federal projects on the Colorado River. All excess capacity not required by Western shall be offered to the Boulder Canyon Project contractors. The excess capacity reservation by Western is for a purpose clearly stated in the Criteria, which Congress consciously addressed through ratification in the Hoover Power Plant Act. Western believes that if Congress had desired to alter this approach in any way, it would have done so explicitly in the modification and ratification process of the Hoover Power Plant Act.

Another factor influencing Western's decision is set forth in section 619a of the Hoover Power Plant Act and section E of the Criteria concerning the specific allocations. Section 619a does not vest in the proposed contractors an absolute right to the specific allocations. This section merely mandates that Western offer each of the allottees listed in Schedule A a renewal contract and offer contracts for the uprating program capacity and associated energy specified in Schedule B. The law does

not state that each proposed contractor is vested with the right to and entitled to the capacity and energy set forth. This is made abundantly clear by the provisions of section 105(h)(2)(i) and the contingencies there referenced. Of course, this language does concomitantly require that Western use good faith in offering a contract and, as in all contracting efforts, there is room for good faith, arm's length bargaining among the parties. Offering a contract to an entity is considerably different from vesting an absolute right to receive something of value in an entity. This distinction and intent are further underscored by section E of the Criteria, which Congress did not alter or amend in this regard, which stated in 1983 and continues to state:

> In the event that a contractor or potential contractor fails to place power under contract within a reasonable period, as specified by the United States and in accordance with the terms and conditions offered by the United States, or fails to provide contributed funds, the amounts of power released by such failure will be reallocated . . . (48 FR 20885, May 9, 1983; 49 FR 50588, December 28, 1984).

Such a reallocation is in keeping with section 619a(g) of the Hoover Power Plant Act, which states that section 619a is the exclusive method for disposing of capacity and energy from Hoover Dam for the contract period commencing June 1, 1987. This result is in keeping with the universally accepted rule that when Congress directs a Federal agency to carry out prescribed actions, that direction carries with it the concomitant authorities necessary in order to carry out the congressional directive. If reallocation were not a viable option to Western, then in the event that any of the designated proposed contractors declined to accept or could not contract for the allocation, Western would be unable to take any further action to carry out the clear intent of Congress to market the capacity and energy generated at the Project. Western remains convinced that reallocation is an option, should offered contracts remain unaccepted.

Western's position that the United States is entitled to the excess capacity as defined in the General Regulations, if any excess capacity results from the uprating program, has not changed; however, this section has been modified to more clearly define the use and pricing of the capacity by the United States.

One commentor offered a suggestion that there should be a charge for excess capacity to the user. In considering the possibility of developing a charge for excess capacity, Western examined the variables of hydrology, the output characteristics of the powerplant, and the possible frequency of outages. Western concludes that the excess capacity would be available for short time periods during the contract period; as such, it would be very difficult to determine a charge for that service. Equally as difficult would be the billing and accounting for such an intermittent quantity. Therefore, in the interest of rate stability, Western will not develop a charge for excess capacity in these General Regulations but will provide for excess capacity accounting and delivery in the contracts.

The "benefits" provision of this section has been modified to refer to the "benefits" section added as paragraph (g) of § 904.5 of these General Regulations. Western believes that the specific benefit language is relevant to revenues and should be included in that section.

Section 904.10 Excess Energy

Excess energy is energy generated at Hoover Dam during a given year which is in excess of 4,501,001 million kWh of energy. The Hoover Power Plant Act creates three priorities with respect to such excess energy. The first priority consists of the first 200 million kWh of excess which goes to Arizona. Any deficits in this amount may be accumulated up to 600 million kWh. The second priority consists of up to 26 million kWh needed to meet contractual obligations to supply firm energy allotments in schedules A and B. Any excess energy over and above the amount required to meet the first two priorities is third-priority excess energy which is to be divided equally among the States of Arizona, California, and Nevada.

Comments were received regarding the pricing of excess energy and the disposition of third-priority excess energy, particularly the allocation in California.

Initially, Western proposed that all excess energy was to be priced at a rate developed under the procedures for short-term sales. Subsequent comments convinced Western that this was inappropriate for first-priority and second-priority excess energy. The revised proposed General Regulations published November 29, 1985, reflected that change. The rationale for the proposed pricing of first- and second-priority excess energy at the firm energy price was provided in the **Federal Register** (51 FR 12333) on April 10, 1986. That April notice continued, however, to propose pricing of third-priority excess energy under the procedures for short-term sales.

Comments submitted by the LADWP–SCE Group indicated agreement with Western's revised proposed pricing of first-priority and second-priority excess energy but expressed disagreement with the proposed pricing of third-priority excess energy. Their position was in agreement with the Joint Allottees's position discussed below that third-priority excess energy should not be priced under procedures for short-term sales. The LADWP–SCE Group also suggested that third-priority excess energy should be priced at the firm energy price.

The Joint Allottees's comments stated that all excess energy should be at a lesser price than firm energy and suggested that Western should adopt the "customary pricing principles" presently being used to price the Hoover "secondary" energy. The Joint Allottees argued that the disposition accorded APA of the first-priority excess energy recognized that Arizona's acceptance of the statutorily specified quantity of first-priority excess energy was in lieu of a larger allocation of firm energy, and that it was contemplated that excess energy would be sold at a lesser price. They further state that Western's proposal to price this first-priority excess energy and second-priority excess energy at the firm energy price "does not take into account that excess energy is not firm energy and is sold on an if-, as-, and when-available basis" and, consequently, should be sold at a lesser price than firm energy.

In the comments on pricing of third-priority excess energy, this same group stated that all "third-priority excess energy is permanently disposed of" and that "Western has confused short-term availability (i.e., availability from time to time) with short-term sales."

The arguments against offering third-priority excess energy at a price developed in accordance with applicable procedures for short-term power sales are convincing. Western agrees that the allocation of third-priority excess energy is established for the 30-year contract term and is, therefore, a long-term resource. Western agrees that a long-term rate should be established for this long-term resource. In response to comments that the price of third-priority excess energy should be less than that of firm energy because of the lower quality, Western does not agree that the quality of third-priority excess energy is significantly less than that of firm energy. Due to the low capacity factor of most of the contractors, excess energy will be, for the most part, scheduled and delivered during onpeak hours, just as firm energy

will be. With the rate for third-priority excess energy in the 5 mills per kWh range, Western believes that this rate is fair and equitable. Western has not been presented with any compelling reasons to reduce the rate for third-priority excess energy below the firm energy rate. Therefore, this section has been changed to provide that third-priority excess energy is to be available at the then existing firm energy price.

Comments on the allocation of third-priority excess energy addressed two areas of concern. The Joint Allottees's comments also addressed the third-priority excess energy available to Arizona and Nevada. They stated that the regulations should specify that the excess energy available to Arizona must be offered to APA and that excess energy available to Nevada must be offered to CRC. The General Regulations have been modified to state that the third-priority excess energy will be offered to those named allottees in those states.

The second area of concern was the basis upon which third-priority excess energy was to be disposed of among the multiple California contractors. In their comments of September 28, 1985, the LADWP–SCE Group proposed a "converging formula" that would increase each of the California allottee's capacity factors in such a manner that all of the allottees would reach 100 percent at the same time. The Joint Allottees argued that third-priority excess energy should be offered in proportion to each contractor's firm energy allotment. They stated that if contractors must share proportionately in any curtailments in capacity and energy, they should share proportionately in any excesses. As with several other issues regarding the proposed General Regulations, Western was faced with two opposing viewpoints. Because in all likelihood, Western will have only one contractor in Arizona and one in Nevada, the allocation by Western of third-priority excess energy among contractors is a matter which will have a practical impact only on California allottees.

Due to the wide disparity in the California allottees' capacity factors, Western attempted to find a formula that would be equitable to all of the California allottees. The Hoover capacity factors for California allottees vary from that of SCE with a low of 10.31 percent to that of MWD with a high of 59.59 percent. While the allottee with a 59.59 percent capacity factor (MWD) sees the Hoover Powerplant as an energy producer, the value of the Hoover resource to the low-capacity factor allottee (SCE) is as a capacity-related peaking resource. However, the value of that peaking resource may be severely limited because of its inability to use Hoover capacity during the entire duration of its peak. That limitation arises, of course, because of the limited energy available.

In considering the legitimate claims of both kinds of contractors to the available third-priority excess energy, allocating excess energy strictly on the basis of capacity fails to recognize that those excess energy years are the same years when MWD would most likely have additional water to pump. On the other hand, allocating third-priority excess energy strictly on the basis of energy tends to deprive the low capacity factor contractors of the opportunity to enhance the value of the Hoover resource by meeting a greater portion of the duration of their peaks. If third-priority excess energy were allocated based only on allocations of firm energy in California, as has been suggested by the Joint Allottees, MWD, the entity with the highest capacity factor, would reach 100 percent capacity factor at a time when SCE, a very low-capacity factor contractor, reaches 17 percent capacity factor. If additional third-priority excess energy becomes available to the California contractors, capacity being paid for by SCE and others would have to be used in order to deliver the energy to which MWD is entitled. It would be necessary to deliver this energy to MWD during offpeak hours as MWD's entitlement to firm energy already allows it to use its capacity entitlement nearly 14 hours per day. Delivery of offpeak energy to MWD, in lieu of delivering onpeak energy to another contractor whose capacity factor is low, reduces the value of the resource to California as a whole. Using Western's method, with the same amount of third-priority excess energy available to California, the MWD capacity factor would rise to 88 percent, while the SCE capacity factor would rise to 22 percent. Thus, Western's method would result in MWD receiving a considerable amount of energy with which to pump surplus water, and at the same time, would provide SCE with the ability to meet peakloads for a much longer duration. Other contractors would also benefit from the delivery of additional energy during onpeak hours. Western believes this results in the highest and best use of the hydro-resource in the public interest by best utilizing the water resources of the region and by reducing dependency on nonrenewable fossil fuels. In addition, this provides for an equitable distribution of the economic benefits of third-priority excess energy among the California contractors. Therefore, in balancing the proposals of both sides and considering the public interest, Western has adopted a formula which recognizes both capacity entitlements and energy entitlements in allocating third-priority excess energy.

Section 904.11 Lay Off of Energy

This section has been added to the General Regulations as a result of discussions with the allottees during contract negotiations. The allottees requested language to provide for the disposal (lay off) of energy available to them that they are unable to utilize. This new section provides that Western will lay off available energy at the request of a contractor pursuant to provisions of the contract. The contractor failing to take its available energy will be billed for any deficit between the amount that Western would have received at the then existing energy rate and the amount actually received as a result of the lay off.

Section 904.12 Payments to Contractors

One commentor questioned the basis for returning funds to contractors through credits on monthly bills and wanted to know the legal basis and significance of this provision. Under the general authorities of the Project Act, the Adjustment Act, and the Department of Energy Organization Act, the Secretary of Energy is authorized to provide for the application of revenues. Furthermore, the 1941 General Regulations provided for credit adjustments, and the same concept is being carried forward to these General Regulations.

This section has not been modified, and credits will be given for any obligation of the United States to return funds to the contractors. Specifically, the Hoover Power Plant Act provided for credits for the amounts advanced by non-Federal purchasers for funds contributed for the uprating program. Adjustments to monthly bills would be another example of a return of funds by credits.

Section 904.12 Capacity Reductions
(Deleted from final General Regulations)

All comments received on this section of the revised proposed General Regulations agreed that the formula proposed to be used during capacity reductions needed revision. The entire section has been deleted from the General Regulations because Western agrees that the formula was incorrect.

Western has concluded that the question of capacity reductions is more appropriately covered in the contract negotiations.

Section 904.13 Disputes

Several commentors submitted recommendations for changes to Western's dispute resolution proposal. In light of the substantive merit of the comments received by Western on this matter, and in an effort to eliminate unnecessary differences in dispute resolution procedures between Western and Reclamation, Western has amended this section.

As proposed, any dispute or disagreement as to interpretation or performance of these regulations shall be first presented to and decided by the Secretary of Energy, acting by and through the Administrator of Western. The decision of the Administrator shall be final and binding, unless a request for arbitration is received by the Administrator within 30 days after the date of decision by the Administrator, or the disputing party files a claim in a Federal district court within applicable statutory time limits. Western changed the reference to a Federal district court to a Federal court of competent jurisdiction. Commentors correctly noted that some disputes could be within the jurisdiction of the Federal Claims Court.

Commentors recommended that provisions be made for administrative appeal of the Administrator's decision to the Secretary of Energy. Western believes that injection of such an additional procedural requirement is legally unnecessary and only serves to lengthen the administrative process and increase the administrative burden for dispute resolution. The Department of Energy Organization Act clearly specifies that such matters are to be performed by the Secretary of Energy, acting by and through the Administrators of the various power marketing administrations. The clear congressional intent is not to burden, unnecessarily, the administrative process surrounding activities of the power marketing administrations. This is achieved by eliminating one level of the appeal process, thereby allowing a dispute to proceed in a more timely fashion. This specific intent provided for in the Department of Energy Organization Act does not apply to the administrative workings and relationships of Interior and its relationship to Reclamation.

A description of the changes made to the Disputes section follows. One major change to the section is the selection of the third arbitrator by the two initial arbitrators named to the panel or pursuant to the Commercial Arbitration Rules. This selection process is in lieu of the original proposal that the third arbitrator be selected by the Chief Judge of the Federal district court that would have jurisdiction of the matter, if taken directly to court. Selection of the third arbitrator by the two arbitrators chosen by the disputants provides additional assurance that the third arbitrator shall have subject matter experience and qualification.

The process for disputes has been changed; if arbitration is requested, the Administrator shall have 90 days from the date of receipt of the request to either concur or deny the request. If no action is taken by the Administrator within the 90 days, the request shall be deemed denied. If the Administrator concurs in the request for arbitration, the Administrator and the contractor shall each name an arbitrator to the panel of arbitrators within 30 days of receipt of the notice of concurrence by the Administrator. If there is more than one disputing contractor, they will collectively name one arbitrator to the panel. In the event the disputing contractors fail to collectively name an arbitrator within 15 days after their first meeting, the arbitrator shall be named in accordance with the applicable provisions of the Commercial Arbitration Rules of the American Arbitration Association. The two arbitrators named to the panel shall select a third member for the panel of arbitrators. This third arbitrator selection shall be completed within 30 days of the first meeting of the two arbitrators. In the event the two arbitrators fail to name the third arbitrator of the panel within the designated time, that arbitrator shall be selected in accordance with the Commercial Arbitration Rules of the American Arbitration Association. This selection process is in accord with comments received by Western and provides uniformity in the Western procedures and those of Reclamation.

The arbitration shall be limited to the issue submitted to the panel. The panel may interpret but shall not rewrite, change, or amend these General Regulations or the contracts for Hoover power. The arbitration shall be governed by the Commercial Arbitration Rules of the American Arbitration Association. The panel of arbitrators shall render a final decision within 60 days of the date of selection of the third arbitrator. A decision of any two of the arbitrators shall be deemed a final decision and, as such, shall be final and binding upon all parties involved in the dispute.

These changes to the dispute resolution process are made in view of the merit of the comments received by Western and are in compliance with applicable law.

904.14 Future Regulations

The comments on this section focused on the addition of a clarification that any future regulations or amendments would not have an adverse impact upon the existing contract rights and obligations of the allottees and the inclusion of a "most favored nation" clause. Both items were contained in the 1941 General Regulations that these General Regulations are replacing.

Western believes that any future promulgation of regulations or amendments hereto could not unilaterally impose adverse impacts upon existing contract rights and/or obligations. Given that such a disclaimer has been used in the past and that the allottees seem to agree on a need for such a disclaimer to these General Regulations, Western has included a provision that any future regulations or amendments would not have an adverse impact upon the existing contract rights and obligations of the contractors, and Western has included a "most favored nation" clause as paragraph (b) to § 904.14 which clarifies an approach applicable to Western's dealings with all contractors.

Executive Order 12291

Under the provisions of section 3 of Executive Order 12291, dated February 17, 1981, a regulatory impact analysis must be made prior to the publication of a major rule. These General Regulations are of a technical nature and are considered to be a nonmajor rule within the meaning of the Executive Order. Western has an exemption from sections 3, 4, and 7 of Executive Order 12291; accordingly, no clearance of these regulations by the Office of Management and Budget (OMB) is required.

Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*), each agency, when required to publish a general notice of proposed rule, shall prepare for public comment an initial regulatory flexibility analysis to describe the impact of the proposed rule on small entities. In this instance, the General Regulations relate to rates for electric service provided by Western. Under 5 U.S.C. 601(2), rates, prices, and services are not considered rules within the meaning of the Act. Furthermore, pursuant to section 605(b) of the

Regulatory Flexibility Act of 1980, the Secretary of Energy, acting by and through the Administrator of Western, hereby certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. Accordingly, no regulatory flexibility analysis is required.

Paperwork Reduction Act of 1980

The Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520) requires that certain information collection requirements be approved by the OMB before information is demanded of the public. OMB has issued a final rule on the Paperwork Burdens on the Public (48 FR 13666) dated March 31, 1983. Ample opportunity was provided in the proposed rule for the interested public to participate in the development of the General Regulations. Nevertheless, this is at their sole election. There is no requirement that members of the public participating in the development of the General Regulations supply information about themselves to the Government. It follows that the General Regulations are exempt from the Paperwork Reduction Act.

National Environmental Policy Act

Pursuant to the National Environmental Policy Act of 1969, and Department of Energy regulations published in the **Federal Register** Notice (47 FR 7976) on February 23, 1982, as amended, Western evaluated the potential for environmental impact of the Boulder City General Consolidated Power Marketing Criteria or Regulations for the Boulder City Area Projects (Environmental Assessment No. DOE EA–0204). On May 2, 1983, the DOE executed a Finding of No Significant Impact for that proposal. Part of the original Criteria was a reference to the rate formula and application criteria that are now developed and proposed in this notice. At the time of the Criteria environmental assessment, the formula and its application were determined to not, either by themselves or cumulatively, have a significant impact. Now that these General Regulations are better defined, Western has made a determination by memorandum, which is available for public review. The determination, which was based upon environmental considerations, concludes that this action does not involve a major Federal action having a significant adverse impact on the human environment, and the preparation of an environmental assessment or an environmental impact statement is not required.

Documents in Public File

The following materials relative to the research performed, analyses made, and other information supporting the General Regulations are available for inspection and copying at the Boulder City Area Office:

1. Letter dated August 8, 1986, to All Interested Parties (with copies of comments received) from Western regarding comments on the revised proposed General Regulations.
2. **Federal Register** Notice (51 FR 26555) dated August 7, 1986, "Charges for the Sale of Power From the Boulder Canyon Project; Notice of a Meeting Between Department of Energy Officials and Representatives of the Contractors of Hoover Dam Power; Reopening of Comment Period."
3. Notice of Environmental Determination, dated May 1986, for the Boulder Canyon Project.
4. Letter dated May 22, 1986, to All Interested Parties (with copies of comments received) from Western regarding comments on the revised proposed General Regulations.
5. **Federal Register** Notice (51 FR 12333) dated April 10, 1986, "Proposed Rule; Additional Information."
6. Reporter's Transcript of Proceedings, Public Comment Forum on revised Proposed General Regulations, February 12, 1986.
7. Statement dated February 12, 1986, to Western from the Colorado River Commission regarding "Request for Additional Analysis and Information Regarding Western Area Power Administration's Proposed General Regulations for the Charges for the Sale of Power From the Boulder Canyon Project."
8. **Federal Register** Notice (51 FR 3471) dated January 28, 1986, "Notice of Public Comment Forum."
9. **Federal Register** Notice (51 FR 4376) dated February 4, 1986, "Future Notice of Public Comment Forum."
10. Letter dated January 10, 1986, to All Interested Parties from Western (with copies of comments received) regarding the revised proposed General Regulations published in the **Federal Register** (50 FR 49050) on November 29, 1985.
11. Reporter's Transcript of Proceedings, Public Comment Forum on Revised Proposed General Regulations, December 19, 1985.
12. **Federal Register** Notice (50 FR 49050) dated November 29, 1985, "Proposed Rulemaking and Request for Comments," announcing the revised proposed General Regulations.
13. "Memorandum for Tom Hine Re Hoover Conformed Criteria From Jack L. Stonehocker on Behalf of Colorado River Commission of Nevada, Arizona Power Authority, Metropolitan Water District of Southern California and the Cities of Burbank, Glendale, Pasadena, Anaheim, Azusa, Banning, Colton, and Riverside," received November 5, 1985.
14. Letter dated October 23, 1985, to Western from Colorado River Commission regarding draft supplemental comments on the Base Charge, the Contribution Charge, and the charge on excess energy.
15. Letter dated October 21, 1985, to All Interested Parties (with copies of comments received) from Western regarding the proposed General Regulations published in the **Federal Register** (50 FR 20732) on May 17, 1985.
16. Letter dated September 24, 1985, to Western from Colorado River Commission, transmitting three draft position papers in respect to the "Hoover Items."
17. **Federal Register** Notice (50 FR 37835) dated September 18, 1985, "10 CFR. Part 903, Procedures for Public Participation in Power and Transmission Rate Adjustments and Extensions."
18. **Federal Register** Notice (50 FR 30447) dated July 26, 1985, "Notice of Delay in Comment Period on the Proposed General Regulations for the Charges for the Sale of Power From the Boulder Canyon Project."
19. Letter dated July 5, 1985, to Western from Colorado River Commission transmitting a list of items which the Hoover allottees propose to discuss during the delay on the General Regulations, entitled "Hoover Items."
20. Letter dated July 1, 1985, to Colorado River Commission from Western responding to a request for delay in the public process on the General Regulations.
21. Proposed Power Delivery Schedule, July 1, 1985, presentation and slides.
22. Reporter's Transcript of Proceedings, Public Comment Forum on Proposed General Regulations, July 1, 1985.
23. Letter dated June 28, 1985, to All Interested Parties from Western regarding questions asked at the public information forum on June 4, 1985.
24. Letter dated June 27, 1985, to Western from Jack L. Stonehocker, Colorado River Commission, requesting a delay in the proceedings on the proposed General Regulations.
25. Draft Power Repayment Study, June 4, 1985, presentation.
26. Memorandum dated June 3, 1985, from Gary D. Miller, Attorney for the General Counsel, regarding "Boulder

Canyon Project/Repayment of the Flood Control Allocation."

27. Proposed General Regulations Public Information Forum, June 4, 1985, presentation and slides.

28. Letter dated May 3, 1985, to Colorado River Commission and Arizona Power Authority from Western responding to an April 18, 1985, letter on conformance of the "General Consolidated Power Marketing Criteria or Regulations for the Boulder City Area Projects" to the Hoover Power Plant Act of 1984.

29. Federal Register Notice (50 FR 20732) dated May 17, 1985, "Proposed Rulemaking," announcing the proposed General Regulations.

30. Letter dated April 18, 1985, to Western from Colorado River Commission and Arizona Power Authority regarding the conformance of the "General Consolidated Power Marketing Criteria or Regulations for the Boulder City Area Projects" to the Hoover Power Plant Act of 1984.

31. Memorandum dated April 5, 1985, from Department of the Interior's Assistant Solicitor, Branch of Water and Power, Division of Energy and Resources, regarding "Repayment of Flood Control Allocation—Boulder Canyon Project."

32. Letter dated March 27, 1985, to Western from Bureau of Reclamation regarding "Post-1987 Repayment Requirements of the Boulder Canyon Project."

33. Federal Register Notice (50 FR 7823) dated February 26, 1985, announcing corrections to the "Conformed General Consolidated Power Marketing Criteria or Regulations for Boulder City Area Projects."

34. Federal Register Notice (49 FR 50582) dated December 28, 1984, publishing the "Conformed General Consolidated Power Marketing Criteria or Regulations for Boulder City Area Projects."

35. Federal Register Notice (49 FR 25230) dated June 20, 1984, "18 CFR Part 300, Filing Requirements and Procedures for Approving the Rates of Federal Power Marketing Administrations."

36. "1984 Hoover Operation Concepts Report," jointly written by Bureau of Reclamation and Western.

37. Delegation Order 0204–108, published in the Federal Register (48 FR 55664) December 14, 1983.

38. Federal Register Notice (48 FR 20872) dated May 9, 1983, publishing the "General Consolidated Power Marketing Criteria or Regulations for Boulder City Area Projects."

39. Consolidated Power Marketing Plan Public Information Forum, August 29, 1980, presentation and slides.

40. Consolidated Power Marketing Plan Public Information Forum, May 16, 1980, presentation and slides.

41. Department of the Interior, Bureau of Reclamation "Uprating Program, Hoover Powerplant, Special Report," issued May 1980, supplemented January 9, 1985, and revised September 1985.

42. Consolidated Power Marketing Plan Public Information Forum, February 22, 1980, presentation and slides.

43. Consolidated Power Marketing Plan Public Information Forum, November 30, 1979, proceedings of the meeting.

44. Department of Energy Order RA 6120.2, Power Marketing Administration Financial Reporting, September 20, 1979.

45. October 31, 1975, General Accounting Office letter regarding the operation of Hoover Powerplant.

46. Bureau of Reclamation Report Number REC–ERC–83–8, Generation Efficiency Loading Algorithm.

47. Worksheets on analysis made on the development of Base Charge.

48. Worksheets on analysis made on the development of Contribution Charge.

49. Worksheets on analysis made on allocation of excess energy in California.

List of Subjects in 10 CFR Part 904

Electric power rates.

For the reasons set out in the preamble, Title 10, Chapter III of the Code of Federal Regulations is amended as set forth below.

Issued at Golden, Colorado, November 14, 1986.

William H. Clagett,

Administrator.

Chapter III of Title 10 of the Code of Federal Regulations is amended by adding a new Part 904 to read as follows:

PART 904—GENERAL REGULATIONS FOR THE CHARGES FOR THE SALE OF POWER FROM THE BOULDER CANYON PROJECT

Subpart A—Power Marketing

Sec.

Authority: Reclamation Act of 1902 (32 Stat. 388); Boulder Canyon Project Act of 1928 (43 U.S.C. 617 *et seq.*); Boulder Canyon Project Adjustment Act of 1940 (43 U.S.C. 618 *et seq.*); Department of Energy Organization Act (42 U.S.C. 7101 *et seq.*); Colorado River Storage Project Act of 1956 (43 U.S.C. 620 *et seq.*); Colorado River Basin Project Act of 1968 (43 U.S.C. 1501 *et seq.*); and Hoover Power Plant Act of 1984 (98 Stat. 1333 (43 U.S.C. 619 *et seq.*)).

Subpart A—Power Marketing

§ 904.1 Purpose.

(a) The Secretary of Energy, acting by and through the Administrator of the Western Area Power Administration (Administrator), is authorized and directed to promulgate charges for the sale of power generated at the Boulder Canyon Project powerplant, and also to promulgate such general regulations as the Secretary finds necessary and appropriate in accordance with the power marketing authorities in the Reclamation Act of 1902 (32 Stat. 388) and all acts amendatory thereof and supplementary thereto, and the Department of Energy Organization Act (42 U.S.C. 7101 *et seq.*).

(b) In accordance with the Boulder Canyon Project Act of 1928 (43 U.S.C. 617 *et seq.*), as amended and supplemented (Project Act); the Boulder Canyon Project Adjustment Act of 1940 (43 U.S.C. 618 *et seq.*), as amended and supplemented (Adjustment Act); the Department of Energy Organization Act (42 U.S.C. 7101 *et seq.*); and the Hoover Power Plant Act of 1984 (98 Stat. 1333 (43 U.S.C. 619 *et seq.*)) (Hoover Power Plant Act); the Western Area Power Administration (Western) promulgates these General Regulations for the Charges for the Sale of Power From the Boulder Canyon Project (General Regulations) defining the methodology to be used in the computation of the charges for the sale of power from the Boulder Canyon Project.

§ 904.2 Scope.

These General Regulations are effective June 1, 1987, and shall apply as the basis for computation of all charges applicable to any sale of power from the Boulder Canyon Project after May 31, 1987. "General Regulations for Power Generation, Operation, Maintenance, and Replacement at the Boulder Canyon Project, Arizona/Nevada" are the subject of a separate rulemaking of the Department of the Interior under 43 CFR Part 431. The "General Regulations for Generation and Sale of Power in Accordance with the Boulder Canyon Project Adjustment Act" (1941 General Regulations) dated May 20, 1941, and the

"General Regulations for Lease of Power" dated April 25, 1930, terminate May 31, 1987.

§ 904.3 Definitions.

The following terms wherever used herein shall have the following meanings:

(a) "Billing Period" shall mean the service period beginning on the first day and extending through the last day of any calendar month.

(b) "Boulder City Area Projects" shall mean the Boulder Canyon Project, the Parker-Davis Project, and the United States entitlement in the Navajo Generating Station (a feature of the Central Arizona Project).

(c) "Capacity" shall mean the aggregate of contingent capacity specified in section 105(a)(1)(A) and the contingent capacity specified in section 105(A)(1)(B) of the Hoover Power Plant Act (43 U.S.C. 619).

(d) "Central Arizona Project" shall mean those works as described in section 1521(a) of the Colorado River Basin Project Act of 1968 (43 U.S.C. 1501 et seq.), as amended.

(e) "Colorado River Dam Fund" or "Fund" shall mean that special fund established by section 2 of the Project Act and which is to be used only for the purposes specified in the Project Act, the Adjustment Act, the Colorado River Basin Project Act of 1968, and the Hoover Power Plant Act.

(f) "Contract" shall mean any contract for the sale of Boulder Canyon Project capacity and energy for delivery after May 31, 1987, between Western and any contractor.

(g) "Contractor" shall mean the entities entering into contracts with Western for electric service pursuant to the Hoover Power Plant Act.

(h) "Excess Capacity" shall mean capacity which is in excess of the lesser of: (1) Capacity that Hoover Powerplant is capable of generating with all units in service at a net effective head of 498 feet, or (2) 1,951,000 kW.

(i) "Excess Energy" shall mean energy obligated from the Project pursuant to section 105(a)(1)(C) of the Hoover Power Plant Act (43 U.S.C. 619).

(j) "Firm Energy" shall mean energy obligated from the Project pursuant to section 105(a)(1)(A) and section 105(a)(1)(B) of the Hoover Power Plant Act (43 U.S.C. 619).

(k) "Overruns" shall mean the use of capacity or energy, without the approval of Western, in amounts greater than Western's contract delivery obligation in effect for each type of service provided for in the Contract.

(l) "Project" or "Boulder Canyon Project" shall mean all works authorized by the Project Act, the Hoover Power Plant Act, and any future additions authorized by Congress, to be constructed and owned by the United States, but exclusive of the main canal and appurtenances authorized by the Project Act, now known as the All-American Canal.

(m) "Replacements" shall mean such work, materials, equipment, or facilities as determined by the United States to be necessary to keep the Project in good operating condition, but shall not include (except where used in conjunction with the word "emergency" or the phrase "however necessitated") work, materials, equipment, or facilities made necessary by any act of God, or of the public enemy, or by any major catastrophe.

(n) "Uprating Program" shall mean the program authorized by section 101(a) of the Hoover Power Plant Act (43 U.S.C. 619(a)) for increasing the capacity of existing generating equipment and appurtenances at the Hoover Powerplant, as generally described in the report of the Department of the Interior, Bureau of Reclamation, entitled "Hoover Powerplant Uprating, Special Report," issued in May 1980, as supplemented in the report entitled, "January 1985 Supplement (revised September 1985) to Hoover Powerplant Uprating, Special Report-May 1980."

§ 904.4 Marketing responsibilities.

(a) Capacity and energy available from the Project will be marketed by Western under terms of the Conformed General Consolidated Power Marketing Criteria or Regulations for Boulder City Area Projects (Conformed Criteria) published in the Federal Register (49 FR 50582) on December 28, 1984. Western shall dispose of capacity and energy from the Project in accordance with section 105(a)(1) of the Hoover Power Plant Act (43 U.S.C. 619(a)(1)), these General Regulations, and the Contracts between the Contractors and Western.

(b) Procedures for the scheduling and delivery of capacity and energy shall be provided for in the Contracts between the Contractors and Western.

§ 904.5 Revenue requirements.

(a) Western shall collect all electric service revenues from the Project in accordance with applicable statutes and regulations and deposit such revenues into the Colorado River Dam Fund. All receipts from the Project shall be available for payment of the costs and financial obligations associated with the Project. The Secretary of the Interior is responsible for the administration of the Colorado River Dam Fund.

(b) The electric service revenue of the Project shall be collected through a charge, computed to be sufficient, together with other net revenues from the Project, to recover the following costs and financial obligations associated with the Project over the appropriate repayment periods set out in paragraph (c) of this section:

(1) Annual costs of operation and maintenance;

(2) Annual interest on unpaid investments in accordance with appropriate statutory authorities;

(3) Annual repayment of funds, and all reasonable costs incurred in obtaining such funds, advanced by non-Federal Contractors to the Secretary of the Interior for the Uprating Program;

(4) The annual payment of $300,000 to each of the States of Arizona and Nevada provided for in section 618(c) of the Adjustment Act and section 1543(c)(2) of the Colorado River Basin Project Act (43 U.S.C. 1501 *et seq.*) (Basin Act), as amended or supplemented;

(5) Capital costs of investments and Replacements, including amounts readvanced from the United States Treasury (Treasury);

(6) Repayment to the Treasury of the advances to the Colorado River Dam Fund for the Project made prior to May 31, 1987, for which payment was deferred because of a deficiency in firm energy generation due to a shortage of available water, as provided for in article 14(a) of the 1941 General Regulations and section 8 of the Boulder City Act of 1958 (72 Stat. 1726), as shown on the books of accounts of Reclamation as of May 31, 1987;

(7) Repayment to the Treasury of the first $25,000,000 of advances made to the Colorado River Dam Fund deemed to be allocated to flood control by section 617a(b) of the Project Act as provided by section 618f of the Adjustment Act; and

(8) Any other financial obligations of the Project imposed in accordance with law.

(c) The Project repayment period shall extend to the final year allowed under applicable cost recovery criteria. The revenue for the costs and financial obligations set out in paragraph (b) of this section shall be collected over the following repayment periods:

(1) The repayment period for advances made to the Colorado River Dam Fund from funds advanced to the Secretary of the Interior by non-Federal entities for the Uprating Program and associated work shall be the period commencing with the first day of the month following completion of each segment of the Uprating Program, or

June 1, 1987, whichever is later, and ending September 30, 2017;

(2) The repayment period for the payments to the Treasury of the advances to the Colorado River Dam Fund for the Project which were payable prior to May 31, 1987, but which were deferred pursuant to article 14(a) of the 1941 General Regulations and section 8 of the Boulder City Act of 1958, shall be the power contract period beginning June 1, 1987, and ending September 30, 2017. Such repayment period is based on a 50-year repayment period beginning June 1, 1937, adjusted for the periods the initial payments were deferred;

(3) The repayment period for the payment to the Treasury of the first $25,000,000 of advances made to the Colorado River Dam Fund deemed to be allocated to flood control by section 617a(b) of the Project Act and deferred by section 618(f) of the Adjustment Act shall be the 50-year period beginning June 1, 1987;

(4) The repayment period for advances to the Colorado River Dam Fund for the Project made on or after June 1, 1937, and prior to June 1, 1987, shall be the 50-year period beginning June 1 immediately following the year of operation in which the funds were advanced;

(5) The repayment period for investments, other than for the visitor facilities authorized by section 101(a) of the Hoover Power Plant Act (43 U.S.C. 619(a)), made from Federal appropriations on or after June 1, 1987, shall be a 50-year period beginning with the first day of the fiscal year following the fiscal year the investment is placed in service; and

(6) The repayment period for the visitor facilities authorized by section 101(a) of the Hoover Power Plant Act (43 U.S.C. 619(a)) shall be the 50-year period beginning June 1, 1987, or when substantially completed, as determined by the Secretary of the Interior, if later.

(d) Annual costs for operation and maintenance and payments to States as set out in paragraph (b) of this section shall be collected as long as revenues accrue from the operation of the Project.

(e) Surplus revenues will also be collected for transfer from the Colorado River Dam Fund for contribution to the Lower Colorado River Basin Development Fund pursuant to section 1543(c)(2) of the Basin Act as amended by the Hoover Power Plant Act to provide revenue for the purposes of sections 1543(f) and 1543(g) of the Basin Act.

(f) All annual costs will be calculated based on a Federal fiscal year. To accommodate the transition from the pre-1987 operating year of June 1 to May 31 to a fiscal year, there will be a 4-month transition period beginning June 1, 1987, and ending September 30, 1987.

(g) If integrated operation of the Boulder Canyon Project with other Boulder City Area Projects and other Federal projects on the Colorado River, as provided in § 904.9 of these General Regulations, confers a direct power benefit upon such other Boulder City Area Projects and such other Federal projects, or if a direct power benefit is conferred by other Boulder City Area Projects or other Federal projects on the Colorado River upon the Boulder Canyon Project, Western shall equitably apportion such benefits and appropriate charges among the Boulder Canyon Project, other Boulder City Area Projects, and other Federal projects on the Colorado River.

§ 904.6 Charge for capacity and firm energy.

The charge for Capacity and Firm Energy from the Project shall be composed of two separate charges; a charge to provide for the basic revenue requirements, as identified in paragraphs (b), (c), and (d) of § 904.5 of these General Regulations (Base Charge), and a charge to provide the surplus revenue for the Lower Colorado River Basin Development Fund contribution, as identified in paragraph (e) of § 904.5 of these General Regulations (Lower Basin Development Fund Contribution Charge).

§ 904.7 Base charge.

(a) The Base Charge shall be developed by the Administrator and promulgated in accordance with appropriate DOE regulations. The Base Charge shall be composed of a capacity component and an energy component.

(b) The capacity component of the Base Charge shall be a dollar per kilowattmonth amount determined by (1) multiplying the estimated average annual revenue requirement developed pursuant to paragraphs (b), (c), and (d) of § 904.5 of these General Regulations by 50 percent, and (2) dividing the results of that multiplication by the estimated average annual kW rating of the Project, and (3) dividing the quotient by 12. The total estimated kW rating will be based on the powerplant output capability with all units in service at 498 feet of net effective head or 1,951,000 kW, whichever is less. The capacity component of the Base Charge shall be applied each billing period to each kW of rated output to which each Contractor is entitled by Contract. Adjustments to the application of the capacity component shall be made during outages which cause significant reductions in capacity as provided by the Contract.

(c) The energy component of the Base Charge shall be a mills per kWh amount determined by (1) multiplying the estimated average annual revenue requirements developed pursuant to paragraphs (b), (c), and (d) of § 904.5 of these General Regulations by 50 percent and (2) dividing the results of that multiplication by the average annual kWh estimated to be available from the Project. The energy component of the Base Charge shall be applied to each kWh made available to each Contractor, as provided for by Contract, except for the energy purchased by Western, at the request of a Contractor, to meet that Contractor's deficiency in Firm Energy pursuant to section 105(a)(2) of the Hoover Power Plant Act (43 U.S.C. 619(a)(2)) and section F of the Conformed Criteria, and that Contractor's Uprating Program credit carry forward, as provided by Contract.

(d) Application of the Base Charge to capacity and energy overruns will be provided for by Contract. The capacity component and the energy component of the Base Charge shall be applied each billing period for each Contractor.

(e) The Base Charge shall be reviewed annually. The Base Charge shall be adjusted either upward or downward, when necessary and administratively feasible, to assure sufficient revenues to effect payment of all costs and financial obligations associated with the Project pursuant to paragraphs (b), (c), and (d) of § 904.5 of these General Regulations. The Administrator shall provide all Contractors an opportunity to comment on any proposed adjustment to the Base Charge pursuant to the DOE's power rate adjustment procedures then in effect.

§ 904.8 Lower basin development fund contribution charge.

(a) The Lower Basin Development Fund Contribution Charge will be developed by the Administrator of Western on the basis that the equivalent of 4½ mills or 2½ mills per kWh, as appropriate, required to be included in the rates charged to purchasers pursuant to section 1543(c)(2) of the Basin Act, as amended by the Hoover Power Plant Act, shall be collected from the energy sales of the Project.

(b) The Lower Basin Development Fund Contribution Charge shall be applied to each kWh made available to each Contractor, as provided for by Contract, except for the energy purchased by Western at the request of a Contractor to meet:

(1) That Contractor's deficiency in Firm Energy, pursuant to section 105(a)(2) of the Hoover Power Plant Act (43 U.S.C. 619(a)(2)) and section F of the Conformed Criteria; and

(2) That Contractor's Uprating Program credit carry forward as provided by Contract. A 4½ mills per kWh charge shall be applied to each kWh made available to an Arizona Contractor, and a 2½ mills per kWh charge shall be applied to each kWh made available to a California or Nevada Contractor; provided, that after the repayment period of the Central Arizona Project, a 2½ mills per kWh charge shall be applied to each kWh made available to the Arizona, California, and Nevada Contractors. The Lower Basin Development Fund Contribution Charge shall be applied to energy overruns. The Lower Basin Development Fund Contribution Charge shall be applied each billing period for each Contractor.

§ 904.9 Excess capacity.

(a) If the Uprating Program results in Excess Capacity, Western shall be entitled to such Excess Capacity to integrate the operation of the Boulder City Area Projects and other Federal Projects on the Colorado River. Specific criteria for the use of Excess Capacity by Western will be provided by Contract. All Excess Capacity not required by Western for the purposes specified by Contract will be available to all Contractors at no additional cost on a pro rata basis based on the ratio of each Contractor's Capacity allocation to the total Capacity allocation.

(b) Credits for benefits resulting from project integration shall be determined by Western and such benefits shall be apportioned in accordance with paragraph (9) of § 904.5 of these General Regulations.

§ 904.10 Excess energy.

(a) If excess Energy is determined by the United States to be available, it shall be made available to the Contractors, in accordance with the priority entitlement of section 105(a)(1)(C) of the Hoover Power Plant Act (43 U.S.C. 619(a)(1)(c)). After the annual first- and second-priority entitlement to excess energy has been obligated for delivery, Western will make available one-third of the third-priority excess energy to the Arizona Power Authority, one-third to the Colorado River Commission of Nevada, and one-third to the California Contractors.

(b) Western will make available third-priority excess energy to the California Contractors based on the following formula:

F = ½ (A/B + C/D) (E); Where:
A = Contractor's allocated Capacity
B = Total California allocated Capacity
C = Contractor's allocated Firm Energy
D = Total California allocated Firm Energy
E = Third-priority Excess Energy available to California
F = Contractor's third-priority Excess Energy

(c) The charge for all Excess Energy shall be the charge for Boulder Canyon Project Firm Energy existing at the time the Excess Energy is made available to the Contractor, including the appropriate Lower Basin Development Fund Contribution Charge.

§ 904.11 Lay off of energy.

(a) If any Contractor determines that it is temporarily unable to utilize Firm Energy or Excess Energy, Western will, at the Contractor's request, attempt to lay off the Firm Energy or Excess Energy the Contractor declares to be available for lay off, pursuant to the provisions for lay off of energy specified in the Contract.

(b) If Western is unable to lay off such energy, or if the Contractor fails to request Western to attempt to lay off the energy, the Contractor will be billed for the Firm Energy or Excess Energy that was available to the Contractor but could not be delivered to the Contractor or sold to another customer.

(c) In the event that Western must lay off the Firm Energy or Excess Energy at a rate lower than the effective Firm Energy rate, the Contractor will be billed for the difference between the amount that Western would have received at the then existing Firm Energy rate, including the appropriate Lower Basin Development Fund Contribution Charge, and the amount actually received.

§ 904.12 Payments to contractors.

(a) Funds advanced to the Secretary of the Interior for the Uprating Program and costs reasonably incurred by the Contractor in advancing such funds, as approved by Western, shall be returned to the Contractor advancing the funds during the Contract period through credits on that Contractor's power bills. Appropriate credits will be developed and applied pursuant to terms and conditions agreed to by contract or agreement.

(b) All other obligations of the United States to return funds to a Contractor shall be repaid to such Contractor through credits on power bills, with or without interest, pursuant to terms and conditions agreed to by contract or agreement.

§ 904.13 Disputes.

(a) All actions by the Secretary of Energy, acting by and through the Administrator of Western, shall be binding unless or until reversed or modified in accordance with provisions contained herein.

(b) Any disputes or disagreements as to interpretation or performance of the provisions of these General Regulations under the responsibility of Western shall first be presented to and decided by the Administrator. The Administrator shall be deemed to have denied the Contractor's contention or claim if it is not acted upon within ninety (90) days of its having been presented.

(c) The decision of the Administrator shall be final unless, within thirty (30) days from the date of such decision, a written request for arbitration is received by the Administrator. The Administrator shall have ninety (90) days from the date of receipt of a request for arbitration either to concur in or deny in writing the request for such arbitration. Failure by the Administrator to take any action within the ninety (90) day period shall be deemed a denial of the request for arbitration. In the event of a denial of a request for arbitration, the decision of the Administrator shall become final. Upon a decision becoming final, the disputing Contractor's remedy lies with the appropriate Federal court. Any claim that a final decision of the Administrator violates any right accorded the Contractor under the Project Act, the Adjustment Act, or Title I of the Hoover Power Plant Act is barred unless suit asserting such claim is filed in a Federal court of competent jurisdiction within one (1) year after final refusal by the Administrator to correct the action complained of, in accordance with section 105(h) of the Hoover Power Plant Act.

(d) When a timely request for arbitration is received by the Administrator and the Administrator concurs in writing, the disputing Contractor and the Administrator shall, within thirty (30) days after receipt of notice of such concurrence, each name one arbitrator to the panel of arbitrators which will decide the dispute. All arbitrators shall be skilled and experienced in the field pertaining to the dispute. In the event there is more than one disputing Contractor, the disputing Contractors shall collectively name one arbitrator to the panel of arbitrators. In the event of their failure collectively to name such an arbitrator within fifteen (15) days after their first meeting, that arbitrator shall be named as provided in the Commercial Arbitration Rules of the American Arbitration Association. The two arbitrators thus selected shall name a third arbitrator within thirty (30) days

of their first meeting. In the event of their failure to so name such third arbitrator, that arbitrator shall be named as provided in the Commercial Arbitration Rules of the American Arbitration Association. The third arbitrator shall act as chairperson of the panel. The arbitration shall be governed by the Commercial Arbitration Rules of the American Arbitration Association. The arbitration shall be limited to the issue submitted. The panel of arbitrators shall not rewrite, change, or amend these General Regulations or the Contracts of any of the parties to the dispute. The panel of arbitrators shall render a final decision in this dispute within sixty (60) days after the date of the naming of the third arbitrator. A decision of any two of the three arbitrators named to the panel shall be final and binding on all parties involved in the dispute.

§ 904.14 Future regulations.

(a) Western may from time to time promulgate such additional or amendatory regulations as deemed necessary for the administration of the Project in accordance with applicable law; provided, that no right under any Contract shall be impaired or obligation thereunder be extended thereby.

(b) Any modification, extension, or waiver of any provision of these General Regulations granted for the benefit of any one or more Contractors shall not be denied to any other Contractor.

(c) Western reserves the right to terminate, modify, or extend these regulations, either partially or in their entirety, to the extent permitted by law or existing contract.

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Federal Register

Friday
November 28, 1986

Part III

Department of Education

34 CFR Parts 668 and 690

Student Assistance General Provisions and Pell Grant Program; Final Regulations

DEPARTMENT OF EDUCATION

34 CFR Parts 668 and 690

Student Assistance General Provisions and Pell Grant Program

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: Starting with the 1987–88 award year, the Secretary of Education is eliminating the Alternate Disbursement System of making awards to students under the Pell Grant Program. Under that System, the Secretary, rather than the institution the student is attending, calculates and disburses Pell Grant awards to students. The Secretary is amending the Pell Grant Program regulations, 34 CFR Part 690, to revoke Subpart H, "Administration of Grant Payments—Alternate Disbursement System (ADS)," and to eliminate references to the Alternate Disbursement System in the other subparts of Part 690 as well as in the Student Assistant General Provisions regulations, 34 CFR Part 668. The Secretary is eliminating the Alternate Disbursement System because he believes that the reasons for operating the System no longer justify the cost to the Department of operating it.

The Pell Grant Program is authorized by section 411 of the Higher Education Act of 1965, as amended (HEA), 20 U.S.C. 1070a.

EFFECTIVE DATE: These regulations take effect either 45 days after publication in the **Federal Register** or later, if Congress takes certain adjournments. It should be noted, however, that these regulatory amendments apply only to the award to student financial assistance under the Pell Grant Program for award years beginning on or after July 1, 1987. If you want to know the effective date of these regulations, call or write the Department of Education (ED) contact person.

FOR FURTHER INFORMATION CONTACT: Mr. Fred Sellers, Chief, Pell Grant Policy Section, or Ms. Carney McCullough, Pell Grant Program Specialist, Office of Student Financial Assistance, U.S. Department of Education, [ROB–3, Room 4318], 400 Maryland Avenue SW., Washington, DC 20202. Telephone (202) 472–4300.

SUPPLEMENTARY INFORMATION: The Secretary developed two systems for paying Pell Grants to students, the Regular Disbursement System (RDS) and the Alternate Disbursement System (ADS). Under the RDS, the institution determines whether a student is eligible to receive a Pell Grant and the amount of that grant. It then disburses the grant to the student by crediting the student's institutional account or paying the grant directly to the student. The Secretary provides money to RDS institutions for these disbursements.

The ADS was developed to accommodate institutions that did not wish to involve themselves directly in the administration of the Pell Grant Program. Under the ADS, the institution determines whether a student is eligible to receive a Pell Grant, but ED determines the amount of that grant. ED then disburses the grant to the student by mailing a check to the student. Thus under the ADS, ED essentially carries out many financial aid office functions for an ADS institution, at no cost to the institution, that RDS institutions carry out directly or through a financial aid service.

Each RDS and ADS institution receives an administrative cost allowance of $5 for each student who receives a Pell Grant at that institution. In addition, the ADS costs ED over $1 million annually to administer, yet the ADS serves only 35–40 thousand of the 2.83 million students who receive Pell Grants annually. ED believes that it is no longer necessary or appropriate to continue this subsidy for ADS institutions and that ADS institutions will be able to administer the Pell Grant Program properly under the RDS by either hiring their own staff or by contracting with financial aid consultants with the expertise to provide that administration.

Revisions to the Notice of Proposed Rulemaking

No significant changes have been made to the Notice of Proposed Rulemaking (NPRM) published in the **Federal Register** of August 22, 1986, 51 FR 30190–30191.

Summary of Comments and Responses

A summary of the comments received and the Department's response to these comments follow.

Comment: Several commenters noted that administering the Pell Grant Program under the RDS would require additional work by institutions currently under ADS. As a result, these institutions would need to hire additional staff or to contract with a financial aid consultant at an increased cost to the institution.

Response: No change has been made. The Secretary already pays an administrative cost allowance of $5 per Pell Grant recipient to both ADS and RDS institutions to assist in defraying the cost of administering the Pell Grant Program. The Secretary believes that it is no longer appropriate to subsidize ADS institutions in their participation in the Pell Grant Program and is therefore placing them on an equal financial footing with RDS institutions.

Comment: Several commenters felt that the elimination of the ADS would force small institutions without appropriate administrative or financial capabilities to withdraw from participation in the Pell Grant Program, and as a result, their eligible students would no longer receive Pell Grants.

Response: No change has been made. It is not the Department's intent to force ADS institutions to withdraw from the Pell Program and, therefore, prevent eligible students from receiving Pell Grants. These institutions can hire employees in their financial aid office with the requisite background and experience or can employ a financial aid consultant to perform these Pell Grant functions.

Comment: Several commenters indicated that their ADS institutions would convert to RDS but that ADS institutions which convert will need substantial training in the administration of the Pell Grant Program under the RDS.

Response: No change has been made. The Secretary will offer training and technical assistance to institutions which convert from ADS to RDS in the administration of the Pell Grant Program.

Comment: Several commenters suggested alternative ways for the Secretary to save money without completely eliminating ADS such as eliminating the administrative cost allowance for ADS institutions and charging a processing fee to institutions utilizing ADS.

Response: No change has been made. The Secretary has considered alternatives such as those mentioned before proposing the elimination of ADS. The administrative cost allowance for institutions with Pell Grant recipients is prescribed by law and cannot be eliminated. It is impractical for the Secretary to continue to administer the ADS and charge the participants a user fee.

Moreover, the processing fee that ED would charge would probably not be significantly less than the cost of employing a financial aid consultant to administer the Pell Grant Program.

Comment: Three commenters pointed out that some institutions participate in the Pell Grant Program through ADS because institutional dictates prohibit the schools from accepting Federal funds which are not designated for specific students. The ADS allows

institutions to act as intermediaries for the students.

Response: No change has been made. Whether an institution participates under ADS or RDS, Pell Grant monies are designated for specific students, and institutions do not select the recipients of Pell Grants. Therefore, institutions such as those described by the commenters continue to act only as intermediaries under the RDS.

Comment: One commenter suggested that the ADS be phased out in order to assist students who enrolled in programs with the belief that Federal funds would be available to them for the duration of their program.

Response: No change has been made. Phasing out the ADS would be extremely costly to the Department and would not benefit a large number of students.

Comment: Several commenters supported the Secretary's proposal to eliminate the ADS as a means of cost saving without sacrificing the availability of funds for student financial assistance and as an opportunity to bring equity to the Pell Grant Program, thereby facilitating the processing of financial aid for students.

Response: The Secretary agrees with the commenters and is eliminating the ADS.

Executive Order 12291

These proposed regulations have been reviewed in accordance with Executive Order 12291.

They are classified as nonmajor because they do not meet the criteria for major regulations established in the order.

Regulatory Flexibility Act Certification

The Secretary certifies that these regulations will not have a significant impact on a substantial number of small entities. Most of the institutions that participate in ADS have very few Pell Grant recipients. Those institutions which are considered small entities and have a large number of Pell Grant recipients will still be able to participate in the Pell Grant Program by contracting with financial aid services for the calculation and payment of grants rather than expanding their administrative functions.

Paperwork Reduction Act of 1980

These regulations do not contain any information collection requirements and are, therefore, not subject to the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96-511) which governs such requirements.

Assessment of Educational Impact

In the notice of proposed rulemaking, the Secretary requested comments on whether the proposed regulations would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

Based on the response to the proposed rules and on its own review, the Department has determined that the regulations in this document do not require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects

34 CFR Part 668

Administrative practice and procedures, Colleges and universities, Consumer protection, Education loan programs—education, Grant programs—education, Student aid.

34 CFR Part 690

Administrative practice and procedure, Education, Education of disadvantaged, Grant programs—education, Student aid.

Citation of Legal Authority

A citation of statutory or other legal authority is placed in parentheses on the line following each substantive provisions of these regulations.

(Catalog of Federal Domestic Assistance: No. 84.063, Pell Grant Program)

Dated: November 14, 1986.

William J. Bennett,

Secretary of Education.

The Secretary amends Parts 668 and 690 of Title 34 of the Code of Federal Regulations as follows:

PART 668—STUDENT ASSISTANCE GENERAL PROVISIONS

1. The authority citation for Part 668 continues to read as follows:

Authority: 20 U.S.C. 1085, 1088, 1091, 1092, 1094, and 1141; 50 U.S.C. App. 482, unless otherwise noted.

§ 668.14 [Amended]

2. In § 668.14, "or" is inserted after the semicolon at the end of paragraph (c)(1)(ii), "; or" is removed at the end of paragraph (c)(2) and a period is inserted in that place, and paragraph (c)(3) is removed.

§ 668.21 [Amended]

3. In § 668.21, paragraph (a)(3) is removed.

§ 668.22 [Amended]

4. In § 668.22, in paragraph (a)(1), the term "(Regular Disbursement System)" is removed.

5. In § 668.32, paragraph (d) is revised to read as follows:

§ 668.32 Statement of educational purpose.

* * * * *

(d) Until a student who is applying for title IV, HEA program assistance under the Pell Grant, campus-based, or State Student Incentive Grant programs files a Statement of Educational Purpose with the institution, an institution may not, for any period of instruction, disburse funds to the student under any title IV, HEA program.

(Authority: 20 U.S.C. 1091).

§ 668.33 [Amended]

6. In § 668.33, "or" is inserted after the semicolon at the end of paragraph (a)(1)(i), "; or" is removed at the end of paragraph (a)(1)(ii) and a period is inserted in that place, and paragraph (a)(1)(iii) is removed.

§ 668.41 [Amended]

7. In § 668.41, the phrase ", including the Pell Grant Program under the Alternate Disbursement System (ADS)," is removed.

§ 668.85 [Amended]

8. In § 668.85, in paragraph (c)(1), the phrase "or to the Secretary if the student is attending an institution which is under the alternate disbursement system," is removed.

PART 690—PELL GRANT PROGRAM

9. The authority for Part 690 continues to read as follows:

Authority: 20 U.S.C. 1070a, unless otherwise noted.

Subpart H—[Removed]

10. Subpart H of Part 690 (§§ 690.91–690.101) is removed.

§ 690.2 [Amended]

11. In § 690.2, paragraph (b), the definitions for "ADS institution" and "RDS institution" are removed.

§ 690.3 [Amended]

12. In § 690.3, paragraph (c) is removed.

§ 690.7 [Amended]

13. In § 690.7, paragraph (b), introductory text, the phrase "(or to the Secretary if it is an ADS institution)" is removed, the term "RDS" is removed in paragraph (c) introductory text, and paragraph (d) is removed.

14. Section 690.61 is revised to read as follows:

§ 690.61 Submission process and deadline for student aid report.

(a) *Submission process.* (1) In order to receive a Pell Grant at an institution, a student shall submit a valid Student Aid Report (SAR) to that institution.

(2) An institution is entitled to rely on SAR information except under conditions set forth in §§ 668.16(f) and 668.60.

(b) *Student Aid Report deadline.* (1) Except as noted in § 668.60, to receive a Pell Grant for an award year, a student shall submit the relevant parts of the SAR to his or her institution by June 30 of that award year.

(2) Except as noted in § 680.60, to receive a Pell Grant for an award year, a student shall submit the relevant parts of the SAR to an institution while he or she is still enrolled and eligible for payment at that institution.

Authority: 20 U.S.C. 1070a.

15. In § 690.65, paragraphs (a), (b), and (c) are revised to read as follows:

§ 690.65 Transfer student; attendance at more than one institution during an award year.

(a) If a student who receives a Pell Grant at one institution subsequently enrolls at a second institution in the same award year, the student shall submit an SAR to the second institution to receive a grant at the second institution. (The institution shall follow the procedures regarding transfer students set forth in 34 CFR 668.14.)

(b) The second institution shall calculate the student's award according to § 690.63.

(c) The second institution may pay a Pell Grant for only that portion of the award year in which a student is enrolled at that institution. The grant amount must be adjusted if necessary to ensure that the grant does not exceed the student's Scheduled Pell Grant for that award year.

* * * * *

§ 690.66 [Amended]

16. In § 690.66, paragraph (d) is removed.

17. In §§ 690.3, 690.63, 690.66, the heading for Subpart G of Part 690 (§§ 690.71–690.84), 690.71, 690.72, 690.73, and 690.74 the terms "Regular Disbursement System" and "RDS" are removed wherever they appear.

§ 690.73 [Amended]

18. In § 690.73, paragraph (e) is removed.

[FR Doc. 86–26730 Filed 11–26–86; 8:45 am]
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Federal Register

Friday
November 28, 1986

Part IV

Environmental Protection Agency

State FIFRA Issues Research and Evaluation Group (SFIREG); Open Meeting

ENVIRONMENTAL PROTECTION AGENCY

[OPP-00234; FRL 3120-4]

State FIFRA Issues Research and Evaluation Group (SFIREG); Open Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: There will be a 2-day meeting of the State FIFRA Issues Research and Evaluation Group (SFIREG). The meeting will be open to the public.

DATE: Monday, December 15, and Tuesday, December 16, 1986, beginning at 8:30 a.m. on December 15 and ending by mid-afternoon on December 16.

ADDRESS: The meeting will be held at: Hyatt-Regency—Crystal City, 2799 Jefferson Davis Highway, Arlington, VA 22202, (703-486-1234).

FOR FURTHER INFORMATION CONTACT:

By mail:

Philip H. Gray, Jr., Office of Pesticide Programs (TS-766C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 1115C, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703-557-7096).

SUPPLEMENTARY INFORMATION: The tentative agenda for the meeting thus far includes the following topics:

1. A status report by the Director, Office of Pesticide Programs, on ongoing FIFRA-State issues.

2. Action items from the July 1986 meeting of the SFIREG.

3. Regional reports.

4. Working Committee Reports.

5. Presentations by the Office of Pesticide Program's Registration Division on issues of interest to State Lead Agencies.

6. Presentations by the Office of Compliance Monitoring on issues of interest to State Lead Agencies.

7. Other topics as appropriate.

Dated: November 17, 1986.

Douglas D. Campt,

Director, Office of Pesticide Programs.

[FR Doc. 86-27002 Filed 11-26-86; 11:17 am]

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Federal Register

Vol. 51, No. 229

Friday, November 28, 1986

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Code of Federal Regulations

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Printing schedules and pricing information	523-3419

Laws 523-5230

Presidential Documents

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Public Papers of the President	523-5230
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TDD for the deaf	523-5229

FEDERAL REGISTER PAGES AND DATES, NOVEMBER

39847-39992.....3
39993-40120.....4
40121-40300.....5
40301-40398.....6
40399-40780.....7
40781-40956.....10
40957-41066.....12
41067-41292.....13
41293-41470.....14
41471-41594.....17
41595-41754.....18
41755-41928.....19
41929-42078.....20
42079-42196.....21
42197-42542.....24
42543-42814.....25
42815-42986.....26
42987-43166.....28

CFR PARTS AFFECTED DURING NOVEMBER

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
5562.....39849
5563.....39851
5564.....40399
5565.....40403
5566.....40957
5567.....40959
5568.....40961
5569.....41293
5570.....41471
5571.....41595
5572.....41755
5573.....41929
5574.....42197
5575.....42543
5576.....42545
5577.....42815
5578.....42817

Executive Orders:
11157 (Amended by EO 12573).....40954
12170 (See Notice of November 10, 1986).....41067
12572.....40401
12573.....40954
12574.....42199

Administrative Orders:
Notices:
November 10, 1986.....41067
Presidential Determinations:
No. 87-2 of October 22, 1986.....39847
No. 87-3 of October 27, 1986.....40301

5 CFR

Ch. XIV.....40121
532.....39853
831.....42987
874.....40975

Proposed Rules:
335.....40436

7 CFR

29.....40405
68.....40121
210.....41295
226.....42990
271.....42992
272.....42992
273.....42992
274.....42992
275.....42992
276.....42992
277.....42992
278.....42992
279.....42992
280.....42992
281.....42992
282.....42992
284.....42992
285.....42992
301.....41931
421.....40963
441.....41757
905.....40781
906.....41069
907.....40778, 41295, 42079
910.....39853, 40778, 41296, 42079
944.....41069
966.....41071
989.....40122
1097.....40782
1137.....42819
1280.....40408
1477.....41757
1900.....40783
1924.....41597
1941.....40783
1943.....40783
1944.....41597
1945.....40783
1951.....42820
1955.....40783
1962.....40783
1965.....40783
1980.....40783

Proposed Rules:
8.....42540
57.....40174
68.....40174
400.....41800, 42108
425.....40438
810.....41971
1011.....40030
1032.....42109
1036.....42579
1064.....40176
1102.....40176
1106.....40176
1108.....40176
1126.....40176
1137.....39863
1138.....40176
1786.....42846
3402.....41466

8 CFR

100.....42080
103.....39993
316a.....40123

Proposed Rules:
103.....40207
214.....40207

9 CFR

77.....42081
91.....41075
92.....40124
202.....42082

Proposed Rules:
51 41108
92 41109
101 41975
102 41975
103 41975
104 41975
107 41975
114 41975
115 40034
118 40034
319 42239

10 CFR

50 ..... 40303, 41353
51 40303
430 42823
463 42994
904 43124
Proposed Rules:
50 ..... 40334, 40335
70 40208
73 40438
74 40208
430 40441
435 41637
455 40441
961 40684

11 CFR

Proposed Rules:
100 41110
106 41110
9001 41110
9002 41110
9003 41110
9004 41110
9005 41110
9006 41110
9007 41110
9031 41110
9032 41110
9033 41110
9034 41110
9035 41110
9036 41110
9037 41110
9038 41110
9039 41110

12 CFR

Ch. VII 42083
225 ..... 39994, 40963
227 41763
543 40127
546 40127
552 40127
562 40127
563 40127
563b 40127
574 40127
600 41932
601 41932
602 41932
603 41932
604 41932
611 41932
612 41932
613 41932
614 41932
615 41932
617 41932
618 41932
620 42084
621 42084
Proposed Rules:
211 41801
226 ..... 42241, 42248
262 41801

13 CFR

107 40000
Proposed Rules:
129 42255
140 42547

14 CFR

1 40692
39 ..... 40001–40003, 40312, 41950, 40408, 40409, 40969, 41076–41079, 41473, 42201–42205
43 40692
45 40692
61 40692
71 ..... 39855, 40156, 40410, 40970, 41612, 41740, 42206, 42207
91 40692
95 42827
97 ..... 40971, 42832
133 40692
135 40692
204 40410
291 40410
Proposed Rules:
Ch. I 42255
25 42583
39 ..... 39864, 39865, 40032–40035, 40209, 40210, 40442, 40811, 40985, 41110, 41112, 41113, 41638, 41979–41981, 42850–42854, 43010
71 ..... 39866, 39867, 40036, 40812, 41748, 42256, 42856, 43011
73 ..... 41114, 41116, 42256, 43012
121 42583
150 40037
159 41290

15 CFR

372 40156
373 40156
374 40156
377 40156
379 40156
390 40156
399 40159
806 41476
Proposed Rules:
303 40813
806 42583

16 CFR

13 ..... 40788, 41613
307 40005
425 42087
Proposed Rules:
13 ..... 40039, 40336, 40443, 43013, 43022

17 CFR

200 40789
202 40791
210 42048
211 41079
229 42048
239 42048
240 ..... 40792, 41296, 42048
249 42048
270 ..... 42048, 42207
Proposed Rules:
1 41117
3 40814
33 41117
201 39868
229 ..... 39868, 42073
230 39868
239 42073
240 ..... 42073, 42856

18 CFR

154 41080
270 40972
271 40973
282 42995
Proposed Rules:
154 41982
271 ..... 41806, 41982
1307 40338

19 CFR

12 42996
103 ..... 40338, 40792
113 42997
141 42997

20 CFR

404 41950
422 41950
Proposed Rules:
404 42045

21 CFR

5 41764
73 40160
74 41765
81 ..... 39856, 41765
82 41765
123 41615
131 40313
133 42088
172 ..... 40160, 42999–43001
175 43120
178 43120
182 42676
184 42676
201 41765
520 ..... 41081, 41783, 42163, 42833
522 41476
558 43121
814 40414
868 40378
874 40378
1308 42834
Proposed Rules:
101 42584
150 40817
155 41987
344 42676
358 42676
874 ..... 40394, 40396
878 40396
886 40396
1308 43025

22 CFR

526 40160
527 40160

23 CFR

625 40817
637 40415

24 CFR

200 42088
215 42088
235 42088
236 42088
247 42088
812 ..... 42088, 42090
880 42088
881 42088
882 42088
883 42088
884 42088
885 42090
886 42088
912 42088

26 CFR

1 42835
31 40167
602 40167
Proposed Rules:
1 40211
7 40211
20 40211
25 40211
31 40232
53 40211
56 40211

27 CFR

19 40023
Proposed Rules:
4 41355
5 41355
7 41355
9 41639

28 CFR

544 42166
Proposed Rules:
2 42593
545 42167

29 CFR

2509 41262
2510 41262
2520 41285
2550 41262
2619 41298
2676 41299
1910 41477
1978 42091
Proposed Rules:
1910 42257
1926 ..... 42680, 42718, 42750

30 CFR

701 ..... 41734, 41952
705 40026
761 41952
764 41952
769 41952
772 41952
773 41952
780 41952
784 41952
785 41952
816 ..... 41734, 41952
817 ..... 41734, 41952
918 40793
946 42548
948 40795
950 42209
Proposed Rules:
15 41046
250 40819
256 40819
800 42984

904.....42266
917.....42267
938.....42267

31 CFR

316.....39990
332.....39990
342.....39990
351.....39990
352.....39990
545.....41906, 41911
555.....41916

Proposed Rules:

10.....40340
103.....42269
357.....43027

32 CFR

99.....42555
150.....42557
198.....41784
289.....41962
291b.....41300
701.....42836
706.....41477, 41478
2003.....40680

Proposed Rules:

166.....40820
231a.....40828
855.....41121

33 CFR

110.....39857, 42163
117.....39857, 40315, 41478, 41894
165.....41479, 42220, 42562
320.....41206
321.....41206
322.....41206
323.....41206
324.....41206
325.....41206
326.....41206
327.....41206
328.....41206
329.....41206
330.....41206
334.....42838

Proposed Rules:

100.....40341
110.....41642, 42269
117.....40342, 43047
151.....40950
158.....40950
165.....42595

34 CFR

222.....41562
668.....41920, 43160
674.....41920
675.....41920
676.....41920
682.....40886
683.....40886
690.....41920, 43160

35 CFR

251.....40418
253.....40418

36 CFR

7.....40418
211.....41785
223.....40315
251.....41081

38 CFR

Proposed Rules:

3.....41644
17.....41807
36.....41808

39 CFR

111.....41300
221.....40796
222.....40796
223.....40796
244.....40796
776.....40170

40 CFR

51.....40656
52.....40316, 40317, 40419, 40656, 40798, 40799, 40975, 41786, 41963, 42221–42225, 42563–42565, 43120
60.....42768–42796, 42839
62.....40799, 40802, 41788, 43120
81.....40803, 41788, 42227
190.....42573
260.....39859, 40572
261.....39859, 40572, 41082, 4110, 41306, 41323, 41480–41501, 41616–41624
262.....39859, 40572
264.....39859, 40572
265.....39859, 40572
268.....39859, 40572
270.....39859, 40572
271.....39859, 40572
300.....41570
413.....40420
433.....40420
712.....41328
716.....41328
790.....41331
795.....40318
799.....40318, 41331

Proposed Rules:

52.....40446, 40447, 40828, 42111 41809, 41810
60.....40043, 40448, 42800
81.....40043, 41355
86.....40986
152.....42974
180.....40987, 40988, 41811, 41812
260.....40726
261.....39968, 40343, 41900
264.....40726
265.....41646
270.....40726
300.....41593
763.....42812

41 CFR

101–40.....40805

42 CFR

405.....41332
406.....41332
408.....41332
409.....41332
410.....41332
412.....42229
413.....42229
421.....41332
431.....41332
433.....41332
435.....41332
489.....41332

Proposed Rules:

36.....40108
57.....43048
58.....41988

43 CFR

2910.....40807

Public Land Orders:

6628.....40421
6629.....41104
6630.....41627
6631.....43003
6632.....43003

Proposed Rules:

11.....41131
426.....40742, 40774

44 CFR

64.....39859, 41505, 42574
65.....40330

Proposed Rules:

205.....41132

45 CFR

5b.....41352
96.....40026
1612.....40422

46 CFR

252.....40422
281.....43003

Proposed Rules:

98.....40951
151.....40951
153.....40951
172.....40951
580.....41132

47 CFR

0.....41105
2.....41628
69.....42235
73.....40170, 40433, 40434, 40976, 40977, 41628
94.....41629
97.....39859, 41630, 42576

Proposed Rules:

22.....42597
25.....40467
67.....40232
69.....40990
73.....40467, 40468, 41357–41360, 41647, 42270, 43050–43054
74.....40990
78.....40990

48 CFR

Ch. 7.....42844
204.....42095
223.....42095
252.....42095
433.....41790
502.....39861
505.....41506
509.....39861
513.....41506
516.....39862
519.....41506
552.....41506
702.....41106
705.....42844
706.....42844
1401.....41964
1405.....41964
1406.....41964
1414.....41964
1415.....41964
1419.....41964
1420.....41964
1428.....41964
1437.....41964
1452.....41964
1453.....41964
2413.....40331
2433.....40331
2901.....40372
2902.....40372
2903.....40372
2905.....40372
2906.....40372
2909.....40372
2913.....40372
2914.....40372
2915.....40372
2916.....40372
2917.....40372
2919.....40372
2933.....40372
2943.....40372
2949.....40372
5350.....40977

Proposed Rules:

1.....39964
14.....41897
22.....39964
52.....39964, 42805
53.....39964
203.....42113
252.....42113
PHS 352.....40108

49 CFR

71.....41631
171.....42174
172.....41631, 42174
173.....41631
192.....41633, 41634
541.....42577
571.....40979
1058.....41635
1063.....42097
1135.....40171
1152.....42098
1312.....40171

Proposed Rules:

Ch. V.....39877
172.....42114
533.....40344
571.....42598

50 CFR

17.....41790
20.....41508, 42098, 42103
36.....41508
216.....40171
371.....41509
611.....40810, 41797
652.....40173
655.....42237
663.....41969
671.....40027
672.....41797
675.....40810, 41797

Proposed Rules:

17.....40044–40051, 42116
216.....41814, 43055
222.....42271
611.....41989
644.....40233

650.....40468
652.....43055
655.....43056
661.....42273
663.....43057
672.....42603
685.....41989

LIST OF PUBLIC LAWS

Note: The listing of public laws enacted during the second session of the 99th Congress has been completed.

[Last listing: Nov. 20]

The listing will be resumed when bills are enacted into public law during the first session of the 100th Congress which convenes on January 6, 1987.